

NetApp, Inc.  
Form S-4/A  
June 17, 2009

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As filed with the Securities and Exchange Commission on June 17, 2009

Registration No. 333-159722

**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

**Amendment No. 1**

**to**

**Form S-4**

**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)*

**3572**

*(Primary Standard Industrial  
Classification Code Number)*

**77-0307520**

*(I.R.S. Employer  
Identification Number)*

**495 East Java Drive**

**Sunnyvale, California 94089**

**(408) 822-6000**

*(Address, including Zip Code, and Telephone Number, including Area Code, of Registrant's Principal Executive  
Offices)*

**Daniel J. Warmenhoven**

**Chief Executive Officer and Director**

**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)*

***With copies to:***

**Steven E. Bochner, Esq.**

**Michael S. Ringler, Esq.**

**Nathaniel P. Gallon, Esq.**

**Wilson Sonsini Goodrich & Rosati**

**Professional Corporation**

**650 Page Mill Road**

**Palo Alto, California 94304-1050**

**(650) 493-9300**

**Robert G. Specker, Esq.**

**Vice President, In-house Counsel**

**Data Domain, Inc.**

**2421 Mission College Blvd.**

**Santa Clara, California 95054**

**(408) 980-4800**

**Gordon K. Davidson, Esq.**

**Dennis R. DeBroeck, Esq.**

**Robert A. Freedman, Esq.**

**R. Gregory Roussel, Esq.**

**Fenwick & West LLP**

**801 California Street**

**Mountain View, California 94041**

**(650) 938-5200**

**Approximate date of commencement of the proposed sale of the securities to the public:** As soon as practicable after this Registration Statement becomes effective and upon completion of the merger described in the enclosed document.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box.

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

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)

If applicable, place an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:

Exchange Act Rule 13e-4(i) (Cross-Border Issuer Tender Offer)

Exchange Act Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

### CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered(1)	Amount to be Registered(2)	Proposed Maximum Offering Price per Unit	Proposed Maximum Aggregate Offering Price(3)	Amount of Registration Fee(4)
Common Stock, par value \$0.001 per share	54,695,347	N/A	\$613,152,900	\$34,214

(1) This Registration Statement relates to shares of common stock, par value \$0.001 per share, of the Registrant ( NetApp ) issuable to holders of shares of common stock, par value \$0.0001 per share, of Data Domain, Inc., a Delaware corporation ( Data Domain ), in the proposed acquisition of Data Domain by the Registrant pursuant to the terms of the Agreement and Plan of Merger, dated as of May 20, 2009, as amended on June 3, 2009, by and among the Registrant, Kentucky Merger Sub One Corporation, Derby Merger Sub Two LLC and Data Domain.

(2) Based on the maximum number of shares of NetApp common stock to be issued in connection with the merger, calculated as the product of (a) 70,275,404 shares, the maximum number of shares of Data Domain common stock that may be cancelled and exchanged in the merger and (b) the maximum exchange ratio of 0.7783 shares of the Registrant's common stock for each share of Data Domain common stock, which represents the highest possible exchange ratio pursuant to the Agreement and Plan of Merger.

(3) Estimated solely for purposes of calculating the registration fee in accordance with Rules 457(c) and 457(f) of the Securities Act of 1933, as amended, the market value of the securities to be registered was calculated as the product of (A) \$25.175, the average of the high and low prices per share of Data Domain common stock on

May 29, 2009, as quoted on the NASDAQ Global Select Market, multiplied by (B) 70,275,404, the maximum number of shares of Data Domain common stock that may be cancelled and exchanged in the merger; less \$1,156,030,396, the aggregate amount of cash that would be payable to the holders of Data Domain common stock in the merger assuming 70,275,404 shares of Data Domain common stock were outstanding and assuming a per share cash amount of \$16.45.

(4) This fee has been previously paid.

**The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement shall become effective on such dates as the Commission, acting pursuant to said Section 8(a), may determine.**

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Information contained herein is subject to completion or amendment. A registration statement relating to these securities has been filed with the Securities and Exchange Commission. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This document shall not constitute an offer to sell or the solicitation of any offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

**PRELIMINARY SUBJECT TO COMPLETION DATED JUNE 17, 2009**

**MERGER PROPOSAL  
YOUR VOTE IS VERY IMPORTANT**

Dear Stockholder:

On May 20, 2009, Data Domain, Inc., referred to as Data Domain, and NetApp, Inc., referred to as NetApp, announced a business combination in which a direct, wholly owned subsidiary of NetApp will merge with Data Domain, with Data Domain continuing as the interim surviving entity, and, immediately thereafter, subject to certain conditions, Data Domain will merge with a second direct, wholly owned subsidiary of NetApp, with such subsidiary continuing as the final surviving entity. On June 3, 2009, NetApp and Data Domain amended the original merger agreement to reflect the terms described in this proxy statement/prospectus. The first merger is referred to herein as the first-step merger, the second merger is referred to herein as the second-step merger, and together such mergers are referred to herein as the merger. If the first-step merger is completed, you will have the right to receive \$16.45 in cash, without interest and less any applicable withholding, referred to as the cash consideration, subject to adjustment, and a number of shares of NetApp common stock equal to the exchange ratio, referred to as the stock consideration, and together with the cash consideration, referred to as the merger consideration, for each outstanding share of common stock of Data Domain that you hold immediately prior to the first-step merger.

The exchange ratio is equal to (i) 0.7783 shares of NetApp common stock if the closing average (as described 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 closing average means the average of the closing sales prices for NetApp common stock (rounded to the nearest one-hundredth of a cent) 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. Data Domain stockholders may contact Innisfree M&A Incorporated, Data Domain's information agent, toll free at (888) 750-5834, and banks or brokers may call collect at (212) 750-5833, for information regarding the approximate merger consideration payable in connection with the first-step merger based on information available as of the date of inquiry. In addition, on the third trading day preceding the date of the special meeting of the Data Domain stockholders described below, NetApp and Data Domain will issue a joint press release announcing the aggregate merger consideration that would be payable to the Data Domain stockholders, assuming that the merger closed on the date of the special meeting. As further described in this proxy statement/prospectus, under certain conditions, NetApp may elect to reduce, or be required to reduce, the stock consideration, and in the event of such a reduction, NetApp will be required to increase the cash consideration.

If the closing average is less than \$17.41, the value of the merger consideration will be less than the aggregate \$30.00 value of the merger consideration on June 3, 2009, the date on which the revised terms of the merger were announced. If the closing average is greater than \$21.27, the value of the merger consideration will be greater than the aggregate \$30.00 value of the merger consideration on June 3, 2009. The following table shows the closing sale prices of NetApp common stock and Data Domain common stock as reported on the NASDAQ Global Select Market on May 19, 2009, the last trading day before the initial announcement of the potential merger, on June 2, 2009, the last trading day before the revised terms of the merger were announced and on [ ], 2009, the last trading day before the distribution of the enclosed proxy statement/prospectus for which data was available. This table also shows the implied value of the merger consideration proposed for each share of Data Domain common stock, which was calculated by adding to \$16.45, or the cash consideration, the product obtained by multiplying the closing price of NetApp common stock on those dates by the implied exchange ratio for the stock consideration that would apply if the closing average were equal to such closing price on such dates.

	NetApp Common Stock	Data Domain Common Stock	Implied Value of One Share of Data Domain Common Stock
May 19, 2009(1)	\$ 18.07	\$ 17.43	\$ 25.00
June 2, 2009	\$ 19.34	\$ 31.58	\$ 30.00
[ ], 2009	\$ [ ]	\$ [ ]	\$ [ ]

(1) Based on the terms of the original merger agreement.

The market prices of both NetApp common stock and Data Domain common stock will fluctuate before the merger. You should obtain current stock price quotations for NetApp common stock and Data Domain common stock. NetApp common stock is quoted on the NASDAQ Global Select Market under the symbol NTAP. Data Domain common stock is quoted on the NASDAQ Global Select Market under the symbol DDUP.

We cannot complete the merger unless Data Domain's stockholders adopt the merger agreement, the proposal to adopt the merger agreement being referred to in the proxy statement/prospectus as the merger proposal. Data Domain will hold a special meeting of its stockholders to vote on the merger proposal at 2421 Mission College Blvd., Santa Clara, CA 95054 at [ ], local time, on [ ], 2009. **Your vote is important. The market price of NetApp common stock will continue to fluctuate following the date of the stockholder vote on the merger proposal at the special meeting. Consequently, at the time of the stockholder vote, the value of the stock consideration will not yet be determined. Regardless of whether you plan to attend the special meeting, please take the time to vote your shares in accordance with the instructions contained in this proxy statement/prospectus. Failing to vote will have the same effect as voting against the merger proposal. You will also have an opportunity to vote to approve the adjournment or postponement of the special meeting, if necessary, to solicit additional proxies in favor of the approval of the merger proposal, referred to as the adjournment proposal.**

**The Data Domain board of directors unanimously recommends that Data Domain stockholders vote FOR approval of the merger proposal and FOR the adjournment proposal.**

This proxy statement/prospectus describes the special meeting, the merger proposal and the adjournment proposal, the documents related to each proposal, and other related matters. **Please carefully read this entire proxy statement/prospectus, including Risk Factors beginning on page 14, for a discussion of the risks relating to the merger proposal.** You also can obtain information about NetApp and Data Domain from documents that each of us has filed with the Securities and Exchange Commission.

By Order of the Board of Directors

Sincerely,

Frank Sloatman  
President and Chief Executive Officer

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the NetApp common stock to be issued under this proxy statement/prospectus or determined if this proxy statement/prospectus is accurate or adequate. Any representation to the contrary is a criminal offense.**

The date of this proxy statement/prospectus is [        ], 2009, and it is first being mailed or otherwise delivered to Data Domain stockholders on or about [        ], 2009.

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**DATA DOMAIN, INC.  
2421 Mission College Blvd.  
Santa Clara, CA 95054**

**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS**

[        ], 2009

To the Stockholders of Data Domain, Inc.:

Data Domain, Inc., or Data Domain, will hold a special meeting of stockholders at 2421 Mission College Blvd., Santa Clara, CA 95054 at [        ], local time, on [        ], 2009 to consider and vote upon the following proposals:

1. To adopt the Agreement and Plan of Merger, dated as of May 20, 2009, as amended on June 3, 2009, by and among NetApp, Kentucky Merger Sub One Corporation, Derby Merger Sub Two LLC and Data Domain, as the agreement may be amended from time to time, which proposal is referred to as the merger proposal; and
2. To approve the adjournment or postponement of the special meeting, if necessary, to solicit additional proxies, in the event that there are not sufficient votes at the time of the special meeting to approve the merger proposal, which proposal is referred to as the adjournment proposal.

The Data Domain board of directors has fixed the close of business on [        ], 2009 as the record date for the special meeting. Only Data Domain stockholders of record at that time are entitled to notice of, and to vote at, the special meeting, or any adjournment or postponement of the special meeting. In order for the merger proposal to be approved, the holders of at least a majority of the Data Domain shares outstanding and entitled to vote thereon must vote in favor of approval of the merger proposal. In the event that a quorum is not present in person or represented by proxy at the special meeting, the chairman of the meeting may adjourn the meeting to another place, date or time. If a quorum is present in person or represented by proxy at the special meeting, approval of the adjournment proposal requires the affirmative vote of the majority of the outstanding shares that are present in person or represented by proxy and entitled to vote at the special meeting.

**Regardless of whether you plan to attend the special meeting, please submit your proxy with voting instructions. Please vote as soon as possible. If you hold stock in your name as a stockholder of record, please vote your shares by (i) completing, signing, dating and returning the enclosed proxy card, (ii) using the telephone number on your proxy card, or (iii) using the Internet voting instructions on your proxy card. If you hold your stock in street name through a bank, broker, or other nominee, please direct your bank, broker, or other nominee to vote in accordance with the instructions you have received from your bank, broker, or other nominee.** This will not prevent you from voting in person, but it will help to secure a quorum and avoid additional solicitation costs. Any holder of Data Domain common stock who is present at the special meeting may vote in person instead of by proxy, thereby canceling any previous proxy. In any event, a proxy may be revoked in writing at any time before the special meeting in the manner described in the accompanying document.

**The Data Domain board of directors has unanimously approved the merger proposal and unanimously recommends that Data Domain stockholders vote FOR approval of the merger proposal and FOR approval of the adjournment proposal.**

BY ORDER OF THE BOARD OF DIRECTORS,

Sincerely,

Frank Sloodman  
President and Chief Executive Officer

[        ], 2009

**YOUR VOTE IS IMPORTANT.**

**PLEASE VOTE YOUR SHARES PROMPTLY, REGARDLESS OF WHETHER YOU PLAN TO ATTEND THE SPECIAL MEETING.**

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**REFERENCES TO ADDITIONAL INFORMATION**

This proxy statement/prospectus incorporates important business and financial information about NetApp and Data Domain from documents that are not included in or delivered with this document. You can obtain documents incorporated by reference in this proxy statement/prospectus, other than certain exhibits to those documents, or filed as exhibits to the registration statement of which this proxy statement/prospectus is a part, by requesting them in writing or by telephone from the appropriate company at the following addresses:

**NetApp, Inc.**  
495 East Java Drive  
Sunnyvale, CA 94089  
Attention: Investor Relations  
Telephone: (408) 822-7098

**Data Domain, Inc.**  
2421 Mission College Blvd.  
Santa Clara, CA 95054  
Attention: Investor Relations  
Telephone: (408) 980-4909

*You will not be charged for any of these documents that you request. Data Domain stockholders requesting documents should do so by [        ], 2009 (which is five business days prior to the date of the special meeting) to ensure that they receive them before the special meeting.*

See Where You Can Find More Information on page 96.

**ABOUT THIS PROXY STATEMENT/PROSPECTUS**

This proxy statement/prospectus, which forms a part of a registration statement on Form S-4 filed with the Securities and Exchange Commission, referred to as the SEC, by NetApp, constitutes a prospectus of NetApp under Section 5 of the Securities Act of 1933, as amended, referred to as the Securities Act, with respect to the shares of NetApp common stock to be issued to Data Domain stockholders in connection with the merger. This document also constitutes a proxy statement under Section 14(a) of the Securities Exchange Act of 1934, as amended, referred to as the Exchange Act, and the rules thereunder, and a notice of meeting with respect to the special meeting of Data Domain stockholders to consider and vote upon the merger proposal and the adjournment proposal.

Except as otherwise provided herein, all descriptions of and calculations made under the terms of the merger agreement and the transactions contemplated by the merger agreement, including the merger, assume that no Data Domain stockholders exercise appraisal rights under Delaware law.

To facilitate the reading of this proxy statement/prospectus, in referring to we, us and other first person declarations, we are referring to both NetApp and Data Domain or, in some instances, the combined company as it would exist following the completion of the merger.

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**Q: Why am I receiving this proxy statement/prospectus?**

A: NetApp, Inc., referred to as NetApp, has agreed to acquire Data Domain, Inc., referred to as Data Domain, by means of a merger of Data Domain with a subsidiary of NetApp. Please see Data Domain Proposal 1 The Merger beginning on page 25 and The Merger Agreement beginning on page 54 for a description of the merger and the merger agreement. A copy of the merger agreement is attached to this proxy statement/prospectus as Appendix A.

To complete the merger, Data Domain stockholders must vote to approve the merger proposal. Data Domain will hold a special meeting of stockholders to obtain this approval. You will also be given an opportunity to vote to approve the adjournment or postponement of the special meeting, if necessary, to solicit additional proxies in favor of the merger proposal, referred to as the adjournment proposal.

**Q: What will happen in the merger?**

A: As the first step in the transaction, a direct, wholly owned subsidiary of NetApp will merge with Data Domain, with Data Domain continuing as the surviving entity, and as a direct, wholly owned subsidiary of NetApp. Immediately thereafter, provided that certain conditions described below are satisfied, Data Domain will merge with a second direct, wholly owned subsidiary of NetApp, with such second subsidiary continuing as the surviving corporation. The first merger is referred to herein as the first-step merger and the second merger is referred to herein as the second-step merger. If the second-step merger occurs, the first-step merger and the second-step merger together are referred to herein as the merger. If the second-step merger does not occur, references herein to the merger shall mean the first-step merger. Upon completion of the first-step merger, Data Domain common stock will cease trading on the NASDAQ Global Select Market, and Data Domain common stockholders will be entitled to receive the merger consideration for each outstanding share of Data Domain common stock held immediately prior to the first-step merger.

**Q: What will Data Domain stockholders receive in the merger?**

A: In the merger, subject to the possible adjustments to the cash consideration and the stock consideration described below, each Data Domain stockholder will have a right to receive a cash amount of \$16.45, without interest and less any applicable withholding, plus a number of shares of NetApp common stock equal to the exchange ratio for each outstanding share of Data Domain common stock. The exchange ratio will depend on the closing average of NetApp common stock. The closing average is 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.

The exchange ratio is equal to (i) 0.7783 shares of NetApp common stock if the closing average 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.

For example, if the closing average of NetApp common stock is \$16.00, a holder of 100 shares of Data Domain common stock will receive \$1,645 in cash and 77 shares of NetApp common stock (i.e.,  $100 \times \$16.45 = \$1,645$  in cash and  $100 \times 0.7783 = 77$  shares of common stock), plus cash equal to the value of the fractional share of NetApp common stock to which such holder would otherwise be entitled.

If the closing average of NetApp common stock is \$18.00, a holder of 100 shares of Data Domain common stock will receive \$1,645 in cash and 75 shares of NetApp common stock (i.e.,  $100 \times \$16.45 = \$1,645$  in cash and 100

$\times (\$13.55/\$18.00) = 75$  shares of common stock), plus cash equal to the value of the fractional share of NetApp common stock to which such holder would otherwise be entitled.

Finally, if the closing average of NetApp common stock is \$22.00, a holder of 100 shares of Data Domain common stock will receive \$1,645 in cash and 63 shares of NetApp common stock (i.e.,  $100 \times \$16.45 = \$1,645$  in cash and  $100 \times 0.6370 = 63$  shares of common stock), plus cash equal to the value of the fractional share of NetApp common stock to which such holder would otherwise be entitled.

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The range of outcomes is illustrated by the following graph:

Stockholders of Data Domain should bear in mind, however, that under the merger agreement, if the exchange ratio is greater than or equal to 0.7006 and less than 0.7783, NetApp, in its sole discretion may reduce the number of shares of NetApp common stock you will receive and proportionately increase the amount of cash you will receive. However, NetApp may not reduce the amount of 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 herein.

If the aggregate amount of the stock consideration issuable in the merger (including the stock consideration issuable to holders of Data Domain options and restricted stock units) would exceed 19.5% of the outstanding shares of NetApp common stock immediately prior to the effective time of the first-step 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 effective time of the first-step 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. In the event that the stock consideration is decreased in accordance with this paragraph, the merger may fail to qualify as a tax-free reorganization under the Internal Revenue Code.

Data Domain stockholders may contact Innisfree M&A Incorporated, Data Domain's information agent, toll free at (888) 750-5834, and banks or brokers may call collect at (212) 750-5833, for information regarding the approximate merger consideration payable in connection with the merger. In addition, on the third trading day preceding the date of the special meeting of the Data Domain stockholders, NetApp and Data Domain will issue a joint press release announcing the aggregate merger consideration that would be payable to the Data Domain stockholders and whether it is anticipated that the merger will qualify as a tax-free reorganization, assuming that the merger closed on the date of the special meeting. However, there can be no assurance that the merger will close on the date of the special meeting of the stockholders. Further, the determination of whether the merger will qualify as a tax-free reorganization will depend upon the value of NetApp common stock on the last business day preceding the closing. As such, the assumptions in the joint press release may differ from the actual merger consideration payable in, and the tax treatment of, the merger at the closing.

**Q: What do I need to do now?**

A: After you have carefully read this proxy statement/prospectus and have decided how you wish to vote your shares, please vote your shares promptly. If you hold stock in your name as a stockholder of record, please vote your shares by (i) completing, signing, dating and returning the enclosed proxy card, (ii) using the telephone

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number on your proxy card or (iii) using the Internet voting instructions on your proxy card. If you have Internet access, you are encouraged to record your vote via the Internet.

If you hold your stock in street name through a bank, broker or other nominee, you must direct your bank, broker or other nominee to vote in accordance with the instructions you have received from your bank, broker or other nominee. Submitting your proxy card or directing your bank, broker or other nominee to vote your shares will ensure that your shares are represented and voted at the special meeting.

### **Q: Why is my vote important?**

A: If you do not vote by proxy or vote in person at the special meeting, it will be more difficult for us to obtain the necessary quorum to hold the special meeting. In addition, your failure to vote, by proxy or in person, or failure to instruct your broker, will have the same effect as a vote against the merger proposal. The merger proposal must be approved by the holders of a majority of the outstanding shares of Data Domain common stock entitled to vote at the special meeting. In the event that a quorum is not present in person or represented by proxy at the special meeting, the chairman of the meeting may adjourn the meeting to another place, date or time. Approval of the adjournment proposal requires the affirmative vote of the majority of the outstanding shares that are present in person or represented by proxy and entitled to vote at the special meeting. The Data Domain board of directors unanimously recommends that you vote to approve the merger proposal and the adjournment proposal.

### **Q: If my shares of common stock are held in street name by my broker, will my broker automatically vote my shares for me?**

A: No. Your broker cannot vote your shares without instructions from you. You should instruct your broker as to how to vote your shares, following the directions your broker provides to you. Please check the voting form used by your broker.

### **Q: What if I abstain from voting or fail to instruct my broker?**

A: If you abstain from voting, the abstention will be counted toward a quorum at the special meeting, but it will have the same effect as a vote against the merger proposal and against the adjournment proposal. If you fail to instruct your broker, a broker non-vote, those shares would be counted towards a quorum at the special meeting, but the shares would not be considered entitled vote, and thus it will have the same effect as a vote against the merger proposal, but it will have no effect on the adjournment proposal.

### **Q: Can I attend the special meeting and vote my shares in person?**

A: Yes. All stockholders, including stockholders of record and stockholders who hold their shares through banks, brokers, nominees or any other holder of record, are invited to attend the special meeting. Holders of record of Data Domain common stock can vote in person at the special meeting. If you are not a stockholder of record, you must obtain a proxy, executed in your favor, from the record holder of your shares, such as a broker, bank or other nominee, to be able to vote in person at the special meeting. If you plan to attend the special meeting, you must hold your shares in your own name or have a letter from the record holder of your shares confirming your ownership, and you must bring a form of personal photo identification with you to be admitted. Data Domain reserves the right to refuse admittance to anyone without proper proof of share ownership or without proper photo identification.

### **Q: Can I change my vote?**

A: Yes. You may revoke any proxy at any time before it is voted by signing and returning a proxy card with a later date, delivering a written revocation letter to the Data Domain Corporate Secretary, or by attending the special meeting in person, notifying the Corporate Secretary and voting by ballot at the special meeting. The Data Domain Corporate Secretary's mailing address is 2421 Mission College Blvd., Santa Clara, CA 95054.

Any stockholder entitled to vote in person at the special meeting may vote in person regardless of whether a proxy has been previously given, but the mere presence (without notifying the Data Domain Corporate Secretary) of a stockholder at the special meeting will not constitute revocation of a previously given proxy.

**Q: If I am a Data Domain stockholder, should I send in my Data Domain stock certificates now?**

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A: No. You should not send in your Data Domain stock certificates at this time. After the merger is completed, NetApp will send you instructions for exchanging Data Domain stock certificates for the merger consideration. Unless Data Domain stockholders specifically request to receive NetApp stock certificates, the shares of NetApp stock they receive in the merger will be issued in book-entry form.

**Q: Is the merger subject to the approval of stockholders of NetApp?**

A: No. NetApp is not required to obtain the approval of its stockholders with respect to the merger proposal.

**Q: When do you expect to complete the merger?**

A: Data Domain currently expects to complete the merger within 60 to 120 days following May 20, 2009, the date on which the merger agreement was initially executed. However, there can be no assurance as to when, or if, the merger will occur. Data Domain must first obtain the approval of Data Domain stockholders at the special meeting and the necessary regulatory approvals.

**Q: What are the material U.S. tax consequences of the merger?**

A: The U.S. tax consequences of the merger depend on whether the second-step merger occurs. The second-step merger will occur only if Wilson Sonsini Goodrich & Rosati, Professional Corporation, counsel to NetApp, and Fenwick & West LLP, counsel to Data Domain, deliver opinions to the effect that the first-step merger and the second-step merger together will qualify as a reorganization within the meaning of Section 368(a) of the Internal Revenue Code of 1986, as amended, or the Code. The tax opinions are conditioned upon receipt of customary written representations from NetApp and Data Domain, including representations that the stock consideration, valued as of the last business day immediately prior to the closing date of the first-step merger, will constitute at least 40% of the total consideration paid or payable to Data Domain stockholders in the first-step merger, referred to as the continuity of interest test.

Whether the continuity of interest test will be satisfied depends primarily upon the market value of the NetApp common stock immediately before the first-step merger. No assurances can be given that the continuity of interest test will be met. As a result, in deciding whether to approve the merger, you should consider the possibility that it may be taxable to you because the continuity of interest test is not satisfied and the second-step merger does not occur. You will not be entitled to change your vote in the event that the merger is taxable.

If the second-step merger occurs and the merger qualifies as a reorganization, a U.S. holder of Data Domain common stock receiving NetApp common stock and cash in exchange for Data Domain common stock in the merger generally will recognize gain equal to the lesser of (i) the amount of cash received by the U.S. holder (excluding any cash received in lieu of fractional shares) and (ii) the excess of the amount realized by the U.S. holder over the U.S. holder's tax basis in the Data Domain common stock. The amount realized by the U.S. holder will equal the sum of the fair market value of the NetApp common stock and the amount of cash (including any cash received in lieu of fractional shares) received by the U.S. holder. Losses will not be permitted to be recognized. Realized gain or loss must be calculated separately for each identifiable block of shares (i.e., shares acquired at different times and prices) exchanged in the merger, and a loss realized on the exchange of one block cannot be used to offset a gain recognized on the exchange of another block.

If the second-step merger does not occur, the exchange of Data Domain common stock for NetApp common stock and cash in the first-step merger will be a fully taxable transaction in which a U.S. holder generally will recognize gain or loss equal to the difference between the amount realized (as defined above) and the U.S.

holder's tax basis in the Data Domain common stock. Gain or loss must be calculated separately for each identifiable block of shares (i.e., shares acquired at different times and prices) exchanged in the first-step merger.

Please see "Material U.S. Federal Income Tax Consequences of the Merger" beginning on page 73.

**Q: Whom should I call with questions?**

A: If you need any assistance in completing your proxy card or have questions regarding the special meeting, you may call Innisfree M&A Incorporated, Data Domain's proxy solicitor, at (888) 750-5834 (toll-free) if you are a stockholder or (212) 750-5833 (collect) if you are a bank or broker.

Table of Contents**SUMMARY**

**This summary highlights material information from this proxy statement/prospectus. It may not contain all of the information that is important to you. Data Domain urges you to read carefully the entire proxy statement/prospectus and the other documents to which we refer to fully understand the merger and the related transactions. See **Where You Can Find More Information** on page 96. Each item in this summary refers to the page of this proxy statement/prospectus on which that subject is discussed in more detail.**

**Following the first-step merger, for each share of Data Domain common stock held by them, Data Domain stockholders will have a right to receive a cash amount of \$16.45, without interest and less any required withholding under United States federal, state, or local law or under foreign law, plus a number of validly issued, fully paid and non-assessable shares of NetApp common stock equal to the exchange ratio. The exchange ratio is equal to (i) 0.7783 shares of NetApp common stock if the closing average (as described 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 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 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. See **The Merger Agreement Per Share Merger Consideration**. Data Domain stockholders may contact Innisfree M&A Incorporated, Data Domain's information agent, toll free at (888) 750-5834, and banks or brokers can call collect at (212) 750-5833, for information regarding the merger consideration to be received upon exchange of each share of Data Domain common stock in connection with the merger. In addition, on the third trading day preceding the date of the special meeting of the Data Domain stockholders, NetApp and Data Domain will issue a joint press release announcing the aggregate merger consideration that would be payable to the Data Domain stockholders and whether it is anticipated that the merger will qualify as a tax-free reorganization, assuming that the merger closed on the date of the special meeting. However, there can be no assurance that the merger will close on the date of the special meeting of the stockholders. Further, the determination of whether the merger will qualify as a tax-free reorganization will depend upon the value of NetApp common stock on the last business day preceding the closing. As such, the assumptions in the joint press release may differ from the actual merger consideration payable in, and the tax treatment of, the merger at the closing.**

On May 20, 2009, NetApp entered into an Agreement and Plan of Merger, referred to as the original merger agreement, by and among NetApp, Kentucky Merger Sub One Corporation, a wholly owned subsidiary of NetApp, referred to as Merger Sub One, Derby Merger Sub Two LLC, a wholly owned subsidiary of NetApp, referred to as Merger Sub Two, and Data Domain, pursuant to which for each share of Data Domain common stock held by them, Data Domain stockholders would have had a right to receive a cash amount of \$11.45 plus a number of validly issued, fully paid and non-assessable shares of NetApp common stock equal to an exchange ratio of (i) 0.833 shares of NetApp common stock if the closing average was less than \$16.26, (ii) 0.682 shares of NetApp common stock if the closing average was greater than \$19.88, 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 was (A) less than or equal to \$19.88 and (B) greater than or equal to \$16.26. On June 3, 2009, NetApp and Data Domain amended the original merger agreement to reflect the terms described in this proxy statement/prospectus. The merger agreement provides for the acquisition of Data Domain by NetApp by means of a merger of Merger Sub One with and into Data Domain, referred to as the first-step merger, with Data Domain as the interim surviving entity. Immediately thereafter, subject

to certain conditions, Data Domain, as the interim surviving entity, will merge with and into Merger Sub Two, referred to as the second-step merger, with Merger Sub Two as the final surviving entity. Unless otherwise specified herein, the second-step merger, taken together with the first-step merger, is referred to in this proxy statement/prospectus as the merger. As a result of the first-step merger, Data Domain will become a wholly owned subsidiary of NetApp. See Material U.S. Federal Income Tax Consequences of the Merger for an explanation of the two-step merger structure. Based on NetApp's stock trading price as of June 2, 2009, the aggregate value of the consideration payable in connection with the merger, is \$1.9 billion on a fully diluted basis (net of cash on Data

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Domain's balance sheet). The aggregate value of the consideration payable at closing is subject to change, as further described in this proxy statement/prospectus.

Each share of Data Domain common stock issued and outstanding immediately prior to the effective time of the merger will be cancelled and extinguished and automatically converted into the right to receive a cash amount of \$16.45, or the cash consideration, without interest and less any required withholding under United States federal, state, local or foreign law, plus a number of validly issued, fully paid and non-assessable shares of NetApp common stock equal to the exchange ratio, referred to as the stock consideration, and together with the cash consideration, the merger consideration.

The merger agreement is included as Appendix A to this proxy statement/prospectus.

### **What Holders of Data Domain Stock Options and Other Equity-Based Awards Will Receive (page 55)**

Each of the vested and unvested options to purchase shares of Data Domain common stock that is outstanding at the effective time of the first-step merger will be assumed and converted into an option to acquire shares of NetApp common stock, subject to the option exchange ratio, at the effective time of the merger, and will otherwise be subject to the terms and conditions of such award prior to the completion of the first-step merger, including vesting and exercisability.

Each of Data Domain's restricted stock units outstanding at the effective time of the first-step merger will be assumed and converted into a restricted stock unit representing the right to receive the merger consideration payable for shares underlying each assumed and converted Data Domain restricted stock unit. The assumed and converted restricted stock units will otherwise be subject to the same terms and conditions, including vesting restrictions, applicable to such Data Domain restricted stock units prior to the effective time of the first-step merger.

Each of Data Domain's unvested shares of restricted stock outstanding at the effective time of the first-step merger will be assumed and converted into the right to receive the merger consideration payable for such shares. The merger consideration payable for such unvested shares of restricted stock will be subject to the same terms and conditions, including vesting restrictions, applicable to such shares of Data Domain restricted stock prior to the effective time of the first-step merger.

### **Material U.S. Federal Income Tax Consequences of the Merger to Data Domain Stockholders (page 73)**

The U.S. tax consequences of the merger depend on whether the second-step merger occurs. The second-step merger will occur only if Wilson Sonsini Goodrich & Rosati, Professional Corporation, counsel to NetApp, and Fenwick & West LLP, counsel to Data Domain, deliver tax opinions to the effect that the merger will qualify as a reorganization within the meaning of Section 368(a) of the Code. The tax opinions are conditioned upon receipt of customary written representations from NetApp and Data Domain, including representations that continuity of interest test will be satisfied, requiring that the stock consideration constitute at least 40% of the total consideration paid or payable to Data Domain stockholders in the first-step merger.

Whether the continuity of interest test will be satisfied depends primarily upon the market value of the NetApp common stock immediately before the first-step merger. No assurances can be given that the continuity of interest test will be met. As a result, in deciding whether to approve the merger, you should consider the possibility that the it may be taxable to you because the continuity of interest test is not satisfied and the second-step merger does not occur. You will not be entitled to change your vote in the event that the merger is taxable.

If the second-step merger occurs and the merger qualifies as a reorganization, a U.S. holder of Data Domain common stock receiving NetApp common stock and cash in exchange for such Data Domain common stock in the merger generally will recognize gain equal to the lesser of (i) the amount of cash received by the U.S. holder (excluding any cash received in lieu of fractional shares) and (ii) the excess of the amount realized by the U.S. holder over the U.S. holder's tax basis in the Data Domain common stock. The amount realized by the U.S. holder will equal the sum of the fair market value of the NetApp common stock and the amount of cash (including any cash received in lieu of fractional shares) received by the U.S. holder. Losses will not be permitted to be recognized. Realized gain or loss must be calculated separately for each identifiable block of shares (i.e., shares acquired at different times and prices) exchanged in the merger, and a loss realized on the exchange of one block cannot be used to offset a gain recognized on the exchange of another block. Any gain recognized by a U.S. holder of Data Domain common stock generally will be long-term capital gain if the U.S. holder's holding period of the Data Domain common stock is more than one year, and

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short-term capital gain if the U.S. holder's holding period is one year or less, at the time of the first-step merger. Long-term capital gains of individuals are eligible for reduced rates of taxation.

If the second-step merger does not occur, the exchange of Data Domain common stock for NetApp common stock and cash in the first-step merger will be a fully taxable transaction in which a U.S. holder generally will recognize gain or loss equal to the difference between the amount realized (as defined above) and the U.S. holder's tax basis in the Data Domain common stock. Gain or loss must be calculated separately for each identifiable block of shares (i.e., shares acquired at different times and prices) exchanged in the first-step merger. Any gain or loss recognized by a U.S. holder of Data Domain common stock generally will be long-term capital gain or loss if the U.S. holder's holding period of the Data Domain common stock is more than one year, and short-term capital gain or loss if the U.S. holder's holding period is one year or less, at the time of the first-step merger. Long-term capital gains of individuals are eligible for reduced rates of taxation. The deductibility of capital losses is subject to limitations.

*The U.S. federal income tax consequences described above may not apply to all holders of Data Domain common stock. Your tax consequences will depend on your individual situation. Accordingly, NetApp and Data Domain strongly urge you to consult with your tax advisor for a full understanding of the particular tax consequences of the merger to you.*

**Comparative Market Prices and Dividends (page 94)**

NetApp common stock trades on the NASDAQ Global Select Market under the symbol NTAP, and Data Domain common stock trades on the NASDAQ Global Select Market under the symbol DDUP. The following table shows the closing sale prices of NetApp common stock and Data Domain common stock as reported on the NASDAQ Global Select Market on May 19, 2009, the last trading day before the signing of the original merger agreement, on June 2, 2009, the last trading day before the signing of the amended merger agreement, and on [ ], 2009, the last trading day before the distribution of this proxy statement/prospectus for which data was available. This table also shows the implied value of the merger consideration proposed for each share of Data Domain common stock, which was calculated by adding to \$16.45, or the cash consideration, the product obtained by multiplying the closing price of a share of NetApp common stock on those dates by the implied exchange ratio for the stock consideration that would apply if the closing average were equal to the closing sale price on those dates.

	<b>NetApp Common Stock</b>	<b>Data Domain Common Stock</b>	<b>Implied Value of One Share of Data Domain Common Stock</b>
May 19, 2009(1)	\$ 18.07	\$ 17.43	\$ 25.00
June 2, 2009	\$ 19.34	\$ 31.58	\$ 30.00
[ ], 2009	\$ [ ]	\$ [ ]	\$ [ ]

(1) Based on the terms of the original merger agreement.

*The market price of NetApp common stock and Data Domain common stock will fluctuate prior to the closing of the first-step merger. You should obtain current market quotations for the shares.*

**The Data Domain Board of Directors Unanimously Recommends that Data Domain Stockholders Vote FOR the Proposals (pages 25 and 95)**

The Data Domain board of directors believes that the merger is in the best interests of Data Domain and its stockholders and has unanimously approved the merger and the merger agreement. The Data Domain board of directors unanimously recommends that Data Domain stockholders vote FOR the merger proposal and FOR the adjournment proposal.

**Qatalyst Partners Provided an Opinion to the Data Domain Board of Directors (page 40)**

As financial advisor to Data Domain, on May 20, 2009, Qatalyst Partners LP, which is referred to herein as Qatalyst, rendered to the Data Domain board of directors its opinion that, as of such date and based upon and subject to the various assumptions, qualifications and limitations set forth in its opinion, the merger consideration to be

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received by the holders of shares of Data Domain common stock, other than affiliates who have executed voting agreements, pursuant to the original merger agreement was fair, from a financial point of view, to such holders.

The full text of the written opinion of Qatalyst, dated May 20, 2009, is attached hereto as Appendix D and is incorporated by reference herein. The opinion sets forth, among other things, the assumptions made, procedures followed, matters considered and limitations and qualifications of the review undertaken by Qatalyst in rendering its opinion. You should read the opinion carefully in its entirety. Qatalyst's opinion was provided to the Data Domain board of directors and addresses only the fairness, from a financial point of view, of the merger consideration to be received by the holders of shares of Data Domain common stock pursuant to the original merger agreement as of the date of the opinion. It does not address any other aspect of the transaction and does not constitute a recommendation to the stockholders of Data Domain as to how to vote with respect to the merger proposal or act on any other matter.

### **Data Domain's Officers and Directors Have Financial Interests in the Merger That Differ From Your Interests (page 46)**

Data Domain's executive officers and directors have interests in the merger that are different from those of other Data Domain stockholders. As of the record date, all directors and executive officers of Data Domain, together with their affiliates, beneficially owned approximately [ ]% of the outstanding shares of Data Domain common stock, which includes shares of common stock and shares of restricted stock that will vest within 60 days of the record date, shares underlying vested options and options that will vest within 60 days of the record date, and shares issuable upon settlement of restricted stock units and that will be issuable within 60 days of such date. Additionally, certain executive officers and the non-employee directors of Data Domain will be entitled to additional benefits as a result of the completion of the merger or upon certain events following the completion of the merger.

### **Directors and Executive Officers of Data Domain Have Agreed to Vote in Favor of the Merger Proposal (page 71)**

In connection with the execution of the merger agreement, directors and executive officers of Data Domain and certain of their affiliates entered into voting agreements pursuant to which they have agreed to vote all shares of Data Domain common stock owned by them in favor of the merger proposal. As of the record date these directors, executive officers and affiliates owned shares representing approximately [ ]% of Data Domain's issued and outstanding common stock. They have also agreed to comply with certain restrictions on the disposition of their shares, subject to the terms and conditions contained in the voting agreements. Pursuant to their terms, these voting agreements will terminate concurrently with any termination of the merger agreement.

The form of voting agreement is included as Appendix B to this proxy statement/prospectus.

### **Holders of Data Domain Common Stock Are Entitled to Appraisal Rights (page 50)**

Under the Delaware General Corporation Law, referred to as the DGCL, holders of Data Domain common stock who do not vote for the approval of the first-step merger proposal have the right to seek appraisal of the fair value of their shares as determined by the Delaware Court of Chancery if the merger is completed, but only if they comply with all requirements of Delaware law, which are summarized in this proxy statement/prospectus. This appraisal amount could be more than, the same as, or less than the amount a Data Domain stockholder would be entitled to receive under the merger agreement. Any holder of Data Domain common stock intending to exercise appraisal rights, among other things, must submit a written demand for appraisal to Data Domain prior to the vote on the approval of the merger proposal and must not vote or otherwise submit a proxy in favor of approval of the merger proposal. Failure to follow exactly the procedures specified under Delaware law will result in the loss of appraisal rights. Because of the complexity of the Delaware law relating to appraisal rights, if you are considering exercising your appraisal right,

Data Domain encourages you to seek the advice of your own legal counsel.

A copy of Section 262 of the DGCL is also included as Appendix C to this proxy statement/prospectus.

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**Conditions That Must Be Satisfied or Waived for the Merger to Occur (page 66)**

Currently, NetApp and Data Domain expect to complete the first-step merger within 60 to 120 days following May 20, 2009, the date on which the merger agreement was initially executed. As more fully described in this proxy statement/prospectus and in the merger agreement, the completion of the first-step merger depends on a number of conditions being satisfied or, where legally permissible, waived. These conditions include, among others, approval of the merger proposal by Data Domain stockholders, the expiration or termination of the applicable Hart-Scott-Rodino waiting period, the receipt of all required regulatory approvals.

Neither NetApp nor Data Domain can be certain when, or if, the conditions to the merger will be satisfied or waived, or that the merger will be completed.

**Termination of the Merger Agreement (page 68)**

Either NetApp or Data Domain may terminate the merger agreement under certain circumstances, which would prevent the merger from being completed.

**Termination Fee (page 70)**

A termination fee of \$57,000,000 may be payable by Data Domain to NetApp upon the termination of the merger agreement under several circumstances.

**Regulatory Approvals Required for the Merger (page 52)**

NetApp and Data Domain have agreed to use reasonable best efforts to obtain as promptly as practicable all regulatory approvals that are required to complete the transactions contemplated in the merger agreement. This includes filing all required notices to governmental authorities, including the required filings with the Department of Justice and the Federal Trade Commission pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, referred to herein as the HSR Act. NetApp and Data Domain are not permitted to complete the merger until the applicable waiting periods under the HSR Act have expired or been terminated.

Although neither NetApp nor Data Domain know of any reason why regulatory approvals would not be obtained in a timely manner, NetApp and Data Domain cannot be certain when, or if, the approvals will be obtained.

**Board of Directors and Management of NetApp following Completion of the Merger (page 50)**

The directors of Data Domain and its subsidiaries will resign in connection with the first-step merger. The composition of NetApp's board of directors and management is not anticipated to change in connection with the completion of the first-step merger, although it is possible that following the first-step merger, one or more members of Data Domain's management may be asked to join NetApp's board of directors and/or management.

**The Rights of Data Domain Stockholders will Change as a Result of the Merger (page 88)**

The rights of Data Domain stockholders will change as a result of the merger due to differences in NetApp's and Data Domain's governing documents. This proxy statement/prospectus contains a summary description of stockholder rights under each of the NetApp and Data Domain governing documents and describes the material differences between them.

**Data Domain will Hold its Special Meeting on [        ], 2009 (page 20)**

The special meeting will be held on [        ], 2009 at [        ], local time, at 2421 Mission College Blvd., Santa Clara, CA 95054. At the special meeting, Data Domain stockholders will be asked to:

Adopt the merger agreement; and

Approve the adjournment or postponement of the special meeting, if necessary, to solicit additional proxies, in the event that there are not sufficient votes at the time of the special meeting to adopt the merger agreement.

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*Record Date.* Only holders of record at the close of business on [ ], 2009 will be entitled to vote at the special meeting. Each share of Data Domain common stock is entitled to vote. As of the record date, [ ] shares of Data Domain common stock were outstanding, held by approximately [ ] registered holders.

*Required Vote.* Approval of the merger proposal requires the affirmative vote of the holders of a majority of the outstanding shares of Data Domain common stock entitled to vote at the special meeting. Because approval of the merger proposal is based on the affirmative vote of a majority of shares outstanding, a Data Domain stockholder's failure to vote, abstention or failure to instruct a broker, a broker non-vote, will have the same effect as a vote against the merger proposal.

In the event that a quorum is not present in person or represented by proxy at the special meeting, the chairman of the meeting may adjourn the meeting to another place, date or time. If a quorum is present in person or represented by proxy at the special meeting, approval of the adjournment proposal requires the affirmative vote of the majority of the outstanding shares that are present in person or represented by proxy and entitled to vote at the special meeting. A Data Domain stockholder's abstention will have the same effect as a vote against the adjournment proposal. A broker non-vote will have no effect on the adjournment proposal.

**Information about the Companies (page 24)**

***NetApp, Inc.***

NetApp, a Delaware corporation, was established in 1992. NetApp is a leading provider of storage and data management solutions. NetApp common stock is traded on the NASDAQ Global Select Market under the symbol NTAP. The principal executive offices of NetApp are located at 495 East Java Drive, Sunnyvale, CA 94089, and its telephone number is (408) 822-6000.

Additional information about NetApp and its subsidiaries is included in documents incorporated by reference in this proxy statement/prospectus. See *Where You Can Find More Information* beginning on page 96.

***Kentucky Merger Sub One Corporation***

Kentucky Merger Sub One Corporation, a wholly owned subsidiary of NetApp, was formed solely for the purpose of completing the merger. Kentucky Merger Sub One Corporation has not carried on any activities to date, except for activities incidental to its formation and activities undertaken in connection with the transactions contemplated by the merger agreement. The principal executive offices of Kentucky Merger Sub One Corporation are located at 495 East Java Drive, Sunnyvale, CA 94089, and its telephone number is (408) 822-6000.

***Derby Merger Sub Two LLC***

Derby Merger Sub Two LLC, a wholly owned subsidiary of NetApp, was formed solely for the purpose of completing the merger. Derby Merger Sub Two LLC has not carried on any activities to date, except for activities incidental to its formation and activities undertaken in connection with the transactions contemplated by the merger agreement. The principal executive offices of Derby Merger Sub Two LLC are located at 495 East Java Drive, Sunnyvale, CA 94089, and its telephone number is (408) 822-6000.

***Data Domain, Inc.***

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Data Domain, a Delaware corporation, was incorporated in Delaware in October 2001. Data Domain is a leading provider of storage solutions for backup and archive applications based on deduplication technology.

Data Domain common stock is traded on the NASDAQ Global Select Market under the symbol DDUP. The principal executive offices of Data Domain are located at 2421 Mission College Blvd., Santa Clara, CA 95054, and its telephone number is (408) 980-4800.

Additional information about Data Domain and its subsidiaries is included in documents incorporated by reference in this proxy statement/prospectus. See [Where You Can Find More Information](#) beginning on page 96.

**Table of Contents****SELECTED CONSOLIDATED HISTORICAL FINANCIAL DATA OF NETAPP**

The tables below present selected consolidated financial data of NetApp prepared in accordance with U.S. generally accepted accounting principles, or GAAP. The data below are only a summary and should be read in conjunction with NetApp's consolidated financial statements and accompanying notes, as well as NetApp's management's discussion and analysis of financial condition and results of operations, all of which can be found in publicly available documents, including those incorporated by reference in this proxy statement/prospectus. For a complete list of documents incorporated by reference in this proxy statement/prospectus, see "Where You Can Find More Information" beginning on page 96.

NetApp derived the consolidated statements of operations data for the years ended April 24, 2009, April 25, 2008 and April 27, 2007, and the consolidated balance sheet data as of April 24, 2009 and April 25, 2008, from its audited consolidated financial statements incorporated by reference in this proxy statement/prospectus. NetApp derived the consolidated statement of operations data for the year ended April 28, 2006 and April 29, 2005, and the consolidated balance sheet data as of April 27, 2007, April 28, 2006 and April 29, 2005, from its audited consolidated financial statements not included or incorporated by reference in this proxy statement/prospectus. NetApp's historical results are not necessarily indicative of the results to be expected in the future.

	<b>Year Ended April 24, 2009</b>	<b>Year Ended April 25, 2008</b>	<b>Year Ended April 27, 2007</b>	<b>Year Ended April 28, 2006</b>	<b>Year Ended April 29, 2005</b>
	<b>(In thousands, except per share amounts)</b>				
<b>Consolidated Statements of Operations Data:</b>					
Net revenues(1)	\$ 3,406,393	\$ 3,303,167	\$ 2,804,282	\$ 2,066,456	\$ 1,598,131
Total cost of revenue	1,416,478	1,289,791	1,099,782	809,995	623,083
Gross profit	1,989,915	2,013,376	1,704,500	1,256,461	975,048
Total operating expenses	1,942,740	1,699,776	1,403,258	948,170	721,861
Income from operations	47,175	313,600	301,242	308,291	253,187
Net income(1)	\$ 86,545	\$ 309,738	\$ 297,735	\$ 266,452	\$ 225,754
Net income per share, basic	\$ 0.26	\$ 0.88	\$ 0.80	\$ 0.72	\$ 0.63
Net income per share, diluted	\$ 0.26	\$ 0.86	\$ 0.77	\$ 0.69	\$ 0.59
Shares used in basic net income per share calculation	330,279	351,676	371,204	371,061	361,009
Shares used in diluted net income per share calculation	334,575	361,090	388,454	388,381	380,412

	<b>April 24, 2009</b>	<b>April 25, 2008</b>	<b>April 27, 2007</b>	<b>April 28, 2006</b>	<b>April 29, 2005</b>
			<b>(In thousands)</b>		
Cash and cash equivalents and short-term investments	\$ 2,604,206	\$ 1,164,390	\$ 1,308,781	\$ 1,322,892	\$ 1,169,965
Working capital	1,759,459	653,331	1,053,256	1,116,047	1,055,700
Total assets	5,472,819	4,070,988	3,658,478	3,260,965	2,372,647
Short-term debt			85,110	166,211	
Long-term debt and other long-term obligations	1,429,499	318,658	9,487	138,200	4,474
Total stockholders' equity	1,662,346	1,700,339	1,989,021	1,923,453	1,660,804

- (1) Net revenues and net income for the fiscal year ended April 24, 2009 included a GSA settlement of \$128,715. Net income for fiscal 2006 included an income tax expense of \$22,500 related to the American Jobs Creation Act and the repatriation of foreign subsidiary earnings back to the U.S.

**Table of Contents****SELECTED CONSOLIDATED HISTORICAL FINANCIAL DATA OF DATA DOMAIN**

The tables below present selected consolidated financial data of Data Domain prepared in accordance with GAAP. The data below are only a summary and should be read in conjunction with Data Domain's consolidated financial statements and accompanying notes, as well as Data Domain's management's discussion and analysis of financial condition and results of operations, all of which can be found in publicly available documents, including those incorporated by reference in this proxy statement/prospectus. The unaudited consolidated financial statements have been prepared on the same basis as the audited consolidated financial statements and include, in the opinion of management, all adjustments, which include only normal recurring adjustments that management considers necessary for the fair presentation of the financial information set forth in those statements. Historical results are not necessarily indicative of future results. For a complete list of documents incorporated by reference in this proxy statement/prospectus, see "Where You Can Find More Information" beginning on page 96.

The consolidated statements of operations data for the three months ended March 31, 2009 and 2008, and the consolidated balance sheet data as of March 31, 2009 are derived from the unaudited consolidated financial statements of Data Domain and the related notes thereto that are incorporated by reference into this proxy statement/prospectus. The consolidated statement of operations data for the fiscal years ended December 31, 2008, 2007 and 2006, and the consolidated balance sheet data as of December 31, 2008 and 2007 are derived from the audited consolidated financial statements of Data Domain and the related notes thereto that are incorporated by reference into this proxy statement/prospectus. The consolidated statements of operations data for the fiscal years ended December 31, 2005 and 2004, and the consolidated balance sheet data as of December 31, 2006 and 2005 are derived from audited consolidated financial statements not included, or incorporated by reference, in this proxy statement/prospectus. The consolidated balance sheet data as of December 31, 2004 are derived from unaudited consolidated financial statements not included, or incorporated by reference, into this proxy statement/prospectus.

	<b>Three Months Ended March 31, 2009</b>	<b>Three Months Ended March 31, 2008</b>	<b>Year Ended December 31, 2008</b>	<b>Year Ended December 31, 2007</b>	<b>Year Ended December 31, 2006</b>	<b>Year Ended December 31, 2005</b>	<b>Year Ended December 31, 2004</b>
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**(In thousands, except per share amounts)**

**Consolidated  
Statements of  
Operations Data:**

Total revenue	\$ 79,036	\$ 52,615	\$ 274,085	\$ 123,622	\$ 46,434	\$ 8,121	\$ 779
Total cost of revenue	22,831	13,806	76,180	35,901	14,523	5,170	1,424
Gross profit (loss)	56,205	38,809	197,905	87,721	31,911	2,951	(645)
Total operating expenses	54,083	37,574	181,095	94,910	36,449	16,984	9,370
Operating income (loss)	2,122	1,235	16,810	(7,189)	(4,538)	(14,033)	(10,015)
Net income (loss)	\$ 1,250	\$ 2,741	\$ 21,593	\$ (3,660)	\$ (4,026)	\$ (13,783)	\$ (9,828)

Net income (loss) per common share, basic	\$ 0.02	\$ 0.05	\$ 0.37	\$ (0.12)	\$ (0.56)	\$ (2.38)	\$ (2.10)
Net income (loss) per common share, diluted	\$ 0.02	\$ 0.04	\$ 0.33	\$ (0.12)	\$ (0.56)	\$ (2.38)	\$ (2.10)
Shares used in computing basic net income (loss) per share	60,157	56,414	58,254	31,482	7,128	5,801	4,672
Shares used in computing diluted net income (loss) per share	65,739	65,378	65,814	31,482	7,128	5,801	4,672

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**March 31,    December 31,    December 31,    December 31,    December 31,    December 31,**  
**2009            2008            2007            2006            2005            2004**  
(In thousands)

**Consolidated Balance Sheet Data:**

Cash and cash equivalents and short-term investments	\$ 246,852	\$ 233,892	\$ 207,136	\$ 11,857	\$ 12,505	\$ 9,358
Working capital	248,058	232,996	203,688	12,856	9,692	8,233
Total assets	400,713	386,981	261,364	30,913	18,896	11,394
Other liabilities	2,058	2,910	594	3,319		
Mandatorily redeemable convertible preferred stock				41,514	41,309	26,273
Common stock and additional paid-in capital	308,619	295,564	248,078	3,049	1,542	1,293
Total stockholders equity (deficit)	289,748	276,884	207,862	(33,566)	(31,037)	(17,516)

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**Table of Contents****SELECTED UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL DATA**

The following selected unaudited pro forma condensed combined financial data was prepared using the purchase method of accounting. The NetApp and Data Domain selected unaudited pro forma condensed combined balance sheet data assume that the merger of NetApp and Data Domain took place on April 24, 2009, and combines the NetApp historical consolidated balance sheet at April 24, 2009 with Data Domain's historical consolidated balance sheet at March 31, 2009. The NetApp and Data Domain selected unaudited pro forma condensed combined statement of operations data assume that the merger of NetApp and Data Domain took place as of April 26, 2008. The selected unaudited pro forma condensed combined statement of operations data for the fiscal year ended April 24, 2009 combines NetApp's historical consolidated statement of income for the fiscal year then ended with Data Domain's results of operations for the twelve months ended March 31, 2009.

The selected unaudited pro forma condensed combined financial data is presented for illustrative purposes only and is not necessarily indicative of the combined financial position or results of operations of future periods or the results that actually would have been realized had the entities been a single entity during these periods. The selected unaudited pro forma condensed combined financial data as of and for the fiscal year ended April 24, 2009 is derived from the unaudited pro forma condensed combined financial statements included elsewhere in this proxy statement/prospectus and should be read in conjunction with those statements and the related notes. See Unaudited Pro Forma Condensed Combined Financial Statements.

	<b>Fiscal Year Ended April 24, 2009 (In thousands, except per share amounts)</b>	
<b>Selected Unaudited Pro Forma Condensed Combined Statement of Operations Data:</b>		
Net revenues	\$	3,706,899
Gross profit		2,160,066
Loss before income taxes		(22,306)
Net income		51,628
Net income per share: basic	\$	0.14
Net income per share: diluted	\$	0.14
Weighted average number of shares used in computing net income per share:		
Basic		374,485
Diluted		381,194
		<b>As of April 24, 2009</b>
<b>Selected Unaudited Pro Forma Condensed Combined Balance Sheet Data:</b>		
Cash and cash equivalents and short-term investments		\$ 1,800,024

Working capital	967,848
Total assets	6,703,341
Long-term debt and other long-term obligations	1,575,248
Stockholders' equity	2,656,333

**Table of Contents****COMPARATIVE HISTORICAL AND PRO FORMA PER SHARE DATA**

The following table shows historical information about NetApp's and Data Domain's respective income per share and book value per share, and similar information reflecting the merger, referred to as pro forma information. As NetApp has a fiscal year ending on the last Friday in April and Data Domain has a fiscal year ending on December 31, the unaudited pro forma condensed combined balance sheet combines the historical balances of NetApp as of April 24, 2009 with the historical balances of Data Domain as of March 31, 2009, plus pro forma adjustments as if the merger had occurred on April 26, 2008. In addition, the unaudited pro forma condensed combined statement of operations combines the historical results of NetApp for the year ended April 24, 2009 with the historical results of Data Domain for the twelve months ended March 31, 2009, plus pro forma adjustments as if the merger had occurred on April 26, 2008. Data Domain's data has been calculated by combining its reported interim data for each quarter within the respective period.

NetApp is required to account for the merger using the purchase method of accounting under GAAP, for accounting and financial reporting purposes. Under the purchase method of accounting, the assets acquired and liabilities assumed from Data Domain as of the completion of the merger will be recorded at their respective fair values and added to those of NetApp. Any excess of the purchase price over the fair value of assets acquired and liabilities assumed will be recorded as goodwill. The consolidated financial statements of NetApp issued after the merger will reflect these fair values and will not be restated retroactively to reflect the historical financial position or results of operations of Data Domain.

The pro forma financial information includes estimates of the purchase price and adjustments to record certain assets and liabilities of Data Domain at their respective fair values. These pro forma adjustments are subject to updates as additional information becomes available and as additional analyses are performed. Certain other assets and liabilities of Data Domain will also be subject to adjustment to their respective fair values. Pending more detailed analyses, no pro forma adjustments are included for those assets and liabilities, including additional intangible assets that may be identified. Any change in the fair value of the net assets of Data Domain will change the amount of the purchase price allocable to goodwill. Additionally, changes to Data Domain's stockholders' equity, including net income through the date the merger is completed, will change the amount of goodwill recorded. The final adjustments may differ materially from the pro forma adjustments reflected in this proxy statement/prospectus.

NetApp also anticipates that the merger will provide it with financial benefits that include, with respect to the combined entity, revenue and operating expense synergies, but these financial benefits are not reflected in the pro forma information. Accordingly, the pro forma information does not attempt to predict or suggest future results. It also does not necessarily reflect what the historical results of NetApp would have been had NetApp and Data Domain been combined during the periods presented.

The information in the following table is based on historical financial information and related notes for Data Domain and NetApp, as well as the unaudited pro forma condensed combined financial statements. You should read the summary financial information provided in the following table together with historical financial information and related notes. The historical financial information of Data Domain and NetApp is also incorporated by reference into this proxy statement/prospectus. See "Where You Can Find More Information" beginning on page 96 for a description of where you can find this historical information. Neither NetApp nor Data Domain has declared dividends on its common stock during the last three fiscal years.

**NetApp****Data Domain(1)**

	<b>Fiscal Year</b>	<b>Fiscal Year</b>	<b>Twelve Months</b>	<b>Twelve Months</b>
	<b>Year</b>	<b>Ended</b>	<b>Months</b>	<b>Ended</b>
	<b>Ended</b>	<b>April 24,</b>	<b>Ended</b>	<b>March 31, 2009</b>
	<b>April 24,</b>	<b>2009</b>	<b>March 31,</b>	
	<b>2009</b>	<b>Pro Forma</b>	<b>2009</b>	<b>Pro Forma</b>
	<b>Historical</b>	<b>Combined</b>	<b>Historical</b>	<b>Combined</b>
				<b>Equivalent(2)</b>
Income per share:				
Basic	\$ 0.26	\$ 0.14	\$ 0.34	\$ 0.10
Diluted	\$ 0.26	\$ 0.14	\$ 0.30	\$ 0.10
Book value per share at period end	\$ 5.00	\$ 7.06	\$ 4.78	\$ 4.96

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- (1) Data Domain book value per share is stockholders' equity divided by total shares outstanding reduced by shares subject to repurchase.
- (2) The pro forma Data Domain equivalent per share amounts were calculated by applying an exchange ratio of 0.7026 as described in Note 4 to the Unaudited Pro Forma Condensed Combined Financial Statements, to the pro forma combined net income and book value per share. The exchange ratio used in this pro forma table reflects the value of the per share merger consideration, exclusive of the cash portion of \$16.45, of \$14.00 divided by the value of a share of NetApp common stock of \$19.92 (as of June 11, 2009), with each of the numerator and denominator calculated based on the average of the closing price for NetApp common stock for the 10 trading day period ended June 8, 2009. The final ratio of the per share merger consideration to the value of a share of NetApp common stock will vary based on the trading price of NetApp common stock.

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**CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS**

In addition to historical information, this proxy statement/prospectus contains or incorporates by reference certain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995.

Forward-looking statements are not historical facts but instead represent NetApp's beliefs and expectations regarding future events, many of which are, by their nature, inherently uncertain and outside NetApp's control. Forward-looking statements include statements preceded by, followed by, or including the words could, would, should, may, will, target, plan, believe, expect, intend, anticipate, estimate, project, potential, possible, objective, seek, strategy and other similar expressions. In particular, the forward-looking statements contained in this proxy statement/prospectus include, but are not limited to, statements regarding:

the expected financial condition, results of operations, earnings outlook and prospects of NetApp, Data Domain and the combined company;

the expected benefits and synergies of the merger;

the likelihood that NetApp and Data Domain will receive the regulatory approvals required to complete the merger;

NetApp's expectation that customers will continue to adopt deduplication technology;

the expectation that the acquisition of Data Domain will complement NetApp's storage and data management business;

the expectation that the merger will allow NetApp to capture a greater share of the capacity optimized disk market;

the expectation that the merger will result in increased operational efficiency and create opportunities for cost reduction through the elimination of redundant overhead expenses and public company costs; and

the expectation that the second-step merger will occur.

The forward-looking statements contained or incorporated by reference herein are subject to certain risks and uncertainties that may cause actual results to differ materially from those reflected in the forward-looking statements. Such risk and uncertainties include those set forth on page 14 under the heading Risk Factors, as well as, among others, the following:

the expenses of the merger being greater than anticipated, including as a result of unexpected factors or events and unanticipated tax consequences of the merger;

the exposure to litigation, including the possibility that litigation relating to the merger agreement and related transactions could delay or impede the completion of the merger;

the integration of Data Domain's business and operations with those of NetApp taking longer than anticipated, being costlier than anticipated and having unanticipated adverse results relating to Data Domain's or NetApp's existing businesses; and

the anticipated cost savings and other synergies of the merger taking longer to be realized or failing to be achieved in their entirety, and attrition in key client, partner and other relationships relating to the merger greater than expected.

You are cautioned not to place undue reliance on the forward-looking statements contained herein, which speak only as of the date of this proxy statement/prospectus or the date of any document incorporated by reference in this document. Except to the extent required by applicable law or regulation, neither NetApp nor Data Domain undertakes any obligation to update these forward-looking statements to reflect events or circumstances after the date of this proxy statement/prospectus or to reflect the occurrence of unanticipated events.

All subsequent written and oral forward-looking statements concerning the merger or other matters addressed in this proxy statement/prospectus and attributable to NetApp or Data Domain or any person acting on their behalf are expressly qualified in their entirety by the preceding cautionary statement.

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**RISK FACTORS**

*In addition to the other information included in and incorporated by reference into this proxy statement/prospectus, including the matters addressed in the section entitled **Cautionary Statement Regarding Forward-Looking Statements** beginning on page 13, you should carefully consider the following risk factors before deciding whether to vote for approval of the merger proposal and the adjournment proposal. In addition, you should read and consider the risks associated with the business of NetApp and the business of Data Domain because these risks will also affect the combined company. These risks can be found in NetApp's Annual Report on Form 10-K, as filed with the SEC on June 16, 2009, and Data Domain's Annual Report on Form 10-K and Form 10-K/A, as filed with the SEC on March 13, 2009 and April 30, 2009, respectively, each of which is incorporated herein by reference. You should also read and consider the other information in this proxy statement/prospectus and the other documents incorporated by reference into this proxy statement/prospectus. See the section entitled **Where You Can Find More Information** beginning on page 96.*

**Risks Relating to the Merger**

***The consideration that you will receive in the merger depends upon the price of NetApp's common stock at the closing of the first-step merger and may fall below \$30 per share of Data Domain stock.***

At the closing of the first-step merger, each share of Data Domain common stock will be converted into the right to receive a cash payment of \$16.45, plus a fraction of a share of NetApp common stock equal to the exchange ratio. The exchange ratio is based on the closing average of NetApp common stock and, within a certain range of possible closing averages, will result in the right to receive NetApp common stock with a market value of \$13.55 per share of Data Domain stock, or a total merger consideration of \$30 per share. Under the terms of the merger agreement, the exchange ratio will be calculated as follows:

if the closing average is less than \$17.41, then the exchange ratio will be 0.7783;

if the closing average is greater than \$21.27, then the exchange ratio will be 0.6370; and

if the closing average is less than or equal to \$21.27 and greater than or equal to \$17.41, then the exchange ratio will be calculated as the fraction obtained by dividing \$13.55 by the closing average.

As a result of the collar mechanism described above, if the closing average (as described in the second paragraph of the section entitled **Summary** beginning on page 1) is less than \$17.41, then for each share of Data Domain stock you own, you will receive less than \$13.55 worth of NetApp common stock, resulting in a total merger consideration of less than \$30 per share.

***The market price of NetApp's common stock may decline as a result of the merger.***

The market price of NetApp's common stock may decline as a result of the merger for a number of reasons, including:

the integration of Data Domain by NetApp may be unsuccessful;

NetApp may not achieve the perceived benefits of the merger as rapidly as, or to the extent, anticipated by financial or industry analysts; or

the effect of the merger on NetApp's financial results may not be consistent with the expectations of financial or industry analysts.

These factors are, to some extent, beyond NetApp's control. In addition, for Data Domain stockholders who hold their shares in certificated form, there will be a time period between the effective time of the merger and the time when Data Domain stockholders actually receive book-entry shares evidencing NetApp common stock. Until book-entry shares are received, Data Domain stockholders will not be able to sell their shares of NetApp common stock in the open market and, thus, will not be able to avoid losses resulting from any decline in the market price of NetApp common stock during this period.

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***The failure of NetApp to operate and manage the combined company effectively could have a material adverse effect on NetApp's business, financial condition and operating results.***

NetApp will need to meet significant challenges to realize the expected benefits and synergies of the merger. These challenges include:

- integrating the management teams, strategies, cultures, technologies and operations of the two companies;
- retaining and assimilating the key personnel of each company;
- retaining existing Data Domain customers; and
- creating uniform standards, controls, procedures, policies and information systems.

The accomplishment of these post-merger objectives will involve considerable risk, including:

- the potential disruption of each company's ongoing business and distraction of their respective management teams;
- the difficulty of incorporating acquired technology and rights into NetApp's operations;
- unanticipated expenses related to the integration;
- potential unknown liabilities associated with the merger; and
- managing the risks related to Data Domain's business as described in Data Domain's Annual Report on Form 10-K for the period ending December 31, 2008, as amended, that may continue to impact the business following the merger.

NetApp and Data Domain have operated and, until the completion of the merger, will continue to operate, independently. It is possible that the integration process could result in the loss of the technical skills and management expertise of key employees, the disruption of each company's ongoing businesses or inconsistencies in standards, controls, procedures and policies due to possible cultural conflicts or differences of opinions on technical decisions and product roadmaps that adversely affect NetApp's ability to maintain relationships with customers, suppliers and employees or to achieve the anticipated benefits of the merger.

Even if NetApp is able to integrate the Data Domain business operations successfully, this integration may not result in the realization of the full benefits of synergies, cost savings, innovation and operational efficiencies that may be possible from this integration, and these benefits may not be achieved within a reasonable period of time.

***The merger may be a fully taxable transaction for U.S. federal income tax purposes.***

The U.S. tax consequences of the merger depend on whether it meets the requirements of Section 368(a) of the Code, including the continuity of interest test, which will be satisfied if the stock consideration, valued as of the last business day immediately prior to the closing date of the merger, constitutes at least 40% of the total consideration paid or payable to Data Domain stockholders in the first-step merger. Whether the continuity of interest test will be satisfied depends primarily upon the market value of the NetApp common stock immediately before the first-step merger and the extent to which NetApp is required to substitute cash for stock at the closing pursuant to the terms of merger

agreement. No assurances can be given that the continuity of interest test will be met. If the test is not met, the second-step merger will not occur, and the merger will be a fully taxable transaction. In deciding whether to approve the merger, you should consider the possibility that the merger may be fully taxable to you, because you will not be entitled to change your vote in that event.

***Failure to retain key employees could diminish the anticipated benefits of the merger.***

The success of the merger will depend in part on the retention of personnel critical to the business and operations of the combined company due to, for example, their technical skills or management expertise. Employees may experience uncertainty about their future role with Data Domain and NetApp until strategies with regard to these employees are announced or executed. If Data Domain and NetApp are unable to retain personnel, including Data Domain's key management, technical and sales personnel, who are critical to the successful integration and future operations of the companies, Data Domain and NetApp could face disruptions in their operations, loss of existing customers, loss of key information, expertise or know-how, and unanticipated additional recruitment and training costs. In addition, the loss of key personnel could diminish the anticipated benefits of the merger.

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***Uncertainty regarding the merger may cause customers, suppliers or strategic partners to delay or defer decisions concerning NetApp and Data Domain and adversely affect each company's ability to attract and retain key employees.***

The merger will happen only if stated conditions are met, including the approval of the merger proposal by Data Domain's stockholders, the receipt of regulatory approvals, and the absence of any material adverse effect in the business of Data Domain or NetApp. Many of the conditions are outside the control of Data Domain and NetApp, and both parties also have stated rights to terminate the merger agreement. Accordingly, there may be uncertainty regarding the completion of the merger. This uncertainty may cause customers, suppliers or strategic partners to delay or defer decisions concerning Data Domain or NetApp, which could negatively affect their respective businesses. Any delay or deferral of those decisions or changes in existing agreements could have a material adverse effect on the respective businesses of Data Domain and NetApp, regardless of whether the merger is ultimately completed. Moreover, diversion of management focus and resources from the day-to-day operation of the business to matters relating to the merger could have a material adverse effect on each company's business, regardless of whether the merger is completed. Current and prospective employees of each company may experience uncertainty about their future roles with the combined company. This may adversely affect each company's ability to attract and retain key management, sales, marketing and technical personnel.

***The market price of NetApp common stock after the merger may be affected by factors different from those affecting the shares of Data Domain or NetApp currently.***

The businesses of NetApp and Data Domain differ in important respects and, accordingly, the results of operations of the combined company and the market price of the combined company's shares of common stock may be affected by factors different from those currently affecting the independent results of operations of NetApp and Data Domain. For a discussion of the businesses of NetApp and Data Domain and of certain factors to consider in connection with those businesses, see the documents incorporated by reference in this proxy statement/prospectus and referred to under "Where You Can Find More Information" beginning on page 96.

***The merger may go forward in certain circumstances even if NetApp or Data Domain suffers a material adverse effect.***

In general, either party can refuse to complete the merger if a material adverse effect (as defined below under the heading "The Merger Agreement - Material Adverse Effect") occurs with regard to the other party before the closing. However, neither party may refuse to complete the merger on that basis as a result of any fact, circumstance, change or effect resulting from:

changes in the general economic conditions in the United States or any other country or region in the world, or changes in conditions in the global economy generally, to the extent that they do not have a disproportionate impact on NetApp or Data Domain relative to other companies and operating in the same industries in which NetApp or Data Domain operates;

changes in general conditions in the industries in which NetApp or Data Domain operates, to the extent that they do not have a disproportionate impact on NetApp or Data Domain relative to other companies operating in the same industries in which NetApp or Data Domain, as a operates;

changes in generally accepted accounting principles or other accounting standards, or the interpretation of such principles or standards by a third party, applicable federal, state, local, municipal, foreign or other law or regulatory conditions, or the interpretation of such law or regulations by a third party;

any failure to take any action or the taking of any specific action by NetApp or Data Domain taken with the prior written consent or written direction of the other party;

the taking of any specific action expressly required by the merger agreement;

acts of war, armed hostilities or terrorism, to the extent that they do not have a disproportionate impact on NetApp or Data Domain relative to other companies operating in the same industries in which NetApp or Data Domain operates;

changes in the trading price or trading volume of NetApp's or Data Domain's common stock, in and of itself, provided that the exception described in this bullet shall not in any way prevent or otherwise affect a

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determination that any fact, circumstance, change or effect that has resulted in, or contributed to, a material adverse effect;

the public announcement of the merger agreement or pendency of the merger, including any loss of employees, provided that the exception described in this bullet shall not apply to any fact, circumstance, change or effect related to or caused by any legal proceedings resulting from the announcement and pendency of the merger and the transactions contemplated by the merger agreement;

any failure of NetApp or Data Domain to meet any public or internal estimates or expectations of revenue, earnings or other financial performance or results of operations for any period, or failure to meet any internal budgets, plans, or forecasts of revenues, earnings or other financial performance or results of operations (it being understood that any underlying cause of any such failure may be deemed to constitute, in and of itself, a material adverse effect and may be taken into consideration when determining whether a material adverse effect has occurred); or

stockholder class action, derivative litigation or other legal proceedings made or brought by any of the current or former stockholders of NetApp or Data Domain against NetApp or Data Domain arising out of the merger or any other transactions contemplated by the merger agreement.

If adverse changes occur but NetApp and Data Domain must still complete the merger, NetApp's stock price may suffer. This in turn may reduce the value of the merger to Data Domain stockholders.

***Data Domain stockholders will have a reduced ownership and voting interest after the merger and will exercise less influence over management.***

Data Domain stockholders currently have the right to vote in the election of the board of directors of Data Domain and on other matters affecting Data Domain. When the merger occurs, each Data Domain stockholder that receives shares of NetApp common stock will become a stockholder of NetApp with a percentage ownership of the combined company that is much smaller than the stockholder's percentage ownership of Data Domain. It is expected that the former stockholders of Data Domain as a group will own less than [ ]% of the outstanding shares of NetApp immediately after the completion of merger. Because of this, Data Domain's stockholders will have less influence on the management and policies of NetApp than they now have on the management and policies of Data Domain.

***The merger agreement limits Data Domain's ability to pursue alternatives to the merger.***

The merger agreement contains no shop provisions that, subject to limited exceptions, limit Data Domain's ability to discuss, facilitate or commit to competing third-party proposals, including, but not limited to, EMC's cash tender offer to the Data Domain stockholders, to acquire all or a significant part of Data Domain, as well as a termination fee that is payable by Data Domain under certain circumstances. These provisions might discourage other potential competing acquirors that might have an interest in acquiring all or a significant part of Data Domain from considering or proposing that acquisition even if it were prepared to pay consideration with a higher per share market price than that proposed in the merger or might result in a potential competing acquiror proposing to pay a lower per share price to acquire Data Domain than it might otherwise have proposed to pay.

***The merger is subject to the receipt of consents and approvals from regulatory authorities that may impose conditions that could have an adverse effect on NetApp or, if not obtained, could prevent completion of the merger.***

Before the merger may be completed, various approvals or consents must be obtained from various regulatory and other authorities. While NetApp and Data Domain believe that they will receive the requisite regulatory approvals

from these governmental authorities, there can be no assurance of this. If such approvals are not obtained, the merger will not be completed. In addition, these governmental authorities may impose conditions on the completion of the merger or require changes to the terms of the merger. Although NetApp and Data Domain do not currently expect that any such conditions or changes would be imposed, there can be no assurance that they will not be, and such conditions or changes could have the effect of delaying completion of the merger or imposing additional costs on or limiting the revenues of NetApp following the merger, any of which might have a material adverse effect on NetApp following the merger. For a full description of the regulatory clearances, consents and

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approvals required for the merger, please see Data Domain Proposal 1 The Merger Regulatory Approvals Required for the Merger beginning on page 52.

***Failure to complete the merger could negatively affect Data Domain's stock price and its future business and operations.***

If the merger is not completed for any reason, Data Domain may be subject to a number of material risks, including the following:

Data Domain may be required under certain circumstances to pay NetApp a termination fee of \$57.0 million;

the price of Data Domain's common stock may decline; and

costs related to the merger, such as financial advisory, legal, accounting and printing fees, must be paid even if the merger is not completed.

If the merger agreement is terminated, Data Domain may be unable to pursue another business combination transaction on terms as favorable as those set forth in the merger agreement, or at all. This could limit Data Domain's ability to pursue its strategic goals.

***NetApp and Data Domain may waive one or more of the conditions of the merger without re-soliciting stockholder approval for the merger.***

Each of the conditions to NetApp's and Data Domain's obligations to complete the merger may be waived, in whole or in part, to the extent permitted by applicable law, by agreement of NetApp and Data Domain, if the condition is a condition to both NetApp's and Data Domain's obligation to complete the merger, or by the party for which such condition is a condition of its obligation to complete the merger. The boards of directors of NetApp and Data Domain may evaluate the materiality of any such waiver to determine whether amendment of this proxy statement/prospectus and re-solicitation of proxies are necessary. NetApp and Data Domain, however, generally do not expect any such waiver to be significant enough to require re-solicitation of stockholders. In the event that any such waiver is not determined to be significant enough to require re-solicitation of stockholders, the companies will have the discretion to complete the merger without seeking further stockholder approval.

***If Data Domain stockholders sell the NetApp common stock received in the merger, they could cause a decline in the market price of NetApp common stock.***

NetApp's issuance of common stock in the merger will be registered with the SEC. As a result, those shares will be immediately available for resale in the public market. The maximum number of shares of NetApp common stock to be issued to Data Domain stockholders in connection with the merger and immediately available for resale will equal approximately [ ]% of the number of outstanding shares of NetApp common stock currently in the public market. Data Domain stockholders may sell the stock they receive commencing immediately after the merger. If this occurs, or if other holders of NetApp common stock sell significant amounts of NetApp common stock immediately after the merger is completed, the market price of NetApp common stock may decline.

***A shift or decline in the demand for deduplication technology could substantially reduce the anticipated benefits of the merger.***

NetApp expects that customers will continue to adopt deduplication technology and that the acquisition of Data Domain will result in certain market synergies. However, if customer demand in the deduplication market decreases

or is less than expected, or if customer preferences shift to a new or different technology, then NetApp may not realize all of the anticipated benefits of the merger.

***Although NetApp has traditionally used a single operating system, NetApp's ability to realize the expected benefits of the merger will depend upon its ability to successfully operate the Data Domain operating system as a separate platform.***

NetApp currently runs a single platform, Data ONTAP, and expects to run the Data Domain operating system as a separate platform. Running two platforms could require significant investments of time and financial resources. If NetApp is unable to effectively maintain and support both platforms or otherwise adjust its infrastructure and processes to accommodate the parallel operation of both platforms in a timely manner, then the strategic benefits of the merger may not be realized or could be significantly reduced.

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***Failure to achieve significant cost synergies could harm NetApp's business and operating results.***

NetApp anticipates that the merger will result in cost synergies associated with combining facilities, IT infrastructure, and certain functions such as finance, human resources and administrative services. However, differences between the two companies' operations could cause unforeseen delays in the integration process, result in lower savings than originally anticipated, or both, which could adversely affect NetApp's business and operating results.

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**THE DATA DOMAIN SPECIAL MEETING**

This section contains information about the special meeting of Data Domain stockholders that has been called to consider and approve the merger proposal and the adjournment proposal.

Together with this proxy statement/prospectus, Data Domain is also sending you a notice of the special meeting and a form of proxy that is solicited by the Data Domain board of directors.

**Time, Date and Place**

The special meeting will be held on [            ], 2009 at [            ], local time, at 2421 Mission College Blvd., Santa Clara, CA 95054.

**Matters to Be Considered**

The purpose of the special meeting is to vote on the following proposals:

1. To adopt the Agreement and Plan of Merger, dated as of May 20, 2009, as amended on June 3, 2009, by and among NetApp, Kentucky Merger Sub One Corporation, Derby Merger Sub Two LLC and Data Domain, as the agreement may be amended from time to time, which proposal is referred to as the merger proposal; and
2. To approve the adjournment or postponement of the special meeting, if necessary, to solicit additional proxies, in the event that there are not sufficient votes at the time of the special meeting to approve the merger proposal, which proposal is referred to as the adjournment proposal.

**Proxies**

Each copy of this proxy statement/prospectus mailed to holders of Data Domain common stock is accompanied by a form of proxy with instructions for voting. If you hold stock in your name as a stockholder of record, you should vote your shares by (i) completing, signing, dating and returning the enclosed proxy card, (ii) using the telephone number on your proxy card or (iii) using the Internet voting instructions on your proxy card to ensure that your vote is counted at the special meeting, or at any adjournment or postponement of the special meeting, regardless of whether you plan to attend the special meeting.

If you hold your stock in street name through a bank, broker or other nominee, you must direct your bank, broker or other nominee to vote in accordance with the instructions you have received from your bank, broker or other nominee.

If you hold stock in your name as a stockholder of record, you may revoke any proxy at any time before it is voted by signing and returning a proxy card with a later date, delivering a written revocation letter to Data Domain's Secretary, or by attending the special meeting in person, notifying Data Domain's Corporate Secretary, and voting by ballot at the special meeting.

Any stockholder entitled to vote in person at the special meeting may vote in person regardless of whether a proxy has been previously given, but the mere presence (without notifying Data Domain's Corporate Secretary) of a stockholder at the special meeting will not constitute revocation of a previously given proxy.

Written notices of revocation and other communications about revoking your proxy should be addressed to:

Data Domain, Inc.  
2421 Mission College Blvd.  
Santa Clara, CA 95054  
Attention: Corporate Secretary

If your shares are held in street name by a bank, broker or other nominee, you should follow the instructions of your bank, broker or other nominee regarding the revocation of proxies.

According to the Data Domain amended and restated bylaws, business to be conducted at a special meeting of stockholders may only be brought before the meeting by or at the direction of the Data Domain board of directors, or by any Data Domain stockholder who is entitled to vote at the meeting and who complies with the notice provisions set forth in the Data Domain amended and restated bylaws. No matters other than the matters described in this document are anticipated to be presented for action at the special meeting or at any adjournment or postponement of the special meeting.

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Data Domain stockholders should not send Data Domain stock certificates with their proxy cards. After the merger is completed, NetApp will mail to holders of Data Domain common stock a transmittal form with instructions on how to exchange their Data Domain stock certificates for the merger consideration.

## **Solicitation of Proxies**

Since many Data Domain stockholders may be unable to attend the special meeting, Data Domain's board of directors is soliciting proxies to be voted at the special meeting to give each stockholder an opportunity to vote on all matters scheduled to come before the meeting and set forth in this proxy statement/prospectus. Data Domain's board of directors is asking stockholders to designate Frank Sloom and Michael P. Scarpelli, or any one of them, as their proxies.

NetApp will pay the costs of printing and mailing this proxy statement/prospectus to Data Domain's stockholders, and Data Domain will pay all other costs incurred by it in connection with the solicitation of proxies from its stockholders on behalf of its board of directors, including the entire cost of soliciting proxies from you. In addition to solicitation of proxies by mail, Data Domain will request that banks, brokers, and other record holders send proxies and proxy material to the beneficial owners of Data Domain common stock and secure their voting instructions. Data Domain will reimburse the record holders for their reasonable expenses in taking those actions. Data Domain has also made arrangements with Innisfree M&A Incorporated to assist it in soliciting proxies and has agreed to pay them \$50,000 plus reasonable expenses for these services over a three month period. Data Domain has agreed to indemnify Innisfree M&A Incorporated for claims related to these services. If necessary, Data Domain may use several of its directors, executive officers and employees, who will not be specially compensated, to solicit proxies from Data Domain stockholders, either personally or by telephone, facsimile, letter or other electronic means.

## **Record Date**

The close of business on [            ], 2009 has been fixed as the record date for determining the Data Domain stockholders entitled to receive notice of and to vote at the special meeting. At that time, [            ] shares of Data Domain common stock were outstanding, held by approximately [            ] registered holders.

## **Voting Rights and Vote Required**

The presence, in person or by proxy, of the holders of a majority of the outstanding shares of Data Domain common stock entitled to vote is necessary to constitute a quorum at the special meeting. Abstentions will be counted for the purpose of determining whether a quorum is present.

Approval of the merger proposal requires the affirmative vote of the holders of a majority of the outstanding shares of Data Domain common stock entitled to vote at the special meeting. You are entitled to one vote for each share of Data Domain common stock you hold as of the record date.

Because the affirmative vote of the holders of a majority of the outstanding shares of Data Domain common stock entitled to vote at the special meeting is needed to approve the merger proposal, the failure to vote by proxy or in person will have the same effect as a vote against the approval of the merger proposal. Abstentions and broker non-votes will also have the same effect as a vote against the approval of the merger proposal. Accordingly, the Data Domain board of directors urges Data Domain stockholders to promptly vote by (i) completing, signing, dating and returning the enclosed proxy card, (ii) using the telephone number on your proxy card, or (iii) using the Internet voting instructions on your proxy card, or, if you hold your stock in street name through a bank, broker or other nominee, by following the voting instructions of your bank, broker or other nominee.

Approval of the adjournment proposal requires the affirmative vote of the holders of a majority of the shares entitled to vote and present in person or by proxy. Because approval of this proposal requires the affirmative vote of a majority of shares present in person or by proxy, abstentions will have the same effect as a vote against this proposal. However, the failure to vote, either by proxy or in person, and broker non-votes, will have no effect on the adjournment proposal.

Stockholders may vote at the meeting by ballot. Votes cast at the meeting, in person or by proxy, will be tallied by Innisfree M&A Incorporated, Data Domain's proxy solicitor.

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As of the record date, directors and executive officers of Data Domain, and their affiliates, had the right to vote [ ] shares of Data Domain common stock, or [ ]% of the outstanding Data Domain common stock at that date. Data Domain currently expects that each of these individuals will vote their shares of Data Domain common stock in favor of the proposals to be presented at the special meeting. Certain executive officers of Data Domain and their affiliates, collectively holding [ ] shares of Data Domain common stock, or [ ] % of the outstanding Data Domain common stock as of the record date have entered voting agreements with NetApp. Pursuant to the voting agreements, these officers have agreed to vote such shares of Data Domain common stock in favor of the approval of the merger proposal, and have granted a proxy to NetApp to vote the shares in such manner.

## **Recommendation of the Data Domain Board of Directors**

The Data Domain board of directors has unanimously approved and adopted the merger agreement and the transactions contemplated thereby. The Data Domain board of directors determined that the merger agreement and the transactions contemplated thereby are advisable and in the best interests of Data Domain and its stockholders and unanimously recommends that you vote FOR approval of the merger proposal and FOR approval of the adjournment proposal. See Data Domain Proposal 1 The Merger Data Domain's Reasons for the Merger; Recommendation of the Data Domain Board of Directors on page 37 for a more detailed discussion of the Data Domain board of directors recommendation.

## **Attending the Meeting**

All holders of Data Domain common stock, including stockholders of record and stockholders who hold their shares through banks, brokers, nominees or any other holder of record, are invited to attend the special meeting. Stockholders of record can vote in person at the special meeting. If you are not a stockholder of record, you must obtain a proxy executed in your favor, from the record holder of your shares, such as a broker, bank or other nominee, to be able to vote in person at the special meeting. If you plan to attend the special meeting, you must hold your shares in your own name or have a letter from the record holder of your shares confirming your ownership and you must bring a form of personal photo identification with you in order to be admitted. Data Domain reserves the right to refuse admittance to anyone without proper proof of share ownership and without proper photo identification.

## **Voting By Telephone or Via the Internet**

In addition to voting by proxy or in person at the special meeting, Data Domain stockholders that hold their shares as the stockholder of record also may vote their shares by using the telephone number on the proxy card or using the Internet voting instructions on the proxy card. Data Domain stockholders that hold their shares in street name through a bank, broker or other nominee may also vote their shares by following the telephone or Internet voting instructions provided by the bank, broker or other nominee. If you have access to the Internet, you are encouraged to vote via the Internet.

## **Adjournments and Postponements**

Although it is not currently expected, the special meeting may be adjourned for the purpose of soliciting additional proxies if Data Domain has not received sufficient votes to approve the merger proposal at the special meeting of stockholders. Any adjournments may be made without notice, other than an announcement at the special meeting, by approval of the affirmative vote of holders of at least a majority of shares of Data Domain common stock who are present in person or represented by proxy at the special meeting. Any adjournment of the special meeting for the purpose of soliciting additional proxies will allow stockholders who have already sent in their proxies to revoke them at any time prior to their use.

At any time prior to convening the special meeting, Data Domain's board of directors may postpone the special meeting for any reason without the approval of Data Domain stockholders. If postponed, Data Domain will provide notice of the new meeting date as required by law. Although it is not currently expected, Data Domain's board of directors may postpone the special meeting for the purpose of soliciting additional proxies if Data Domain has not received sufficient proxies to constitute a quorum or sufficient votes for adoption of the merger agreement. Similar to adjournments, any postponement of the special meeting for the purpose of soliciting additional proxies will allow stockholders who have already sent in their proxies to revoke them at any time prior to their use.

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**Appraisal Rights**

Under Delaware law, Data Domain stockholders are entitled to appraisal rights in connection with the merger. Failure to take any of the steps required under Delaware law on a timely basis may result in the loss of these appraisal rights, as more fully described in Data Domain Proposal 1 The Merger Appraisal Rights beginning on page 50.

**Other Matters**

As of the date of this proxy statement/prospectus, the Data Domain board of directors does not know of any other business to be presented for consideration at the special meeting. If other matters properly come before the special meeting, the persons named in the accompanying form of proxy intend to vote on such matters based on their best judgment and they intend to vote the shares as the Data Domain board of directors may recommend.

**Questions and Additional Information**

Data Domain stockholders who would like additional copies, without charge, of this proxy statement/prospectus or have additional questions about the merger, including the procedures for voting their shares of Data Domain common stock, should contact:

Data Domain, Inc.  
2421 Mission College Blvd.  
Santa Clara, CA 95054  
Attention: Investor Relations  
Telephone: (408) 980-4909

or Data Domain's solicitation agent:

Innisfree M&A Incorporated  
501 Madison Avenue, 20<sup>th</sup> Floor  
New York, NY 10022  
Stockholders Call Toll-Free at: (888) 750-5834  
Banks and Brokers Call Collect at: (212) 750-5833

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**INFORMATION ABOUT THE COMPANIES**

**NetApp, Inc.**

NetApp is a supplier of enterprise storage and data management software and hardware products and services. NetApp provides solutions to help global enterprises meet major information technology challenges such as managing storage growth, assuring secure and timely information access, protecting data and controlling costs by providing innovative solutions that simplify the complexity associated with managing corporate data. NetApp was incorporated in 1992 and shipped the world's first networked storage appliance a year later. Since then, NetApp has brought to market many significant innovations and industry firsts in storage and data management.

NetApp common stock is traded on the NASDAQ Global Select Market under the symbol NTAP. The principal executive offices of NetApp are located at 495 East Java Drive, Sunnyvale, CA 94089, and its telephone number is (408) 822-6000.

On May 22, 2009, NetApp commenced an option exchange program pursuant to which employees of NetApp (other than executive officers and directors) who hold certain options to purchase shares of NetApp's common stock are being given the opportunity to exchange such options for restricted stock units. The option exchange program was approved by NetApp's stockholders on April 21, 2009. Unless extended by NetApp, the option exchange offer will expire on June 19, 2009. For more information, please see NetApp's tender offer statement on Schedule TO, as filed with the SEC on May 22, 2009, as may be amended from time to time.

Additional information about NetApp and its subsidiaries is included in documents incorporated by reference in this document. See "Where You Can Find More Information" beginning on page 96.

**Kentucky Merger Sub One Corporation**

Kentucky Merger Sub One Corporation, a wholly owned subsidiary of NetApp, was formed solely for the purpose of completing the merger. Kentucky Merger Sub One has not carried on any activities to date, except for activities incidental to its formation and activities undertaken in connection with the transactions contemplated by the merger agreement. The principal executive offices of Kentucky Merger Sub One Corporation are located at 495 East Java Drive, Sunnyvale, CA 94089, and its telephone number is (408) 822-6000.

**Derby Merger Sub Two LLC**

Derby Merger Sub Two LLC, a wholly owned subsidiary of NetApp, was formed solely for the purpose of completing the merger. Derby Merger Sub Two has not carried on any activities to date, except for activities incidental to its formation and activities undertaken in connection with the transactions contemplated by the merger agreement. The principal executive offices of Derby Merger Sub Two LLC are located at 495 East Java Drive, Sunnyvale, CA 94089, and its telephone number is (408) 822-6000.

**Data Domain, Inc.**

Data Domain, a Delaware corporation, was incorporated in Delaware in October 2001. Data Domain is a leading provider of storage solutions for backup and archive applications based on deduplication technology. Data Domain deduplication storage systems are designed to deliver reliable, efficient and cost-effective solutions that enable enterprises of all sizes to manage, retain and protect their data.

Data Domain common stock is traded on the NASDAQ Global Select Market under the symbol DDUP. The principal executive offices of Data Domain are located at 2421 Mission College Blvd., Santa Clara, CA 95054 and its telephone number is (408) 980-4800.

Additional information about Data Domain and its subsidiaries is included in documents incorporated by reference in this proxy statement/prospectus. See *Where You Can Find More Information* beginning on page 96. Data Domain also plans to file a proxy statement for its 2009 annual meeting of stockholders with the SEC. The annual meeting is expected to be held on July 2, 2009, and the purpose of the meeting is to reelect three members of Data Domain's board of directors and to ratify Data Domain's independent registered public accounting firm for the fiscal year ending December 31, 2009.

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**DATA DOMAIN PROPOSAL 1 THE MERGER**

The stockholders of Data Domain are being asked to adopt the Agreement and Plan of Merger, dated as of May 20, 2009, as amended on June 3, 2009, by and among NetApp, Inc., Kentucky Merger Sub One Corporation, Derby Merger Sub Two LLC and Data Domain, as the agreement may be amended from time to time. This proposal is referred to as the merger proposal.

**Background of the Merger**

Since 2006, Frank Sloodman, President and Chief Executive Officer of Data Domain, and Daniel J. Warmenhoven, Chairman and Chief Executive Officer of NetApp, have from time to time had informal discussions regarding their respective businesses and the data storage industry in general.

Goldman Sachs & Co., or Goldman Sachs, had served as co-managing underwriters in Data Domain's initial public offering in June 2007. In November 2008, prior to the engagement of Goldman Sachs by NetApp, a representative of Goldman Sachs arranged for a meeting between Messrs. Sloodman and Warmenhoven to discuss the possibility of a business combination involving NetApp and Data Domain.

On November 4, 2008, Messrs. Sloodman and Warmenhoven and a representative of Goldman Sachs met to discuss the merits of a potential business combination involving NetApp and Data Domain. Messrs. Sloodman and Warmenhoven agreed that although there was value in a potential business combination, considering current market conditions and trading prices of the stock of the respective companies, such a business combination was not feasible at that time. Messrs. Sloodman and Warmenhoven agreed that no further discussions of a potential business combination involving NetApp and Data Domain would occur for the foreseeable future.

In early 2009, Mr. Sloodman and a representative of Goldman Sachs had ongoing discussions of potential strategic transactions involving Data Domain. A representative of Goldman Sachs arranged for a meeting on March 17, 2009, between Mr. Sloodman and Thomas Georgens, President and Chief Operating Officer of NetApp to discuss potential strategic opportunities involving NetApp and Data Domain.

On March 17, 2009, Messrs. Sloodman and Georgens and a representative of Goldman Sachs met to discuss potential strategic opportunities involving NetApp and Data Domain. Mr. Georgens inquired as to whether Data Domain would be interested in a potential business combination with NetApp at that time. Mr. Sloodman agreed to discuss such a potential business combination with members of the Data Domain board of directors.

On March 17, 2009, Mr. Sloodman briefed Aneel Bhusri, Chairman of the Data Domain board of directors, and some of the other members of the Data Domain board of directors on his discussions with Mr. Georgens regarding a potential business combination with NetApp. The members of the Data Domain board of directors agreed to open a dialogue with NetApp regarding a potential business combination dependent upon the value of the consideration offered by NetApp.

On March 18, 2009, Mr. Sloodman telephoned Mr. Georgens to inform him that Data Domain was receptive to a potential business combination with NetApp, but that further discussions would be dependent upon the value of the consideration offered by NetApp to the Data Domain stockholders.

On March 24, 2009, Mr. Sloodman, Michael P. Scarpelli, Senior Vice President and Chief Financial Officer of Data Domain, Mr. Georgens and Steven J. Gomo, Executive Vice President and Chief Financial Officer of NetApp, met to

discuss a potential business combination involving NetApp and Data Domain. After discussing the potential synergies, cultural fit and strategic benefits of a potential business combination involving NetApp and Data Domain, the parties expressed their respective continued interests in further exploring such a business combination.

On March 26, 2009, the Data Domain board of directors held a meeting to discuss a potential business combination with NetApp. Mr. Sloatman reviewed the conversation he and Mr. Scarpelli had with Messrs. Georgens and Gomo regarding a potential proposal from NetApp to acquire Data Domain. Mr. Sloatman proposed hiring Qatalyst Partners LP, or Qatalyst, as Data Domain's financial advisor to advise the Data Domain board of directors regarding the evaluation of a potential NetApp proposal and other strategic alternatives for Data Domain. Mr. Sloatman noted that Goldman Sachs had been previously engaged by NetApp to serve as its financial advisor. The Data Domain board of directors approved the engagement of Qatalyst as Data Domain's financial advisor.

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Mr. Slootman also reviewed potential benefits and synergies from a potential business combination with NetApp. Representatives of Fenwick & West LLP, or Fenwick & West, Data Domain's legal counsel, then reviewed considerations regarding the Data Domain board of directors' fiduciary duties in the context of such a potential business combination. Representatives of Qatalyst led a discussion regarding current macro economic market conditions, recent strategic developments in the technology sector, potential deal structures, processes and other issues to consider in such a potential business combination. The Data Domain board of directors expressed concerns regarding the potential harm to Data Domain's business relating to any uncertainty perceived by its current or future customers should they learn of discussions regarding a potential business combination involving Data Domain and the ability of Data Domain's competition to take advantage of any such perceived uncertainty. At the conclusion of the meeting, the Data Domain board of directors confirmed that it had not been seeking a sale of Data Domain, however should NetApp elect to proceed with an offer it would merit further consideration.

On March 27, 2009, NetApp and Goldman Sachs executed an engagement letter for Goldman Sachs to act as NetApp's financial advisor.

On April 1, 2009, the NetApp board of directors met to discuss the potential business combination between NetApp and Data Domain.

On April 2, 2009, Messrs. Slootman and Warmenhoven met to further discuss the opportunities and strategic benefits of a potential business combination involving NetApp and Data Domain. Mr. Warmenhoven indicated his interest in Data Domain's business and his respect for the long-term value of Data Domain as an enterprise. Mr. Warmenhoven indicated that NetApp was serious about making an offer for Data Domain and that the value of the consideration that NetApp would offer would reflect NetApp's commitment to securing such a potential business combination with Data Domain. Later that day representatives of Qatalyst had a call with Mr. Warmenhoven in which he informed them that the NetApp board of directors had authorized him to move forward with discussions regarding a potential business combination with Data Domain and the parties discussed the potential timing of a potential business combination.

On April 3, 2009, Messrs. Warmenhoven and Bhusri met to discuss the strategic rationale and benefits of a potential business combination involving NetApp and Data Domain. Both parties reiterated their interest in considering such a potential business combination. Mr. Bhusri indicated that the amount and certainty of the value of the consideration to be delivered to the Data Domain stockholders at closing was a priority of the Data Domain board of directors given the general economic uncertainty and volatile stock market conditions over the past several months. Mr. Bhusri indicated that the Data Domain board of directors intended to continue operating Data Domain as an independent entity absent a potential business combination at a sufficient value and therefore he expressed concern over the risks to Data Domain's business if competitors or customers became aware of discussions regarding a business combination involving Data Domain. Mr. Warmenhoven informed Mr. Bhusri that NetApp intended to place discussions of a potential business combination with Data Domain on hold temporarily. Mr. Bhusri agreed that the parties should not move forward at all until such time as both of the parties were in a position to move forward expeditiously.

On April 6, 2009, Mr. Slootman met with a representative of Company A to discuss the terms of a proposed commercial relationship that was being negotiated. The representative of Company A indicated that Company A might be interested in a business combination involving Data Domain and asked Mr. Slootman when a discussion of such a potential business combination would be appropriate. Mr. Slootman informed the representative of Company A that such a discussion should happen sooner rather than later. After this meeting, the parties continued to discuss the proposed commercial relationship, but no representatives of Company A contacted Mr. Slootman or any other representatives of Data Domain regarding a business combination involving Data Domain and Company A.

On April 9, 2009, the Data Domain board of directors met to further discuss the potential business combination with NetApp. Mr. Bhusri reviewed the status of discussions with Mr. Warmenhoven regarding NetApp's potential interest

in pursuing a business combination, but noted that no offer or specific terms had been proposed to date and that NetApp did not wish to engage in further conversations regarding a business combination for the time being and likely would not be in a position to reengage in such discussions until near the end of NetApp's fiscal quarter. Mr. Slotman reviewed his discussion with the representative of Company A. Representatives of Qatalyst summarized their conversations with Mr. Warmenhoven regarding the potential business combination with NetApp.

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Representatives of Fenwick & West reviewed the Data Domain board of directors' fiduciary duties and commented on legal considerations in the event Data Domain were to receive an offer from NetApp. At the conclusion of the meeting, the Data Domain board of directors confirmed that it was not seeking a sale of Data Domain absent a potential business combination involving sufficient value. However, the Data Domain board of directors acknowledged that should NetApp elect to proceed with an offer that provided for significant value to Data Domain's stockholders a transaction with NetApp would merit further consideration. The Data Domain board of directors further determined that Data Domain would not initiate any further discussions with NetApp or any other parties at this time.

On April 14, 2009, the NetApp board of directors held a meeting to discuss a potential business combination with Data Domain. Certain members of management presented the board of directors with a market analysis, as well as evaluations of the potential market opportunities and Data Domain's valuation and discounted cash flows. Following discussion among the NetApp board of directors and management, the NetApp board of directors authorized NetApp management to approach Data Domain with an offer to acquire Data Domain, subject to the parameters discussed and approved by the NetApp board of directors.

On April 21, 2009, the Data Domain board of directors held a meeting, during which it discussed, among other matters, trends in the data storage market and potential consolidation in the data storage market. Mr. Slootman reviewed the opportunities and challenges of remaining an independent entity in the current and foreseeable market environment in light of the storage market trends toward vertically integrated product offerings, noting that Data Domain may need to consider strategic alternatives or partnerships in the future to provide a more complete product offering in order to grow and remain competitive in the marketplace.

On April 22, 2009, Data Domain and Qatalyst executed an engagement letter for Qatalyst to act as Data Domain's financial advisor.

On April 24, 2009, Mr. Warmenhoven contacted Mr. Slootman to arrange a meeting to reinstate discussions about a potential business combination involving NetApp and Data Domain.

On April 27, 2009, Fenwick & West provided a mutual non-disclosure agreement to Wilson Sonsini Goodrich & Rosati P.C., or Wilson Sonsini, NetApp's legal counsel, which, after some discussions between respective counsel, was executed later that day by Data Domain and NetApp.

On April 27, 2009, Messrs. Slootman, Bhusri, Warmenhoven and Georgens met to further discuss a potential business combination involving NetApp and Data Domain. Messrs. Warmenhoven and Georgens presented a written summary of proposed terms for the potential transaction, including, among other items, consideration consisting of a mix of \$7.00 to \$8.00 per share in cash and 0.805 shares of NetApp common stock per share of Data Domain common stock, representing an implied value of \$22.00 to \$23.00 per share. The proposed terms also provided for a limited period of exclusivity for discussions with NetApp. Messrs. Slootman and Bhusri indicated that an exclusivity agreement was not acceptable to Data Domain, but that they would discuss the other aspects of the proposal with the Data Domain board of directors. Mr. Warmenhoven informed Mr. Bhusri of the potential for a role on the NetApp board of directors for Mr. Bhusri and a role in the management of NetApp for Mr. Slootman.

On April 28, 2009, the Data Domain board of directors met to discuss the status of the potential business combination with NetApp. Mr. Slootman reviewed the discussions that occurred with Messrs. Warmenhoven and Georgens regarding NetApp's interest in a business combination with Data Domain and the written terms that were proposed by NetApp, including the proposed per share consideration. Mr. Bhusri informed the Data Domain board of directors of the potential for a role on the NetApp board of directors for Mr. Bhusri and a role in the management of NetApp for Mr. Slootman. A discussion then ensued among the Data Domain board of directors, Qatalyst and Fenwick & West

regarding the NetApp proposal and potential responses thereto. Representatives of Fenwick & West reviewed the Data Domain board of directors' fiduciary duties, the various processes the Data Domain board of directors might adopt and discussed potential responses to the offer from NetApp. Given the recent fluctuations of the trading prices of the respective companies' stock and fluctuations in the market indices generally, the Data Domain board of directors determined that establishing a collar mechanism around any portion of the stock consideration was important to providing some protection for the value to be received to the Data Domain stockholders in the event that the market price of NetApp's common stock price fluctuated within a given range.

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between signing and closing of the proposed transaction. The Data Domain board of directors also expressed concerns regarding the timing of a potential business combination and the certainty of closing such a transaction once a definitive agreement was signed. Of particular concern was the negative impact of any uncertainty to Data Domain's business perceived by its current or future customers and the ability of Data Domain's competition to take advantage of any such uncertainty. The Data Domain board of directors considered the heightened risk of these harms to Data Domain's business if any of Data Domain's competitors were contacted regarding a potential strategic transaction. The Data Domain board of directors agreed that Mr. Bhusri would talk to Mr. Warmenhoven regarding NetApp's offer, specifically to seek to increase the amount of total consideration in the potential transaction, to increase the cash component of the mix of consideration and to provide further protection from fluctuations in NetApp's stock price between signing and closing of the potential transaction. The Data Domain board of directors also instructed representatives of Qatalyst to contact representatives of NetApp to seek favorable financial terms consistent with the objectives they provided to Mr. Bhusri.

Following the meeting of the Data Domain board of directors on April 28, 2009, Mr. Bhusri called Mr. Warmenhoven to discuss the potential business combination with NetApp. Mr. Bhusri indicated that the Data Domain board of directors was interested in pursuing a potential business combination with NetApp, however, they believed enhanced financial terms would be necessary for discussions to continue. Mr. Bhusri also informed Mr. Warmenhoven that the Data Domain board of directors thought the cash component of the mix of consideration should be increased and that the Data Domain board of directors wanted down-side protection around the stock component of the consideration to protect the value to the Data Domain stockholders in the event that the market price of NetApp's common stock price fluctuated between signing and closing of the proposed transaction. Mr. Bhusri reiterated that Data Domain could not agree to an exclusive negotiating period for NetApp. Mr. Warmenhoven said that he would review this information with the NetApp board of directors.

On April 28, 2009 Fenwick & West provided a form of standstill agreement to Wilson Sonsini that provided that NetApp would not acquire shares of Data Domain, subject to limited exceptions.

On April 29, 2009, representatives of Qatalyst had a call with representatives of Goldman Sachs seeking a proposal with enhanced financial terms along the lines described above.

On May 1, 2009, Messrs. Slooman and Georgens met to further discuss the potential market, customer, product and cost synergies that could be achieved through a business combination of NetApp and Data Domain, the corporate culture of the two companies and how the companies would fit together and generally discussed the business of their respective companies. Messrs. Slooman and Georgens did not negotiate or discuss the substantive terms of the proposed business combination at this meeting.

On May 1, 2009, the NetApp board of directors held a meeting to further discuss the potential acquisition of Data Domain. The board of directors discussed with management the status of negotiations with Data Domain and NetApp's strategy with respect to the transaction. The NetApp board of directors then authorized management to present Data Domain with a revised offer, subject to the parameters discussed and approved by the board of directors.

On May 4, 2009, Mr. Warmenhoven called Mr. Bhusri and indicated that NetApp would increase the proposed aggregate consideration to Data Domain stockholders in the business combination to \$24.00 per share, comprised of \$6.00 in cash and \$18.00 dollars worth of shares of NetApp common stock for each share of Data Domain common stock, with a symmetrical 7.5% collar on the stock portion of the consideration so that Data Domain stockholders would receive a fixed amount of consideration in the event that the market price of NetApp's common stock price fluctuated within that range between signing and closing of the proposed transaction. Mr. Bhusri informed Mr. Warmenhoven that while the Data Domain board of directors was interested in the potential business combination with NetApp, there were still several issues with the offer that needed to be resolved before the parties could move

forward, including an increase in the aggregate consideration, the need for a greater portion of the aggregate consideration to be provided in cash and for a wider collar to be placed around the stock component of the consideration. On that same day, Mr. Sloodman and Mr. Georgens also discussed NetApp's revised proposal. Mr. Sloodman also indicated that amount of the aggregate consideration, price certainty and protection against fluctuations NetApp's common stock price were important to Data Domain and that the terms of any business combination involving Data Domain should include an increase in the aggregate consideration, an increased amount of cash and an appropriate collar on the stock portion of the consideration. Also on May 4, 2009, a

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representative of Qatalyst discussed the details of Data Domain's views regarding the financial terms of a potential business combination involving Data Domain and NetApp with a representative of Goldman Sachs.

On May 5, 2009, Mr. Warmenhoven emailed a revised written summary of proposed terms of the potential business combination with NetApp to Mr. Bhusri. The revised offer consisted of \$24.00 per share in aggregate consideration, comprised of \$9.50 per share in cash and \$14.50 worth of shares of NetApp common stock for each share of Data Domain common stock, with a symmetrical 7.5% collar on the stock portion of the consideration.

On May 6, 2009, the Data Domain board of directors held a meeting at which it had an extensive discussion with Qatalyst and Fenwick & West regarding, among other matters, NetApp's original offer, NetApp's subsequent offers and the current offer of \$24.00 per share (consisting of \$9.50 per share in cash and \$14.50 per share in NetApp common stock, with a 7.5% symmetrical collar around the stock portion of the consideration), NetApp's desire to sign a merger agreement for any potential transaction by May 20, 2009 (the scheduled date for the announcement of NetApp's fiscal fourth quarter results) and other parties that may potentially be interested in a strategic transaction with Data Domain. Representatives of Fenwick & West reviewed the fiduciary duties of the Data Domain board of directors and the various processes the Data Domain board of directors might adopt. The Data Domain board of directors considered conducting a market check prior to the signing of a merger agreement with NetApp only if it could be conducted in a manner that did not jeopardize securing a firm proposal from NetApp and did not disrupt Data Domain's relationships with its current and future customers during the process. However, the Data Domain board of directors ultimately determined that it was not clear that Data Domain could come to mutually agreeable terms regarding a business combination with NetApp and therefore such a market check would involve a high degree of risk to Data Domain's customer relationships. The Data Domain board of directors authorized Mr. Bhusri and representatives of Qatalyst to propose a counteroffer to NetApp seeking a higher price of \$26.00 per share in the aggregate and wider collar of 15% around the stock portion of the consideration.

After the Data Domain board of directors meeting on May 6, 2009, Mr. Bhusri called Mr. Warmenhoven to make a counter proposal at a higher price of \$26.00 in aggregate consideration per share. After further negotiation, the parties tentatively agreed on \$25.00 in aggregate consideration per share, with the remaining financial terms to be negotiated the following day at a meeting that included Mr. Bhusri, representatives of Qatalyst, Messrs. Georgens and Gomo, J.R. Ahn, Vice President, Corporate Development of NetApp, and representatives of Goldman Sachs.

On May 6, 2009, representatives of Qatalyst contacted representatives of Goldman Sachs to discuss the revised terms of the proposed transaction.

On May 7, 2009, Data Domain and NetApp executed a revised mutual non-disclosure agreement that contained a standstill provision with respect to shares of Data Domain common stock.

On May 7, 2009, Mr. Bhusri, representatives of Qatalyst, Messrs. Georgens, Gomo and Ahn, and representatives of Goldman Sachs met to discuss the detailed financial terms of the proposed business combination between NetApp and Data Domain. The parties agreed to a mix of consideration consisting of \$11.00 per share in cash and \$14.00 per share in NetApp common stock. The parties also agreed to a 10% symmetrical collar so that Data Domain stockholders would receive a fixed amount of consideration in the event that the market price of NetApp's common stock price fluctuated within a that range between signing and closing of the proposed transaction.

On May 7, 2009, Mr. Slooman, David L. Schneider, Senior Vice President Worldwide Sales of Data Domain, Mr. Georgens and Robert E. Salmon, Executive Vice President, Field Operations of NetApp, met to get acquainted and discuss potential product sales synergies to be derived from a business combination between NetApp and Data Domain.

On May 7, 2009, a member of the board of directors of EMC, a competitor of Data Domain, contacted Mr. Sloodman. The EMC board member sought to arrange a meeting between Mr. Sloodman and the Chief Executive Officer of EMC to share with them EMC's vision for the future. Mr. Sloodman asked for more specific information on the nature of the meeting, but the board member of EMC did not provide any further detail.

On May 7, 2009, the Data Domain board of directors held a meeting to further discuss the potential business combination with NetApp. At this meeting, Mr. Bhusri reviewed for the Data Domain board of directors his discussion with Mr. Warmenhoven regarding valuation and informed the Data Domain board of directors that they

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had negotiated an increase in NetApp's offer from \$24.00 to \$25.00 per share in aggregate consideration, consisting of \$11.00 per share in cash and \$14.00 per share in NetApp common stock, with a 10% symmetrical collar around the value of the stock portion of the consideration. The Data Domain board of directors then discussed with representatives of Qatalyst the negotiations regarding the collar mechanism around the value of the stock portion of the consideration, the progression of the proposed terms from NetApp and the value of the current NetApp proposal. Mr. Slootman reviewed for the Data Domain board of directors the call he received from a director of EMC asking whether Mr. Slootman would be available to meet with the Chief Executive Officer of EMC. The Data Domain board of directors engaged in an extensive discussion regarding the NetApp offer and the whether to call other companies, including competitors, that could be candidates for a strategic transaction prior to signing a definitive merger agreement with NetApp. The Data Domain board of directors expressed further concerns regarding the high risk of potential harm to Data Domain's business relating to any uncertainty perceived by its current or future customers should they learn of discussions regarding a business combination involving Data Domain prior to the announcement of a definitive agreement and the ability of Data Domain's competition to take advantage of any such perceived uncertainty. The Data Domain board of directors further evaluated the heightened risk of these harms to Data Domain's business if any of Data Domain's competitors were contacted regarding a potential strategic transaction. Representatives of Fenwick & West then discussed the fiduciary duties of the Data Domain board of directors and the various processes the Data Domain board of directors might adopt. The Data Domain board of directors was concerned that initiating a market check at this time could jeopardize securing a firm agreement from NetApp and could disrupt Data Domain's relationships with its current and future customers during the process. The Data Domain board of directors determined that Data Domain should move forward with the potential business combination with NetApp without contacting other companies that might be candidates for a strategic transaction with Data Domain, but that the Data Domain board of directors would continue to evaluate this strategy and consider the matter further based upon the progress and terms of the potential business combination with NetApp.

On May 7, 2009, with the authorization of the Data Domain board of directors, Mr. Bhusri called Mr. Warmenhoven to inform him of the conversation between the EMC board member and Mr. Slootman earlier that day.

On May 8, 2009, Wilson Sonsini delivered an initial draft of the merger agreement to Data Domain and Fenwick & West. Also on May 8, 2009, Fenwick & West granted access to an online data room containing Data Domain due diligence materials to representatives of NetApp, Wilson Sonsini and Goldman Sachs.

On May 8, 2009, the Chief Executive Officer of EMC contacted Mr. Slootman via email to request a meeting the next time that the Chief Executive Officer was in the San Francisco Bay Area and suggested proposed dates. Mr. Slootman agreed via email to such dates, resulting in a meeting being scheduled on May 27, 2009.

On May 9, 2009, Messrs. Scarpelli and Slootman and Robert Specker, Vice President, In-house Counsel to Data Domain provided financial and business due diligence on Data Domain to representatives of NetApp and Goldman Sachs.

Between May 9 and May 20, 2009, Messrs. Warmenhoven, Georgens and Gomo, other executive officers of NetApp, and other employees of NetApp met numerous times with Messrs. Bhusri, Slootman, Scarpelli and Specker, other executive officers and employees of Data Domain to discuss various aspects of the potential business combination. During this period, NetApp and its advisors reviewed due diligence materials relating to Data Domain made available to NetApp in an online data room, requested and reviewed additional materials relating to Data Domain and engaged in due diligence discussions with their counterparts.

On May 11, 2009, the Data Domain board of directors met to further discuss, among other matters, the potential business combination with NetApp. Mr. Slootman informed the Data Domain board of directors that the Chief Executive Officer of EMC had contacted him to schedule a meeting and, based upon the availability of the Chief

Executive Officer of EMC, the meeting had been scheduled for May 27, 2009. A representative of Qatalyst reviewed a discussion with Mr. Warmenhoven in which Mr. Warmenhoven had reiterated NetApp's position that NetApp would not engage in a bidding contest if additional parties emerged seeking to acquire Data Domain. Representatives of Fenwick & West reviewed key terms of the initial draft of the merger agreement, including the omission of the ability of Data Domain to accept such a superior proposal and terminate the merger agreement with NetApp and the Data Domain board of directors' ability to change its recommendation in favor of the proposed

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business combination with NetApp for any reason consistent with its fiduciary duties and NetApp's initial request of a termination fee of 5.00% of the transaction value, and then discussed the fiduciary duties of the Data Domain board of directors and the various processes the Data Domain board of directors might adopt. The Data Domain board of directors and its advisors determined that in the negotiations with NetApp, Data Domain would insist on a process that would permit a superior proposal from a third party to surface after the signing of the merger agreement with NetApp and for the Data Domain board of directors to consider and accept such a superior proposal and terminate the merger agreement with NetApp, the Data Domain board of directors' ability to change its recommendation in favor of the proposed business combination with NetApp for any reason consistent with its fiduciary duties and an amount of the termination fee that would not be preclusive of a superior proposal. The Data Domain board of directors reaffirmed the priority of its objectives of retaining the compelling valuation of the proposed business combination with NetApp, obtaining deal certainty with respect to the proposed business combination with NetApp and not exposing Data Domain's business and customers to uncertainty and risk. The Data Domain board of directors and its advisors discussed the fact that NetApp's board of directors would be meeting on May 13, 2009, and that it would be important to assess NetApp's continued resolve to pursue a deal with Data Domain before deciding whether to taking any action relative to soliciting the interest of other parties with respect to a strategic transaction with Data Domain. In the interim, the Data Domain board of directors determined that Data Domain should move forward with the due diligence and other aspects of the potential business combination with NetApp.

On May 12, 2009, Fenwick & West delivered proposed revisions to the draft merger agreement to NetApp and Wilson Sonsini. Between May 12 and May 20, 2009, in addition to continuing their due diligence investigations of each other, NetApp and Data Domain, along with their respective legal and financial advisors, negotiated the terms of the merger agreement.

On May 12 and 13, 2009, Messrs. Warmenhoven, Georgens, Gomo and Ahn, other employees of NetApp and representatives of Goldman Sachs met with Messrs. Sloopman, Scarpelli and Specker, other employees of Data Domain and representatives of Qatalyst to discuss specific functional areas of diligence with respect to Data Domain and the potential business combination between NetApp and Data Domain, including financial, sales and marketing, human resources, services, product, supply chain and manufacturing, information technologies and facilities, and legal and intellectual property.

On May 13, 2009, the Data Domain board of directors held a meeting at which it discussed with representatives of Qatalyst the current financial terms of the transaction, the significant premiums the proposed business combination from NetApp provided and the likelihood that another party would offer more value to the Data Domain stockholders. The Data Domain board of directors engaged in further extensive discussions regarding the NetApp offer. The Data Domain board of directors reviewed the value of the NetApp offer, the significant premiums implied by the offer, the current economic conditions and stock market volatility. The Data Domain board of directors confirmed the desire to avoid the downside risk of further economic and stock market uncertainties by securing the attractive deal value reflected in the proposed business combination with NetApp, while obtaining protection of this deal value with the cash component of the offer and the collar around the stock portion of the consideration. Representatives of Fenwick & West discussed key terms of the merger agreement and the fiduciary duties of the Data Domain board of directors. The Data Domain board of directors discussed with representatives of Fenwick & West the legal issues surrounding its decision of whether to contact other companies, including competitors, that could be candidates for a strategic transaction with Data Domain prior to signing a definitive merger agreement with NetApp in light of the applicable merger agreement terms proposed by NetApp. The Data Domain board of directors expressed further concerns regarding the potential harm to Data Domain's business relating to any uncertainty perceived by its current or future customers should they learn of discussions regarding a business combination involving Data Domain prior to the announcement of a definitive agreement and the ability of Data Domain's competition to take advantage of any such perceived uncertainty. The Data Domain board of directors acknowledged the heightened risk of these harms to Data Domain's business if any of Data Domain's competitors were contacted regarding a potential strategic transaction.

The Data Domain board of directors was concerned that initiating a market check at this time could jeopardize securing the proposed business combination with NetApp. The Data Domain board of directors also expressed concerns regarding additional delay and uncertainty associated with soliciting the interest of other parties with respect to a strategic transaction with Data Domain. The Data Domain board of directors determined that Data Domain should move forward with the potential

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business combination with NetApp without contacting other companies and reaffirmed its commitment to insisting on merger agreement terms that would not unduly preclude the possibility of Data Domain receiving and implementing a superior proposal after the signing of a merger agreement with NetApp.

On May 13, 2009, the NetApp board of directors held a meeting to discuss the progress of the potential acquisition of Data Domain. Members of NetApp's management team were present to update the board of directors on work completed to date, initial findings from the due diligence process and next steps. The board of directors reviewed with management the preliminary terms of the potential transaction and discussed at length the stand-alone prospects of the potential transaction as well as expected net synergies. Following such discussion, the members of the board of directors authorized management to continue with its diligence review and discussions with Data Domain regarding a potential transaction.

On May 14, 2009, Messrs. Warmenhoven, Georgens, Gomo and Ahn, other employees of NetApp and representatives of Goldman Sachs met with Messrs. Bhusri, Slooman, Scarpelli and Specker, and representatives of Qatalyst to discuss due diligence of NetApp with respect to the potential business combination between NetApp and Data Domain. Between May 14 and May 19, 2009, representatives of NetApp and its advisors met with representatives of Data Domain and its advisors to engage in further due diligence discussions regarding the potential business combination between NetApp and Data Domain.

On May 14, 2009, Messrs. Bhusri and Warmenhoven met to discuss the terms of the proposed merger agreement. Mr. Bhusri indicated that, among other items, the Data Domain board of directors considered it important that the merger agreement allow for a process by which other parties could submit offers for alternate strategic transactions after the signing of a definitive merger agreement and that the Data Domain board of directors maintain the ability to consider such offers presented to it after the signing of a merger agreement with NetApp consistent with its fiduciary duties. Specifically, the Data Domain board of directors insisted on the ability to change its recommendation in favor of the proposed business combination with NetApp for any reason consistent with its fiduciary duties, a right to terminate the merger agreement after receipt of an alternative offer with respect to a strategic transaction that it determines to be a superior proposal and that the termination fee proposed by NetApp be reduced. Mr. Warmenhoven also mentioned to Mr. Bhusri that NetApp was currently conducting a search for a new member of its board of directors of Directors and suggested that Mr. Bhusri consider participating in the search process. Both parties agreed that no determinations would be made with respect to Mr. Bhusri's consideration for a position on the NetApp board of directors until after completion of the business combination between Data Domain and NetApp. On the same day, representatives of Qatalyst met with Mr. Warmenhoven to underscore the views that Mr. Bhusri had communicated regarding the deal protection terms of the merger agreement.

Also on May 14, 2009, Wilson Sonsini delivered an initial draft of the form of voting agreement to Fenwick & West.

On May 16, 2009, the Data Domain board of directors met to further discuss the potential business combination with NetApp. Representatives of Qatalyst reviewed due diligence that had been conducted on NetApp with respect to, among other matters, NetApp's recent financial results and outlook. Representatives of Fenwick & West then led a discussion regarding the voting agreements that were requested from officers, directors and associated funds and the status of the previous day's negotiations on key terms of the merger agreement. Representatives of Fenwick & West informed the Data Domain board of directors that NetApp agreed to include a process that would permit a superior proposal from a third party to surface after the signing of the merger agreement with NetApp and for the Data Domain board of directors to consider and accept such a superior proposal and terminate the merger agreement with NetApp and had proposed a termination fee of 4.50% of the transaction value, and the impact of the outcome of these negotiations on the Data Domain board of directors' fiduciary duties. The Data Domain board of directors discussed the fact that NetApp still appeared to be committed to the transaction. The Data Domain board of directors reaffirmed its commitment to the need for a provision of the merger agreement that provided for the Data Domain board of

directors' ability to change its recommendation in favor of the proposed business combination with NetApp for any reason consistent with its fiduciary duties and agreeing to an amount of the termination fee that would not be preclusive of a superior proposal. At the conclusion of this meeting, the Data Domain board of directors reiterated its commitment to continue negotiating the potential business combination with NetApp.

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On May 17, 2009, Fenwick & West delivered proposed revisions to the draft form of voting agreement to Wilson Sonsini. Between May 18 and May 20, 2009, NetApp, Data Domain and certain parties that were asked to sign the voting agreements, along with their respective legal advisors, negotiated the terms of the form of voting agreement.

On May 16 and 17, 2009, Mr. Sloodman exchanged emails with Mr. Georgens regarding whether NetApp would be providing offer letters to any Data Domain employees prior to the signing of a merger agreement. No such offer letters were provided to any Data Domain employees by NetApp prior to the signing of the merger agreement.

On May 18, 2009, Messrs. Schneider and Warmenhoven, James Lau, Co-Founder, Chief Strategy Officer and Executive Vice President of NetApp and David Hitz, Co-Founder and Executive Vice President of NetApp, met to get acquainted and discuss potential synergies to be derived from a business combination between NetApp and Data Domain.

On May 18, 2009, the Data Domain board of directors held a meeting to further discuss the potential business combination with NetApp. At this meeting, Mr. Bhusri and representatives of Fenwick & West reviewed for the Data Domain board of directors the results of the negotiations that had taken place earlier that day between Mr. Sloodman, representatives of Fenwick & West, Mr. Georgens, in-house attorneys for NetApp and representatives of Wilson Sonsini. Specifically, they noted that as a result of the negotiations the merger agreement would now provide for the Data Domain board of directors' ability to change its recommendation in favor of the proposed business combination with NetApp for any reason consistent with its fiduciary duties, a right to terminate the merger agreement after receipt of an alternative offer with respect to a strategic transaction that the Data Domain board of directors determines to be a superior proposal and the amount of the termination fee had been reduced to 3.25% of the transaction value. Representatives of Qatalyst reviewed the stock and cash components of the consideration to be received by the Data Domain stockholders proposed by NetApp, and other financial terms of the proposed merger. At the conclusion of this meeting, the Data Domain board of directors reiterated its commitment to finalize the terms of the potential business combination with NetApp.

On May 19, 2009, several conversations occurred among representatives of Qatalyst and Goldman Sachs and Mr. Bhusri and Mr. Georgens to discuss the exchange ratio, collar mechanics and final mix of consideration. As a result of these meetings and conference calls, the parties agreed to use the closing stock price of NetApp common stock on May 19, 2009 of \$18.07 in order to calculate the stock exchange ratio for the basis for the 10% symmetrical collar on the stock portion of the consideration that will provide adjustments to maintain the \$25 per share merger consideration for variations in NetApp's stock price of up to 10% in either direction between signing and closing of the merger, thereby providing downside protection for Data Domain stockholders if NetApp's stock declines by up to 10% while maintaining the upside potential if NetApp's stock increases in value by more than 10%. The parties also agreed that the cash portion of the merger consideration would be increased from \$11.00 to \$11.45 and the stock portion of the merger consideration would be decreased from \$14.00 to \$13.55.

On May 19, 2009, the NetApp board of directors held a meeting to further discuss the potential business combination with Data Domain. Representatives of Wilson Sonsini reviewed the board of directors' fiduciary duty obligations in the context of the potential acquisition, and the board of directors took note of the significant legal and financial due diligence that had been conducted over the past several weeks, including the analyses and various detailed models prepared by Goldman Sachs. Next, the board of directors reviewed the key terms of the merger agreement and engaged in extensive discussions in this regard. Representatives of Goldman Sachs then provided a summary of the potential transaction, presented various detailed financial analyses, and provided a review of its fairness opinion, which concluded that the merger consideration was fair to NetApp from a financial point of view. The members of the board of directors made inquiry of management and its advisors in this regard, and further discussion then ensued. At the conclusion of the meeting, the board of directors unanimously approved the acquisition of Data Domain, the merger agreement and related matters.

On May 20, 2009, the Data Domain board of directors held a meeting at which the proposed business combination with NetApp was further discussed and considered for final approval. At this meeting, Mr. Bhusri updated the Data Domain board of directors on the current status of negotiations with NetApp. Representatives of Fenwick & West reviewed in detail with the Data Domain board of directors the outcome of further negotiations and the terms of the merger agreement and related agreements, as well as the fiduciary duties of the Data Domain board

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of directors. Mr. Sloodman reviewed an analysis of strengths, weaknesses, opportunities and challenges of Data Domain remaining as a stand alone company. Representatives of Qatalyst presented to the Data Domain board of directors its financial analysis of the proposed transaction and delivered to the Data Domain board of directors its oral opinion, subsequently confirmed in writing as of May 20, 2009, that, as of that date the consideration to be received by holders of shares of Data Domain common stock, other than affiliates who had executed voting agreements, pursuant to the original merger agreement, was fair, from a financial point of view, to such holders. The full text of the written opinion of Qatalyst, dated May 20, 2009, which sets forth, among other things, the assumptions made, procedures followed, matters considered and limitations and qualifications of the review undertaken by Qatalyst in rendering its opinion, is attached hereto as Appendix D. Following the presentations, and after further review and discussion, the Data Domain board of directors unanimously voted to approve the merger, the merger agreement and related matters and resolved to recommend that Data Domain stockholders adopt the merger agreement, which was subsequently filed with the SEC as an exhibit to Data Domain's Current Report on Form 8-K filed on May 21, 2009.

Following the adjournment of the meeting of the Data Domain board of directors on May 20, 2009, the parties signed the merger agreement. The signing of the merger agreement was publicly announced later that day, following the closing of trading on the NASDAQ Global Select Market.

On May 20, 2009, after the announcement of the signing of the merger agreement, Mr. Sloodman contacted the Chief Executive Officer of EMC to cancel the meeting previously scheduled for May 27, 2009.

### **Additional Background to the Merger**

On various occasions after the announcement of the signing of the merger agreement on May 20, 2009 and through June 1, 2009, individual representatives of EMC and members of the board of directors of EMC contacted individual representatives of Data Domain and members of the Data Domain board of directors regarding an alternative acquisition proposal from EMC. None of the representatives of Data Domain or members of the Data Domain board of directors responded to such inquiries other than to inform the respective representatives of EMC and members of the board of directors of EMC that they could not discuss the matter since they were bound by the non-solicitation provisions of the merger agreement.

On June 1, 2009, EMC announced an unsolicited \$30.00 per share all cash tender offer to the stockholders of Data Domain. EMC sent a letter to Mr. Sloodman that same day regarding the cash tender offer to the stockholders of Data Domain and enclosed a proposed form of merger agreement.

On June 1, 2009, the Data Domain board of directors held a meeting at which EMC's announcement of a cash tender offer to the stockholders of Data Domain and the proposed business combination with NetApp were discussed. Representatives of Qatalyst and Fenwick & West reviewed the terms of EMC's cash tender offer. After further review and discussion, the Data Domain board of directors determined (after consultation with Qatalyst and Fenwick & West) that EMC's announcement of a \$30.00 per share all cash tender offer to the stockholders of Data Domain was reasonably likely to lead to a Superior Proposal (as that term is defined in the merger agreement). In accordance with the merger agreement, Data Domain then informed NetApp of this determination and of Data Domain's intent to contact EMC and offer to enter into discussions if EMC entered into a nondisclosure and standstill agreement as required by the merger agreement.

On June 2, 2009, EMC formally commenced a \$30.00 per share all cash tender offer to the stockholders of Data Domain. Unless extended by EMC, the tender offer expires at midnight, New York City time, on Monday June 29, 2009.

On June 2, 2009, Mr. Warmenhoven called Mr. Bhusri to inform him that NetApp would be willing to increase the aggregate consideration in the proposed business combination with Data Domain from \$25.00 to \$30.00, and maintaining the 10% symmetrical collar around the value of the stock portion of the consideration.

On June 2, 2009, the Data Domain board of directors held a meeting at which both EMC's cash tender offer to the stockholders of Data Domain and the proposed business combination with NetApp were discussed. At this meeting, Mr. Bhusri updated the Data Domain board of directors on the revised proposal from NetApp to increase the aggregate consideration from \$25.00 to \$30.00. Representatives of Qatalyst and Fenwick & West reviewed the

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terms of EMC's cash tender offer to the stockholders of Data Domain. In addition, the Data Domain board of directors discussed potential additional terms it might seek in connection with the revised oral proposal from NetApp and determined to review and seek to negotiate the terms of the revised proposal from NetApp once they were received.

On June 2, 2009, a representative of Qatalyst called Mr. Gomo to discuss the financial terms of NetApp's revised proposal regarding the proposed business combination involving Data Domain and NetApp and proposed additional terms that would enhance the proposal from Data Domain's point of view.

Late in the evening on June 2, 2009, Mr. Georgens delivered a letter to Messrs. Bhusri and Sloomman containing the financial terms of the revised proposal regarding the proposed business combination involving Data Domain and NetApp, which provided for \$30.00 per share in aggregate consideration, consisting of \$16.45 per share in cash and \$13.55 per share in NetApp stock, with a 10% symmetrical collar around the value of the stock portion of the consideration, based upon the closing stock price of NetApp common stock on June 2, 2009 of \$19.34. At this time, Mr. Georgens also delivered to Messrs. Bhusri and Sloomman an initial draft of the amendment to the original merger agreement to effect this revised proposal.

On June 2, 2009, the NetApp board of directors held a meeting to discuss EMC's announcement of an all cash tender offer and the business combination with Data Domain. Representatives of Wilson Sonsini and Goldman Sachs reviewed the key terms of EMC's cash tender offer to the stockholders of Data Domain. Next, representatives of Goldman Sachs provided a summary of potential responses and presented various detailed financial analyses associated with these responses. Then, the NetApp board of directors reviewed the key terms of a potential response and engaged in extensive discussion in this regard. Representatives of Goldman Sachs have provided a fairness opinion to the NetApp board of directors, which concluded that the revised proposal which provided for \$30.00 per share in aggregate consideration, consisting of \$16.45 per share in cash and \$13.55 per share in NetApp stock, with a 10% symmetrical collar around the value of the stock portion of the consideration was fair to NetApp from a financial point of view. The NetApp board of directors unanimously approved the terms of NetApp's revised proposal and approved the amendment to the original merger agreement and related matters.

Following receipt of the revised proposal from NetApp, representatives of Qatalyst and Goldman Sachs discussed the financial terms of NetApp's revised proposal regarding the proposed business combination involving Data Domain and NetApp and continued to request additional terms that would enhance the proposal from Data Domain's point of view.

On the morning of June 3, 2009, the Data Domain board of directors held a meeting at which both EMC's cash tender offer to the stockholders of Data Domain and the revised financial terms of the proposed business combination with NetApp were discussed. At this meeting, representatives of Fenwick & West and Qatalyst updated the Data Domain board of directors on the terms of the revised proposal regarding the proposed business combination with NetApp and the related amendment to the merger agreement, including the fact that the stock portion of the merger consideration has a 10% symmetrical collar around the closing stock price of NetApp common stock on June 2, 2009 (the last trading day prior to the Data Domain board of directors' approval of the amendment to the merger agreement) of \$19.34 that will provide adjustments to maintain the \$30.00 per share merger consideration for variations in NetApp's stock price of up to 10% in either direction between signing and closing of the proposed business combination involving Data Domain and NetApp, thereby providing downside protection for the Data Domain stockholders if the NetApp common stock price declines by up to 10% while maintaining a portion of the upside potential if the NetApp common stock price increases in value by more than 10%. After further review and discussion, the Data Domain board of directors unanimously determined that the revised terms of NetApp's proposal were advisable, fair to and in the best interests of Data Domain's stockholders and voted to approve the amendment to the original merger agreement, which was filed with the SEC as an exhibit to Data Domain's Current Report on Form 8-K filed later that day. The Data Domain board of directors further considered and discussed EMC's cash tender offer to the stockholders of Data Domain and, after consultation with Qatalyst and Fenwick & West, the Data Domain board of directors

reaffirmed its determination that EMC's \$30.00 per share all cash tender offer to the stockholders of Data Domain was reasonably likely to lead to a Superior Proposal (as that term is defined in the merger agreement). Later that day, the parties executed the amendment to the

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merger agreement and Data Domain issued a press release announcing the execution of the amendment to the merger agreement.

On June 3, 2009, a representative of Fenwick & West delivered to a representative of Skadden, Arps, Slate, Meagher & Flom LLP, legal counsel to EMC, a form of mutual non-disclosure agreement that contained a standstill provision with respect to shares of Data Domain common stock, which, under the original merger agreement, is a pre-condition to Data Domain's discussions or negotiations with a third party, such as EMC, with respect to a potential Superior Proposal (as that term is defined in the merger agreement). Later in the day, EMC issued a press release reaffirming its \$30.00 per share tender offer for all Data Domain shares. As of June 16, 2009, EMC had not executed a non-disclosure agreement that contains a standstill provision with Data Domain and therefore Data Domain is still prohibited from discussing or negotiating the terms of EMC's cash tender offer with EMC by the terms of the merger agreement with NetApp.

On June 4, 2009, NetApp and Data Domain filed the proxy statement/prospectus with the SEC.

In addition, the Data Domain board of directors held meetings on June 4, 5, 8, 11 and 14, to discuss the proposed business combination with NetApp, EMC's cash tender offer and related matters. The Data Domain board of directors consulted with representatives of Fenwick & West and Qatalyst during the discussions at each of these meetings.

On June 12, 2009, the Police & Fire Retirement System of the City of Detroit, or plaintiff, filed a lawsuit in Delaware Chancery Court against the Data Domain board of directors and NetApp alleging that the Data Domain board of directors breached its fiduciary duties in connection with the proposed business combination with NetApp and that NetApp aided and abetted such breach. Plaintiff seeks unspecified damages, preliminary and permanent injunctive relief against the proposed business combination with NetApp, and costs and attorneys' fees.

On June 15, 2009, Data Domain filed a Schedule 14D-9 with the SEC in which the Data Domain board of directors recommended that the Data Domain stockholders reject EMC's cash tender offer and in which the Data Domain board of directors reaffirmed its unanimous recommendation that the Data Domain stockholders vote to approve the adoption of the merger agreement with NetApp.

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**Data Domain's Reasons for the Merger; Recommendation of the Data Domain Board of Directors**

In the course of reaching its decision to approve the merger, adopt the merger agreement and recommend that Data Domain stockholders vote FOR the adoption of the merger agreement, the Data Domain board of directors consulted with senior management, legal counsel and its financial advisor. The Data Domain board of directors also consulted with outside legal counsel regarding its fiduciary duties, legal due diligence matters and the terms of the merger agreement and related agreements. The following discussion includes all material reasons and factors considered by the Data Domain board of directors in making its recommendation, but is not, and is not intended to be, exhaustive:

*Merger Consideration.* The Data Domain board of directors considered the following with respect to the merger consideration to be received by the Data Domain stockholders:

that our stockholders will receive merger consideration of \$30.00 per share consisting of \$16.45 per share in cash and \$13.55 per share in NetApp stock upon the completion of the merger (assuming NetApp's common stock price remains within the 10% symmetrical collar discussed below), as compared to the uncertain future long-term value to our stockholders that might be realized if we remained independent;

the fact that the cash portion of the merger consideration will provide liquidity and certainty of value to our stockholders;

the fact that the stock portion of the merger consideration has a 10% symmetrical collar around the closing stock price of NetApp common stock on June 2, 2009 (the last trading day prior to the Data Domain board of directors' approval of the Merger) of \$19.34 that will provide adjustments to maintain the \$30.00 per share merger consideration for variations in NetApp's stock price of up to 10% in either direction between signing and closing of the merger, thereby providing downside protection for Data Domain stockholders if NetApp's stock declines by up to 10% while maintaining a portion of the upside potential if NetApp's stock increases in value by more than 10%;

the fact that the \$30.00 per share value of the consideration for Data Domain common stock in the merger (assuming NetApp's stock price remains within the 10% collar discussed above) represents significant premiums to our stockholders of approximately 115% premium over the average closing price of our common stock on The NASDAQ Global Select Market over the 60 trading day period ending on May 19, 2009 (the last trading day prior to the Data Domain board of directors' approval of the merger) and a 72% premium over the closing price of our common stock on The NASDAQ Global Select Market on May 19, 2009 (the last trading day prior to the Data Domain board of directors' approval of the merger) and the levels of those premiums as compared to the premiums in other comparable merger transactions; and

the then current financial market conditions and the recent and historical market prices of Data Domain common stock, including the market price performance of Data Domain common stock relative to those of other industry participants. See *Comparative Market Prices and Dividends* for information about our common stock prices over the past two years.

*Synergy between NetApp and Data Domain.* The Data Domain board of directors considered NetApp's prospects following the closing of the merger. NetApp's sales and distribution channels and international reach to offer the Data Domain product line to more customers, accelerating growth and market adoption. The Data Domain board of directors believed that the combination of the two companies would increase the value of NetApp and thereby the value of the NetApp common stock that Data Domain stockholders would receive in

the merger.

*Review of Prospects in Remaining Independent.* The Data Domain board of directors considered the possibility of continuing to operate Data Domain as an independent public company. The Data Domain board of directors also considered the perceived risks and uncertainties of remaining an independent public company, the range of possible values to its stockholders arising from this alternative and the timing and uncertainty of successfully accomplishing meaningful growth under Data Domain's strategic plan. The Data

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Domain board of directors' assessment was that pursuit of a growth strategy as an independent company was not reasonably likely to create greater value for the Data Domain stockholders than the merger, after discounting for the elapse of time and considering the factors reviewed below. In considering the alternative of pursuing growth as an independent company, the Data Domain board of directors considered the following factors:

increased competition, especially from competitors with greater name recognition, more resources, financial and otherwise, broader product offerings and more vertically integrated product offerings than Data Domain;

Data Domain's slowing growth rates and the challenge of expanding beyond its core deduplication product offerings in the context of enterprise customers and large data centers increasing requests for a broader suite of data storage products and services;

the increasing preference of enterprises to consolidate vendors and use one vendor for all of its data center needs instead of using multiple vendors that offer best-of-breed products independently;

customer concern regarding Data Domain's relatively small size compared to its competitors due to the critical nature of its storage products in customer data centers; and

the time and risk involved in integrating new management members and key employees if Data Domain were successful in recruiting new management and key employees.

*Economic Conditions.* The Data Domain board of directors considered the fact that the United States economy, in general, appears to be in a downturn. This turmoil and uncertainty could adversely affect the demand for Data Domain's products and services. In addition, because Data Domain's sales are primarily to corporate customers, Data Domain's business depends on general economic and business conditions.

*Opinion of Qatalyst Partners LP.* The Data Domain board of directors considered the financial presentation of Qatalyst and the opinion of Qatalyst, dated May 20, 2009, that, as of the date of the opinion, and subject to and based on the assumptions made, procedures followed, matters considered and limitations and qualifications of the review undertaken in such opinion, the merger consideration to be received by holders of shares of Data Domain common stock, other than affiliates who have executed voting agreements, pursuant to the original merger agreement was fair, from a financial point of view, to such holders, as more fully described in the section entitled "Data Domain Proposal 1 - The Merger - Opinion of Qatalyst Partners LP" on page 40.

*Likelihood and Timing of Closing.* The Data Domain board of directors considered the likelihood that the proposed acquisition would be completed on a timely basis, in light of:

the customary closing conditions included in the merger agreement;

the fact that the merger does not need to be approved by foreign anti-trust authorities;

the available cash resources of NetApp to pay the cash portion of the merger consideration without the need for outside financing and the representation that NetApp made in the merger agreement to that effect; and

the fact that the merger does not need to be approved by NetApp's stockholders and the representation that NetApp made in the merger agreement to that effect.

*Terms of the Merger Agreement.* The Data Domain board of directors considered the terms and conditions of the merger agreement and the course of negotiations thereof, including:

the limited conditions to NetApp's obligation to complete the merger, including the absence of a financing condition or vote of NetApp's stockholders and limited ability of NetApp to terminate the merger agreement under clearly defined circumstances;

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the structure of the transaction as a merger, requiring approval by Data Domain's stockholders, which would result in detailed public disclosure and a period of time prior to completion of the merger during which an unsolicited superior proposal, if any, could be brought forth;

the ability of the Data Domain board of directors, under certain circumstances, to furnish information to and conduct negotiations with a third party, if the Data Domain board of directors determines in good faith (after consultation with its financial advisor and its outside legal counsel) that (A) the third party has made an acquisition proposal that either constitutes or is reasonably likely to lead to a superior proposal and (B) the failure to take such action is reasonably likely to result in a breach of its fiduciary duties to the Data Domain stockholders;

the ability of the Data Domain board of directors, under certain circumstances, to change its recommendation that the Data Domain stockholders adopt the merger agreement if the Data Domain board of directors determines in good faith (after consultation with its outside counsel) that the failure to change its recommendation is reasonably likely to be a breach of its fiduciary duties to the Data Domain stockholders;

the ability of Data Domain to terminate the merger agreement in order to accept a superior proposal, subject to certain conditions and payment to NetApp of \$57.0 million, representing approximately 2.7% of the total equity value of the proposed transaction at the time of the execution of the merger agreement;

the belief of the Data Domain board of directors that the termination fee is within the range of reasonable termination fees provided for in comparable transactions and is not a significant deterrent to possible competing offers; and

that Data Domain's stockholders will be entitled to appraisal rights under Delaware law.

*NetApp's Reputation.* The Data Domain board of directors considered the business reputation of NetApp and its management and the substantial financial resources of NetApp, which the Data Domain board of directors believed supported the conclusion that the merger could be completed relatively quickly and in an orderly manner.

In the course of its deliberations, the Data Domain board of directors also considered a variety of risks and factors weighing against the merger, including:

*Risks of Announcement and Completion.* The Data Domain board of directors considered:

the risks and contingencies related to the announcement of the merger, including our ability to retain key employees and maintain our relationships with customers, commercial partners and third parties;

the conditions to NetApp's obligation to complete the merger and the right of NetApp to terminate the merger agreement under certain circumstances; and

the risks and costs to Data Domain if the merger is not completed, including the diversion of management and employee attention, potential employee attrition, the potential impact on our stock price and the effect on our business relationships.

*Limitations on Data Domain's Business.* The Data Domain board of directors considered the potential limitations on Data Domain's pursuit of business opportunities due to pre-closing covenants in the merger agreement whereby Data Domain agreed that it will carry on its business in the ordinary course of business consistent with past practice, and subject to specified exceptions, will not take certain actions related to the conduct of its business without the prior written consent of NetApp.

*Absence of Pre-Signing Solicitation.* The Data Domain board of directors considered the absence of contacting other companies or other effort to solicit interest from other potential buyers that might be a likely candidates for a strategic transaction with Data Domain prior to the execution and delivery of the merger agreement.

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*Potential Taxable Transaction.* The Data Domain board of directors considered that the merger agreement allows for NetApp to increase the cash portion of the merger consideration in the event that the issuance of additional shares of its common stock would require NetApp to obtain a vote of its stockholders to approve the issuance and that the increase in the cash portion could result in the stock portion of the merger consideration being taxable to the Data Domain stockholders.