

NETSUITE INC  
Form SC 13E3  
September 27, 2016

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**SCHEDULE 13E-3**

(§240.13e-100)

**RULE 13e-3 TRANSACTION STATEMENT  
UNDER SECTION 13(e) OF THE SECURITIES EXCHANGE ACT OF 1934**

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**NetSuite Inc.**

(Name of Issuer)

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**NetSuite Inc.**

(Name of Person(s) Filing Statement)

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**Common Stock, par value \$0.01 Per Share**

(Title of Class of Securities)

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**64118Q107**

(CUSIP Number of Class of Securities)

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**Douglas P. Solomon, Esq.  
Senior Vice President and  
General Counsel  
NetSuite Inc.  
2955 Campus Drive, Suite 100  
San Mateo, CA 94403  
(650) 627-1000**

(Name, Address, and Telephone Numbers of Person Authorized to Receive Notices  
and Communications on Behalf of the Person(s) Filing Statement)

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**with copies to:  
Larry W. Sonsini**

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Martin W. Korman  
Bradley L. Finkelstein  
Douglas K. Schnell  
Wilson Sonsini Goodrich & Rosati  
Professional Corporation  
650 Page Mill Road  
Palo Alto, CA 94034  
(650) 493-9300

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This statement is filed in connection with (check the appropriate box):

- a. ☐ The filing of solicitation materials or an information statement subject to Regulation 14A (Sections 240.14a-1 through 240.14b-2), Regulation 14C (Sections 240.14c-1 through 240.14c-101) or Rule 13e-3(c) (§240.13e-3(c)) under the Securities Exchange Act of 1934.
- b. ☐ The filing of a registration statement under the Securities Act of 1933.
- c. ☒ A tender offer.
- d. ☐ None of the above.

Check the following box if the soliciting materials or information statement referred to in checking box (a) are preliminary copies: ☐

Check the following box if the filing is a final amendment reporting the results of the transaction: ☐

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**CALCULATION OF FILING FEE**

**Transaction valuation\***

\$9,473,545,994.00

**Amount of filing fee\*\***

\$953,986.08

\*

Estimated solely for purposes of calculating the filing fee. This calculation is based on the offer to purchase all of the issued and outstanding shares of common stock, par value \$0.01 per share, of NetSuite Inc. ("NetSuite"), at a purchase price of \$109.00 per share, net to the seller in cash, without interest thereon and subject to any required tax withholding. Such shares consist of: (i) 81,007,997 shares of common stock of NetSuite that were issued and outstanding as of August 8, 2016; (ii) 1,035,657 shares of common stock of NetSuite potentially issuable upon exercise of outstanding exercisable in-the-money stock options as of August 8, 2016; (iii) 3,480,715 shares of common stock of NetSuite issuable upon the settlement of outstanding restricted stock units as of August 8, 2016; and (iv) 1,388,897 shares of common stock of NetSuite issuable upon the settlement of outstanding performance share units as of August 8, 2016. The foregoing figures have been provided by the issuer to the offeror and are as of August 8, 2016, the most recent practicable date.

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

✓

Check the box if any part of the fee is offset as provided by Section 240.0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount previously Paid:	\$ 953,986.08	Filing Party:	Napa Acquisition Corporation, OC Acquisition LLC and Oracle Corporation
Form or Registration No.:	Schedule TO	Date Filed:	August 18, 2016

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**Explanatory Note**

This Rule 13E-3 Transaction Statement on Schedule 13E-3 (together with the exhibits and annexes hereto, as it may be amended or supplemented, this "Schedule 13E-3") is being filed by NetSuite Inc., a Delaware corporation ("NetSuite"). The filing person is the subject company. This Schedule 13E-3 relates to the cash tender offer (the "Offer") by Napa Acquisition Corporation, a Delaware corporation ("Purchaser"), a subsidiary of OC Acquisition LLC, a Delaware limited liability company ("Parent"), which is a subsidiary of Oracle Corporation, a Delaware corporation ("Oracle"), to purchase all of the issued and outstanding shares of common stock, par value \$0.01 per share (the "Shares"), of NetSuite, at a purchase price of \$109.00 per Share (the "Offer Price"), net to the seller in cash, without interest thereon and subject to any required tax withholding, upon the terms and subject to the conditions set forth in the Offer to Purchase dated August 18, 2016 (as it may be amended and supplemented from time to time, the "Offer to Purchase"), and the related Letter of Transmittal (as it may be amended and supplemented from time to time, the "Letter of Transmittal").

In response to the Offer, NetSuite filed a Solicitation/Recommendation Statement on Schedule 14D-9 (as it may be amended and supplemented, the "Schedule 14D-9"). The information contained in the Schedule 14D-9 and the Offer to Purchase, including all schedules, annexes and exhibits thereto, copies of which are attached as exhibits hereto, is expressly incorporated by reference to the extent that such information is required in response to the items in this Schedule 13E-3, and is supplemented by information specifically provided herein. The responses to each item of this Schedule 13E-3 are qualified in their entirety by the information contained in the Schedule 14D-9 and Offer to Purchase. All terms used in this Schedule 13E-3 without definition have the meanings ascribed to them in the Schedule 14D-9.

This Schedule 13E-3 is being filed solely to include additional disclosure in response to comments received from the staff of the Securities and Exchange Commission.

**Item 1. Summary Term Sheet.**

The information in the Offer to Purchase under the caption "Summary Term Sheet" is incorporated herein by reference.

**Item 2. Subject Company Information.**

(a) *Name and Address.* The information in the Schedule 14D-9 under the caption "Item 1. Subject Company Information Name and Address" is incorporated herein by reference.

(b) *Securities.* The information in the Schedule 14D-9 under the caption "Item 1. Subject Company Information Securities" is incorporated herein by reference.

(c) *Trading Market and Price.* The information in the Offer to Purchase under the caption "The Tender Offer Section 6 Price Range of Shares; Dividends" is incorporated herein by reference.

(d) *Dividends.* The information in the Offer to Purchase under the caption "The Tender Offer Section 6 Price Range of Shares; Dividends" is incorporated herein by reference.

(e) *Prior Public Offerings.* Not applicable.

(f) *Prior Stock Purchases.* Not applicable.

**Item 3. Identity and Background of Filing Person.**

(a) *Name and Address.* The information in the Schedule 14D-9 under the caption "Item 1. Subject Company Information," and in the Offer to Purchase under the caption "The Tender Offer Section 8 Certain Information Concerning Oracle, Parent and Purchaser," is incorporated herein by

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reference. The filing person is the subject company. The business address and phone number of the directors and executive officers of the Company is the same as that of the Company noted above. The business address and phone number of the directors and executive officers of Oracle, Parent and Purchaser are the same as those of Purchaser and Acquisition Sub specified in the Schedule TO.

(b) *Business and Background of Entities.* The information in the Offer to Purchase under the captions "The Tender Offer Section 7 Certain Information Concerning the NetSuite" and "The Tender Offer Section 8 Certain Information Concerning Oracle, Parent and Purchaser" is incorporated herein by reference.

NetSuite Restricted Holdings LLC ("NRH") is a California limited liability company that serves as an investment holding entity to hold shares of NetSuite common stock and any proceeds therefrom, subject to and in compliance with the terms of its operating agreement. The address for NRH is c/o Bill Wright & Associates, LLC, One Bush Street, Suite 650, San Francisco, CA 94104. NRH has not been convicted in a criminal proceeding during the past five years and has not been a party to any judicial or administrative proceeding during the past five years (except for matters that were dismissed without sanction or settlement) that resulted in a judgment, decree or final order enjoining such entity from future violations of, or prohibiting activities subject to, U.S. federal or state securities laws, or a finding of any violation of U.S. federal or state securities laws.

(c) *Business and Background of Natural Persons.* The information in the Offer to Purchase under the caption "Schedule I" is incorporated herein by reference.

The name, age, citizenship, principal business address, principal occupation and business experience during the past five years of each of the Company's directors and executive officers is set forth in Annex A. Each such person has not been convicted in a criminal proceeding during the past five years (excluding traffic violations or similar misdemeanors) and has not been a party to any judicial or administrative proceeding during the past five years (except for matters that were dismissed without sanction or settlement) that resulted in a judgment, decree or final order enjoining such person from future violations of, or prohibiting activities subject to, U.S. federal or state securities laws, or a finding of any violation of U.S. federal or state securities laws.

### **Item 4. Terms of the Transaction.**

(a) *Material Terms; Tender Offers.* The information in the Offer to Purchase under the captions "Summary Term Sheet," "The Tender Offer Section 1 Terms of the Offer," "The Tender Offer Section 2 Acceptance for Payment and Payment for Shares," "The Tender Offer Section 3 Procedures for Accepting the Offer and Tendering Shares," "The Tender Offer Section 4 Withdrawal Rights," "The Tender Offer Section 5 Certain U.S. Federal Income Tax Consequences of the Offer," "The Tender Offer Section 15 Conditions of the Offer" and "The Tender Offer Section 16 Certain Legal Matters; Regulatory Approvals" is incorporated herein by reference.

(c) *Different Terms.* The information in the Schedule 14D-9 under the caption "Item 3. Past Contacts, Transactions, Negotiations and Agreements Agreements between NetSuite, Parent, Purchaser and Oracle Tender and Support Agreements," and in the Offer to Purchase under the caption "Special Factors Section 6 The Merger Agreement; Other Agreements," is incorporated herein by reference.

(d) *Appraisal Rights.* The information in the Schedule 14D-9 under the captions "Item 8 Additional Information" and "Annex B Section 262 of the Delaware General Corporation Law," and in the Offer to Purchase under the caption "Special Factors Section 7 Appraisal Rights," is incorporated herein by reference.

(e) *Provisions for Unaffiliated Security Holders.* None.

(f) *Eligibility for Listing or Trading.* Not Applicable.

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

(a)-(c), (e) *Transactions; Significant Corporate Events; Negotiations or Contacts; and Agreements Involving the Subject Company's Securities.* The information in the Schedule 14D-9 under the caption "Item 3. Past Contacts, Transactions, Negotiations and Agreements" and "Item 4. The Solicitation or Recommendation," and in the Offer to Purchase under the captions "Special Factors Section 1 Background of the Offer; Past Contacts or Negotiations with the Company" and "Special Factors Section 6 The Merger Agreement; Other Agreements," is incorporated herein by reference. Exhibit 4.4 to NetSuite's Amendment No. 4 to its Registration Statement on Form S-1 is incorporated herein by reference.

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

(b), (c)(1)-(8) *Use of Securities Acquired, Plans.* The information in the Schedule 14D-9 under the captions "Item 3. Past Contacts, Transactions, Negotiations and Agreements," "Item 4. Solicitation/Recommendation Background of the Transaction; Reasons for the Recommendation of the NetSuite Board" and "Item 7 Purposes of the Transaction and Plans or Proposals," and in the Offer to Purchase under the captions "Summary Term Sheet," "Special Factors Section 1 Background of the Offer; Past Contacts or Negotiations with the NetSuite," "Special Factors Section 2 Purpose of the Offer; Plans for the NetSuite," "Special Factors Section 5 Certain Effects of the Offer," "Special Factors Section 6 The Merger Agreement; Other Agreements," is incorporated herein by reference.

**Item 7. Purposes, Alternatives, Reasons and Effects.**

(a) *Purposes.* The information in the Schedule 14D-9 under the caption "Item 4. The Solicitation or Recommendation Background of the Transaction; Reasons for the Recommendation of the NetSuite Board," and in the Offer to Purchase under the captions "Introduction," "Summary Term Sheet," "Special Factors Section 1 Background of the Offer; Past Contacts or Negotiations with NetSuite," "Special Factors Section 2 Purpose of the Offer; Plans for the Company," "Special Factors Section 5 Certain Effects of the Offer," "Special Factors Section 6 The Merger Agreement; Other Agreements," and "Schedule I" is incorporated herein by reference.

(b) *Alternatives.* The information in the Schedule 14D-9 under the caption "Item 4. The Solicitation or Recommendation Background of the Transaction; Reasons for the Recommendation of the NetSuite Board," and in the Offer to Purchase under the captions "Introduction," "Summary Term Sheet" and "Special Factors Section 1 Background of the Offer; Past Contacts or Negotiations with NetSuite," is incorporated herein by reference.

(c) *Reasons.* The information in the Schedule 14D-9 under the caption "Item 4. The Solicitation or Recommendation Background of the Transaction; Reasons for the Recommendation of the NetSuite Board," and in the Offer to Purchase under the captions "Introduction," "Summary Term Sheet," "Special Factors Section 1 Background of the Offer; Past Contacts or Negotiations with NetSuite," "Special Factors Section 2 Purpose of the Offer; Plans for the Company," "Special Factors Section 5 Certain Effects of the Offer," "Special Factors Section 6 The Merger Agreement; Other Agreements" and "Schedule I," is incorporated herein by reference.

(d) *Effects.* The information in the Schedule 14D-9 under the captions "Item 3. Past Contacts, Transactions, Negotiations and Agreements" and "Item 4. The Solicitation or Recommendation Background of the Transaction; Reasons for the Recommendation of the NetSuite Board," and in the Offer to Purchase under the captions "Introduction," "Summary Term Sheet," "Special Factors Section 1 Background of the Offer; Past Contacts or Negotiations with NetSuite," "Special Factors Section 2 Purpose of the Offer; Plans for the Company," "Special Factors Section 5 Certain Effects of the Offer," "Special Factors Section 6 The Merger Agreement; Other Agreements," "The Tender

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Offer Section 5 Certain U.S. Federal Income Tax Consequences of the Offer" and "Schedule I," is incorporated herein by reference.

### **Item 8. Fairness of the Transaction.**

(a)-(d) *Fairness; Factors Considered in Determining Fairness; Approval of Security Holders; Unaffiliated Representative.* The information in the Schedule 14D-9 under the caption "Item 4. The Solicitation or Recommendation," and in the Offer to Purchase under the captions "Summary Term Sheet," "Special Factors Section 1 Background of the Offer; Past Contacts or Negotiations with NetSuite," "Special Factors Section 3 Position of NetSuite Regarding Fairness of the Offer and the Merger," and "Special Factors Section 4 Position of Oracle, Parent and Purchaser Regarding Fairness of the Offer and the Merger," is incorporated herein by reference.

(e) *Approval of Directors.* The information in the Schedule 14D-9 under the caption "Item 4. The Solicitation or Recommendation" is incorporated herein by reference.

(f) *Other Offers.* None.

### **Item 9. Reports, Opinions, Appraisals and Negotiations.**

(a)-(b) *Report, Opinion or Appraisal; Preparer and Summary of the Report, Opinion or Appraisal.* The information in the Schedule 14D-9 under the caption "Item 4. The Solicitation or Recommendation," and in the Offer to Purchase under the captions "Special Factors Section 1 Background of the Offer; Past Contacts or Negotiations with NetSuite," "Special Factors Section 4 Position of Oracle, Parent and Purchaser Regarding Fairness of the Offer and Merger" and "Special Factors Section 6 The Merger Agreement; Other Agreements," is incorporated herein by reference.

(c) *Availability of Documents.* The reports, opinions or appraisals referenced in this Item 9 will be made available for inspection and copying at the principal executive offices of NetSuite during its regular business hours by any interested holder of Shares or representative of any such interested holder who has been so designated in writing.

### **Item 10. Source and Amounts of Funds or Other Consideration.**

(a) *Source of Funds.* The information in the Offer to Purchase under the captions "Summary Term Sheet," "Special Factors Section 6 The Merger Agreement; Other Agreements," "Special Factors Section 9 Certain Relationships between Oracle, Parent and Purchaser and NetSuite" and "The Tender Offer Section 9 Source and Amount of Funds" is incorporated herein by reference.

(b) *Conditions.* Not applicable.

(c) *Expenses.* The information in the Offer to Purchase under the caption "The Tender Offer Section 18 Fees and Expenses" is incorporated herein by reference.

(d) *Borrowed Funds.* Not applicable.

### **Item 11. Interest in Securities of the Subject Company.**

(a) *Securities Ownership.* The information in the Schedule 14D-9 under the captions "Item 3. Past Contacts, Transactions, Negotiations and Agreements" and "Item 4. The Solicitation or Recommendation" is incorporated herein by reference.

(b) *Securities Transactions.* Other than as set forth below, no transactions with respect to the Shares have been effected by NetSuite or, to the knowledge of NetSuite after making reasonable inquiry, by any of its executive officers, directors, affiliates or subsidiaries during the 60 days prior to the date of this Schedule 13E-3.

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The information in the Schedule 14D-9 under the caption "Item 6 Interest in Securities of the Subject Company" is incorporated herein by reference.

### **Item 12. The Solicitation or Recommendation.**

(d) *Intent to Tender or Vote in a Going-Private Transaction.* The information in the Schedule 14D-9 under the captions "Item 3. Past Contacts, Transactions, Negotiations and Agreements" and "Item 4. The Solicitation or Recommendation," and in the Offer to Purchase under the captions "Summary Term Sheet," "Special Factors Section 1 Background of the Offer; Past Contacts or Negotiations with NetSuite," "Special Factors Section 6 The Merger Agreement; Other Agreements" and "Special Factors Section 8 Transactions and Arrangements Concerning the Shares," is incorporated herein by reference.

(e) *Recommendations of Others.* The information in the Schedule 14D-9 under the captions "Item 3. Past Contacts, Transactions, Negotiations and Agreements," and "Item 4. The Solicitation or Recommendation," and in the Offer to Purchase under the captions "Summary Term Sheet," "Special Factors Section 1 Background of the Offer; Past Contacts or Negotiations with NetSuite," "Special Factors Section 6 The Merger Agreement; Other Agreements" and "Special Factors Section 8 Transactions and Arrangements Concerning Shares," is incorporated herein by reference.

### **Item 13. Financial Statements.**

(a) *Financial Information.*

(1) NetSuite's Consolidated Financial Statements in NetSuite's Annual Report on Form 10-K for the fiscal year ended December 31, 2015, including the notes thereto, are incorporated by reference herein.

(2) NetSuite's unaudited interim Consolidated Financial Statements for Quarterly Report on Form 10-Q for the period ended June 30, 2016, including the notes thereto, are incorporated by reference herein.

(3)

**RATIO OF EARNINGS TO FIXED CHARGES**

	Year Ended December 31,		Six months ended June 30,	Three months ended June 30,
	2014	2015	2016	2016
Pre-tax income from continuing operations	\$ (97,871,539)	\$ (130,361,510)	\$ (65,302,852)	\$ (36,750,642)
Add:				
Fixed charges	14,971,333	15,554,184	8,102,284	4,083,360
Earnings (losses)	\$ (82,900,205)	\$ (114,807,327)	\$ (57,200,568)	\$ (32,667,282)
Fixed charges:				
Interest expensed and capitalized	\$ 1,399,549	\$ 1,135,282	\$ 583,143	\$ 287,355
Amortized premiums, discounts and capitalized expenses related to indebtedness	12,909,910	13,538,799	6,964,112	3,509,414
Estimate of interest within rental expense	661,874	880,103	555,029	286,591
Total fixed charges	\$ 14,971,333	\$ 15,554,184	\$ 8,102,284	\$ 4,083,360
Ratio of earnings to fixed charges <sup>(1)</sup>	5.54	7.38	7.06	8.00

(1)

Ratio of earnings to fixed charges is computed by dividing Earnings (losses) by Total fixed charges.

(4) The book value per share as of the date of the most recent balance sheet presented is \$3.88.

(b) *Pro Forma Information*. Not applicable.**Item 14. Persons/Assets, Retained, Employed, Compensated or Used.**(a) *Solicitations or Recommendations*. The information in the Offer to Purchase under the caption "The Tender Offer Section 18 Fees and Expenses" is incorporated by reference herein.(b) *Employees and Corporate Assets*. None.**Item 15. Additional Information.**(b)-(c) *Other Material Information*. The information in the Schedule 14D-9 under the caption "Item 8. Additional Information" is incorporated herein by reference. The information contained in the Exhibits referred to in Item 16 is incorporated herein by reference.**Item 16. Exhibits.**

- (a)(1)(A) Offer to Purchase, dated August 18, 2016 (incorporated herein by reference to Exhibit (a)(1)(A) of the Schedule TO filed with the Securities and Exchange Commission (the "SEC") by Oracle Corporation, OC Acquisition LLC and Napa Acquisition Corporation on August 18, 2016).



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(a)(1)(B) Letter of Transmittal (including Guidelines for Certification of Taxpayer Identification Number on IRS Form W-9)  
(incorporated herein by reference to Exhibit (a)(1)(B) of the Schedule TO filed with the SEC by Oracle Corporation, OC  
Acquisition LLC and Napa Acquisition Corporation on August 18, 2016).

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- (a)(1)(C) Notice of Guaranteed Delivery (incorporated herein by reference to Exhibit (a)(1)(C) of the Schedule TO filed with the SEC by Oracle Corporation, OC Acquisition LLC and Napa Acquisition Corporation on August 18, 2016).
- (a)(1)(D) Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees (incorporated herein by reference to Exhibit (a)(1)(D) of the Schedule TO filed with the SEC by Oracle Corporation, OC Acquisition LLC and Napa Acquisition Corporation on August 18, 2016).
- (a)(1)(E) Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees (incorporated herein by reference to Exhibit (a)(1)(E) of the Schedule TO filed with the SEC by Oracle Corporation, OC Acquisition LLC and Napa Acquisition Corporation on August 18, 2016).
- (a)(1)(F) Summary Advertisement as published in the Wall Street Journal (incorporated herein by reference to Exhibit (a)(1)(F) of the Schedule TO filed with the SEC by Oracle Corporation, OC Acquisition LLC and Napa Acquisition Corporation on August 18, 2016).
- (a)(2) Schedule 14D-9 (incorporated herein by reference to the Schedule 14D-9 filed with the SEC by NetSuite Inc. on August 18, 2016).
- (a)(5)(A) Press Release issued by NetSuite Inc. on July 28, 2016 (incorporated herein by reference to Exhibit 99.1 to the Current Report on Form 8-K filed with the SEC by NetSuite Inc. on August 1, 2016).
- (a)(5)(B) Press Release issued by Oracle Corporation on July 28, 2016 (incorporated herein by reference to Exhibit (a)(5)(A) to the Schedule TO filed with the SEC by Oracle Corporation, OC Acquisition LLC and Napa Acquisition Corporation on August 18, 2016).
- (a)(5)(C) FAQ issued by Oracle Corporation on July 28, 2016 (incorporated herein by reference to Exhibit (a)(5)(B) to the Schedule TO filed with the SEC by Oracle Corporation, OC Acquisition LLC and Napa Acquisition Corporation on August 18, 2016).
- (a)(5)(D) Overview and Frequently Asked Questions for External Use issued by NetSuite Inc. on July 28, 2016 (incorporated herein by reference to Exhibit 99.2 to the Schedule 14D-9 filed with the SEC by NetSuite Inc. on July 28, 2016).
- (a)(5)(E) Letter to Customers issued by NetSuite Inc. on July 29, 2016 (incorporated herein by reference to Exhibit 99.1 to the Schedule 14D-9 filed with the SEC by NetSuite Inc. on July 29, 2016).
- (a)(5)(F) Frequently Asked Questions by Employees issued by NetSuite Inc. on July 29, 2016 (incorporated herein by reference to Exhibit 99.2 to the Schedule 14D-9 filed with the SEC by NetSuite Inc. on July 29, 2016).
- (a)(5)(G) Transaction Timing Materials (incorporated herein by reference to the Schedule 14D-9 filed with the SEC by NetSuite Inc. on August 11, 2016).
- (a)(5)(H) Letter from T. Rowe Price Associates Inc. to the Board of Directors of NetSuite Inc., dated September 6, 2016 (incorporated herein by reference to Exhibit 99.1 to the Current Report on Form 8-K filed with the SEC by NetSuite Inc. on September 7, 2016).
- (a)(5)(I) Press Release issued by Oracle Corporation on September 9, 2016, announcing the extension of the Offer (incorporated herein by reference to Exhibit (a)(5)(C) to Amendment No. 1 to the Schedule TO filed with the SEC by Oracle Corporation, OC Acquisition LLC and Napa Acquisition Corporation on September 9, 2016).

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- (a)(5)(J) Complaint captioned Dennis Palkon, on Behalf of Himself and All Others Similarly Situated v. NetSuite Inc., et al., filed on August 30, 2016, in the United States District Court for the Northern District of California (incorporated herein by reference to Exhibit (a)(5)(D) to Amendment No. 1 to the Schedule TO filed with the SEC by Oracle Corporation, OC Acquisition LLC and Napa Acquisition Corporation on August 18, 2016).
- (b) None.
- (c)(1) Discussion materials prepared by Qatalyst Partners LP for discussion with the Board of Directors of NetSuite Inc., dated February 22, 2016.
- (c)(2) Discussion materials prepared by Qatalyst Partners LP for discussion with the Board of Directors of NetSuite Inc., dated June 6, 2016.
- (c)(3) Discussion materials prepared by Qatalyst Partners LP for discussion with the Board of Directors of NetSuite Inc., dated June 10, 2016.
- (c)(4) Discussion materials prepared by Qatalyst Partners LP for discussion with the Board of Directors of NetSuite Inc., dated July 13, 2016.
- (c)(5) Discussion materials prepared by Qatalyst Partners LP for discussion with the Transactions Committee of the Board of Directors and the Board of Directors of NetSuite Inc., dated July 27, 2016.
- (c)(6) The information set forth in the Schedule 14D-9 under the caption "Annex A Opinion of Qatalyst Partners LP" is incorporated herein by reference.
- (c)(7) Opinion of Moelis & Company LLC to the Special Committee of the Board of Directors of Oracle Corporation, dated July 28, 2016 (incorporated herein by reference to Exhibit (c)(7) to the Schedule TO-T/A filed with the SEC by Oracle Corporation, OC Acquisition LLC and Napa Acquisition Corporation on September 27, 2016).
- (c)(8) Presentation of Moelis & Company LLC to the Special Committee of the Board of Directors of Oracle Corporation, dated April 19, 2016 (incorporated herein by reference to Exhibit (c)(8) to the Schedule TO filed with the SEC by Oracle Corporation, OC Acquisition LLC and Napa Acquisition Corporation on September 27, 2016).
- (c)(9) Presentation of Moelis & Company LLC to the Special Committee of the Board of Directors of Oracle Corporation, dated May 20, 2016 (incorporated herein by reference to Exhibit (c)(9) to the Schedule TO filed with the SEC by Oracle Corporation, OC Acquisition LLC and Napa Acquisition Corporation on September 27, 2016).
- (c)(10) Presentation of Moelis & Company LLC to the Special Committee of the Board of Directors of Oracle Corporation, dated May 27, 2016 (incorporated herein by reference to Exhibit (c)(10) to the Schedule TO filed with the SEC by Oracle Corporation, OC Acquisition LLC and Napa Acquisition Corporation on September 27, 2016).
- (c)(11) Update Material of Moelis & Company LLC to the Special Committee of the Board of Directors of Oracle Corporation, dated June 8, 2016 (incorporated herein by reference to Exhibit (c)(11) to the Schedule TO filed with the SEC by Oracle Corporation, OC Acquisition LLC and Napa Acquisition Corporation on September 27, 2016).
- (c)(12) Update Material of Moelis & Company LLC to the Special Committee of the Board of Directors of Oracle Corporation, dated June 14, 2016 (incorporated herein by reference to Exhibit (c)(12) to the Schedule TO filed with the SEC by Oracle Corporation, OC Acquisition LLC and Napa Acquisition Corporation on September 27, 2016).

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- (c)(13) Update Material of Moelis & Company LLC to the Special Committee of the Board of Directors of Oracle Corporation, dated June 30, 2016 (incorporated herein by reference to Exhibit (c)(13) to the Schedule TO filed with the SEC by Oracle Corporation, OC Acquisition LLC and Napa Acquisition Corporation on September 27, 2016).
- (c)(14) Update Material of Moelis & Company LLC to the Special Committee of the Board of Directors of Oracle Corporation, dated July 8, 2016 (incorporated herein by reference to Exhibit (c)(14) to the Schedule TO filed with the SEC by Oracle Corporation, OC Acquisition LLC and Napa Acquisition Corporation on September 27, 2016).
- (c)(15) Presentation of Moelis & Company LLC to the Special Committee of the Board of Directors of Oracle Corporation, dated July 25, 2016 (incorporated herein by reference to Exhibit (c)(15) to the Schedule TO filed with the SEC by Oracle Corporation, OC Acquisition LLC and Napa Acquisition Corporation on September 27, 2016).
- (e)(1) Agreement and Plan of Merger, among NetSuite Inc., OC Acquisition LLC, Napa Acquisition Corporation and Oracle Corporation, dated as of July 28, 2016 (incorporated herein by reference to Exhibit 2.1 to the Current Report on Form 8-K filed with the SEC by NetSuite Inc. on August 1, 2016).
- (e)(2) Confidentiality Agreement, effective as of May 5, 2016, between NetSuite Inc. and Oracle Corporation, as amended and restated on July 20, 2016 (incorporated herein by reference to Exhibit (e)(2) to the Schedule 14D-9 filed with the SEC by NetSuite Inc. on August 18, 2016).
- (e)(3) Exclusivity Agreement, dated as of July 15, 2016, between the Transactions Committee, on behalf of NetSuite Inc. and the Special Committee, on behalf of Oracle Corporation (incorporated herein by reference to Exhibit (e)(3) to the Schedule 14D-9 filed with the SEC by NetSuite Inc. on August 18, 2016).
- (e)(4) Form of Tender and Support Agreement among OC Acquisition LLC, Napa Acquisition Corporation and the stockholder party thereto (incorporated herein by reference to Exhibit (e)(4) to the Schedule 14D-9 filed with the SEC by NetSuite Inc. on August 18, 2016).
- (e)(5) Tender and Support Agreement, dated as of July 28, 2016, among OC Acquisition LLC, Napa Acquisition Corporation and NetSuite Restricted Holdings LLC (incorporated herein by reference to Exhibit (e) (5) to the Schedule 14D-9 filed with the SEC by NetSuite Inc. on August 18, 2016).
- (e)(6) Amended and Restated Certificate of Incorporation of the NetSuite Inc. (incorporated herein by reference to Exhibit 3.2 to the Form S-1 filed with the SEC by NetSuite Inc. on July 2, 2007 (Registration No. 333-144257)).
- (e)(7) Amended and Restated Bylaws of NetSuite Inc. (incorporated herein by reference to Exhibit 3.14 to the Current Report on Form 8-K filed with the SEC by NetSuite Inc. on March 21, 2014).
- (e)(8) NetSuite Inc. 1999 Stock Plan and forms of agreements thereunder (incorporated herein by reference to Exhibit 10.2 to the Form S-1 filed with the SEC by NetSuite Inc. on July 2, 2007 (Registration No. 333-144257)).

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- (e)(9) NetSuite Inc. 2007 Equity Incentive Plan and forms of agreements thereunder (incorporated herein by reference to Exhibit 10.1 of the Quarterly Report on Form 10-Q filed with the SEC by NetSuite Inc. on August 13, 2008 (File No. 001-33870) and Exhibits 10.1 to 10.3 to the Quarterly Report on Form 10-Q filed with the SEC by NetSuite Inc. on May 7, 2012).
- (e)(10) 2008 Executive Bonus Plan (incorporated herein by reference to Exhibit 10.1 to the Current Report on Form 8-K filed with the SEC by NetSuite Inc. on May 1, 2008 (File No. 001-33870)).
- (e)(11) 2015 Employee Stock Purchase Plan (incorporated herein by reference to Exhibit 4.1 to the Registration Statement on Form S-8 filed with the SEC by NetSuite Inc. on October 15, 2015).
- (e)(12) NetSuite Inc. 2016 Equity Incentive Plan (incorporated herein by reference to Appendix A to the Schedule 14A filed with the SEC by NetSuite Inc. on April 29, 2016).
- (e)(13) Severance and Change of Control Agreement by and between the NetSuite Inc. and Zachary Nelson, effective December 24, 2008 (incorporated herein by reference to Exhibit 10.18 to the Annual Report on Form 10-K filed with the SEC by NetSuite Inc. on March 13, 2009).
- (e)(14) Severance and Change of Control Agreement by and between the NetSuite Inc. and Evan M. Goldberg, effective December 24, 2008 (incorporated herein by reference to Exhibit 10.19 to the Annual Report on Form 10-K filed with the SEC by NetSuite Inc. on March 13, 2009 (File No. 001-33870)).
- (e)(15) Severance and Change of Control Agreement by and between the NetSuite Inc. and James McGeever, effective December 24, 2008 (incorporated herein by reference to Exhibit 10.20 to the Annual Report on Form 10-K filed with the SEC by NetSuite Inc. on March 13, 2009 (File No. 001-33870)).
- (e)(16) Severance and Change of Control Agreement by and between the NetSuite and Douglas P. Solomon, effective December 24, 2008 (incorporated herein by reference to Exhibit 10.23 to the Annual Report on Form 10-K filed with the SEC by NetSuite Inc. on March 13, 2009 (File No. 001-33870)).
- (e)(17) Severance and Change of Control Agreement by and between NetSuite Inc. and Marc Huffman, effective May 1, 2014 (incorporated herein by reference to Exhibit 10.2 to the Quarterly Report on Form 10-Q filed with the SEC by NetSuite Inc. on May 6, 2014).
- (e)(18) Form of Severance Agreement Waiver between NetSuite Inc. and the employees party thereto (incorporated herein by reference to Exhibit (e)(18) to the Schedule 14D-9 filed with the SEC by NetSuite Inc. on August 18, 2016).
- (e)(19) Form of Indemnification Agreement between NetSuite Inc. and each of its directors and executive officers (incorporated herein by reference to Exhibit 10.1 to the Form S-1 Registration filed with the SEC by NetSuite Inc. on July 2, 2007 (Registration No. 333-144257)).
- (e)(20) Offer Letter Agreement by and between NetSuite Inc. and Zachary Nelson, effective July 1, 2007 (incorporated herein by reference to Exhibit 10.6 to Amendment No. 1 to the Form S-1 filed with the SEC by NetSuite Inc. on October 30, 2007 (Registration No. 333-144257)).

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- (e)(21) Offer Letter Agreement by and between NetSuite Inc. and Evan M. Goldberg, effective July 1, 2007 (incorporated herein by reference to Exhibit 10.7 to Amendment No. 1 to the Form S-1 filed with the SEC by NetSuite Inc. on October 30, 2007 (Registration No. 333-144257)).
- (e)(22) Offer Letter Agreement by and between NetSuite Inc. and James McGeever, effective March 2, 2011 (incorporated herein by reference to Exhibit 10.8 to the Annual Report on Form 10-K filed with the SEC by NetSuite Inc. on March 3, 2011 (File No. 001-33870)).
- (e)(23) Letter Agreement by and between Marc Huffman and NetSuite Inc. effective May 1, 2014 (incorporated herein by reference to Exhibit 10.1 to the Quarterly Report on Form 10-Q filed with the SEC by NetSuite Inc. on May 6, 2014).
- (f) The information set forth in the Schedule 14D-9 under the captions "Item 8. Additional Information Appraisal Rights" and "Annex B Section 262 of the Delaware General Corporation Law" is incorporated herein by reference.
- (g) None.
- (h) None.

**SIGNATURES**

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this Statement is true, complete and correct.

**NETSUITE INC.**

By: /s/ ZACHARY NELSON

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Name: Zachary Nelson  
Title: Chief Executive Officer  
Date: September 27, 2016

**EXHIBIT INDEX**

- (a)(1)(A) Offer to Purchase, dated August 18, 2016 (incorporated herein by reference to Exhibit (a)(1)(A) of the Schedule TO filed with the Securities and Exchange Commission (the "SEC") by Oracle Corporation, OC Acquisition LLC and Napa Acquisition Corporation on August 18, 2016).
- (a)(1)(B) Letter of Transmittal (including Guidelines for Certification of Taxpayer Identification Number on IRS Form W-9) (incorporated herein by reference to Exhibit (a)(1)(B) of the Schedule TO filed with the SEC by Oracle Corporation, OC Acquisition LLC and Napa Acquisition Corporation on August 18, 2016).
- (a)(1)(C) Notice of Guaranteed Delivery (incorporated herein by reference to Exhibit (a)(1)(C) of the Schedule TO filed with the SEC by Oracle Corporation, OC Acquisition LLC and Napa Acquisition Corporation on August 18, 2016).
- (a)(1)(D) Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees (incorporated herein by reference to Exhibit (a)(1)(D) of the Schedule TO filed with the SEC by Oracle Corporation, OC Acquisition LLC and Napa Acquisition Corporation on August 18, 2016).
- (a)(1)(E) Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees (incorporated herein by reference to Exhibit (a)(1)(E) of the Schedule TO filed with the SEC by Oracle Corporation, OC Acquisition LLC and Napa Acquisition Corporation on August 18, 2016).
- (a)(1)(F) Summary Advertisement as published in the Wall Street Journal (incorporated herein by reference to Exhibit (a)(1)(F) of the Schedule TO filed with the SEC by Oracle Corporation, OC Acquisition LLC and Napa Acquisition Corporation on August 18, 2016).
- (a)(2) Schedule 14D-9 (incorporated herein by reference to the Schedule 14D-9 filed with the SEC by NetSuite Inc. on August 18, 2016).