

NETSUITE INC  
Form S-8  
February 10, 2012

As filed with the Securities and Exchange Commission on February 10, 2012

Registration No. 333-\_\_\_\_\_

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM S-8  
REGISTRATION STATEMENT**

*Under*

*The Securities Act of 1933*

**NETSUITE INC.**

(Exact name of registrant as specified in its charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

2955 Campus Drive, Suite 100

94-3310471  
(I.R.S. Employer  
Identification Number)

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San Mateo, CA 94403

(650) 627-1000

(Address, including zip code and telephone number, of principal executive offices)

**NetSuite Inc. 2007 Equity Incentive Plan**

(Full title of the plan)

**Douglas P. Solomon, Esq.**

**NetSuite Inc.**

**2955 Campus Drive, Suite 100**

**San Mateo, CA 94403**

(Name and address of agent for service)

**(650) 627-1000**

(Telephone number, including area code, of agent for service)

*Copy to:*

**Richard A. Kline, Esq,**

**Goodwin Procter LLP**

**135 Commonwealth Drive**

**Menlo Park, CA 94025**

**(650) 752-3100**

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 definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

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Large accelerated filer

Accelerated filer

Non-accelerated filer   
(Do not check if a smaller reporting  
company)

Smaller reporting company

**CALCULATION OF REGISTRATION FEE**

<b>Title of Securities to be Registered</b>	<b>Amount to be Registered (1)</b>	<b>Proposed Maximum Offering Price Per Share</b>	<b>Proposed Maximum Aggregate Offering Price</b>	<b>Amount of Registration Fee</b>
Common Stock, \$0.01 par value To be issued under the 2007 Equity Incentive Plan	2,693,604(2)	\$46.10(3)	\$124,175,144.40	\$14,230.47

- (1) Pursuant to Rule 416(a) under the Securities Act of 1933, as amended, this Registration Statement shall also cover any additional shares of the Common Stock of NetSuite Inc. (the Registrant ) that become issuable pursuant to the 2007 Equity Incentive Plan (the 2007 Plan ) by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without receipt of consideration that increases the number of the Registrant s outstanding shares of Common Stock.
- (2) Reflects an automatic annual increase on December 31, 2011 to the number of shares of the Registrant s Common Stock reserved for issuance under the 2007 Plan, which annual increase is provided for in the 2007 Plan.
- (3) Estimated in accordance with Rule 457(h) solely for the purpose of calculating the registration fee on the basis of \$46.10 per share, which represents the average of the high and low prices reported on the New York Stock Exchange on February 8, 2012.

**Explanatory Statement**

The following shares that were previously reserved for issuance pursuant to the NetSuite Inc. 1999 Stock Plan (the 1999 Plan ) on a Registration Statement on Form S-8 (File No. 333-148290) filed with the Commission on December 21, 2007, as amended on August 18, 2008, may now be issued pursuant to the NetSuite Inc. 2007 Equity Incentive Plan (the 2007 Plan ): 11,692 shares that were subject to awards under the 1999 Plan as of the effective date of the 2007 Plan but which have expired or otherwise terminated without having been exercised in full and shares issued pursuant to awards granted under the 1999 Plan that are forfeited to or repurchased by the Company.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.**

The following documents previously filed by the Registrant with the Securities and Exchange Commission (the SEC or the Commission ) are hereby incorporated by reference in this registration statement on Form S-8 (the Registration Statement ) (other than information in a report on Form 8-K that is furnished and not filed pursuant to Form 8-K, and, except as may be noted in any such Form 8-K, exhibits filed on such form that are related to such information):

- A. The Registrant s Annual Report on Form 10-K for the year ended December 31, 2010, filed with the SEC on March 3, 2011;
- B. The Registrant s Current Report on Form 8-K, filed with the SEC on March 10, 2011;
- C. The Registrant s Quarterly Report on Form 10-Q, filed with the SEC on May 5, 2011;
- D. The Registrant s Current Report on Form 8-K, filed with the SEC on May 13, 2011;
- E. The Registrant s Current Report on Form 8-K, filed with the SEC on June 2, 2011;
- F. The Registrant s Quarterly Report on Form 10-Q, filed with the SEC on August 8, 2011;
- G. The Registrant s Quarterly Report on Form 10-Q, filed with the SEC on November 7, 2011; and
- H. The Registrant s Current Report on Form 8-K, filed with the SEC on December 15, 2011.

In addition, the Registrant hereby incorporates by reference into this Registration Statement the description of the Registrant's common stock, par value \$0.01 per share (the Common Stock), contained in the registration statement on Form 8-A (File No. 001-33870) filed with the Commission on December 5, 2007, pursuant to Section 12(b) of the Securities Exchange Act of 1934, as amended (the Exchange Act), including any amendment or report filed for the purpose of updating such description.

All documents filed by us pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act on or after the date of this Registration Statement and prior to the filing of a post-effective amendment to this Registration Statement that indicates that all securities offered have been sold or that deregisters all securities then remaining unsold shall be deemed to be incorporated by reference in this Registration Statement and to be a part hereof from the date of filing of such documents. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

**ITEM 4. DESCRIPTION OF SECURITIES.**

Not applicable.

**ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL.**

Not applicable.

**ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.**

Section 145 of the Delaware General Corporation Law authorizes a corporation's board of directors to grant, and authorizes a court to award, indemnity to officers, directors and other corporate agents.

As permitted by Section 102(b)(7) of the Delaware General Corporation Law, the Registrant's amended and restated certificate of incorporation includes provisions that eliminate the personal liability of its directors and officers for monetary damages for a breach of their fiduciary duty as directors and officers.

In addition, as permitted by Section 145 of the Delaware General Corporation Law, the amended and restated bylaws of the Registrant provide that:

The Registrant shall indemnify its directors and officers for serving the Registrant in those capacities or for serving other business enterprises at the Registrant's request, to the fullest extent permitted by Delaware law. Delaware law provides that a corporation may indemnify such person if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Registrant and, with respect to any criminal proceeding, had no reasonable cause to believe such person's conduct was unlawful.

The Registrant may, in its discretion, indemnify employees and agents in those circumstances in which indemnification is not required by law.

The Registrant is required to advance expenses, as incurred, to its directors and officers in connection with defending a proceeding, except that such director or officer shall undertake to repay such advances if it is ultimately determined that such person is not entitled to indemnification.

The Registrant will not be obligated pursuant to the amended and restated bylaws to indemnify a person with respect to proceedings initiated by that person, except with respect to proceedings authorized by the Registrant's board of directors. The rights conferred in the amended and restated bylaws are not exclusive, and the Registrant is authorized to enter into indemnification agreements with its directors, officers, employees and agents and to obtain insurance to indemnify such persons.

The Registrant may not retroactively amend the bylaw provisions to reduce its indemnification obligations to directors, officers, employees and agents.

The Registrant's policy is to enter into separate indemnification agreements with each of its directors and officers that provide the maximum indemnity allowed to directors and executive officers by Section 145 of the Delaware General Corporation Law and also provides for certain additional procedural protections. The Registrant also maintains insurance to insure directors and officers against certain liabilities.

Insofar as indemnification for liabilities arising under the Securities Act of 1933, as amended (the Securities Act) may be permitted to directors, executive officers or persons controlling us, we have been informed that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

**ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.**

Not applicable.

**ITEM 8. EXHIBITS.**

<b>Exhibit Number</b>	<b>Description</b>
4.1	2007 Equity Incentive Plan and forms of agreement thereunder (which are incorporated herein by reference to Exhibit 10.3 to the Registrant's Registration Statement on Form S-1 (Registration No. 333-144257), as amended (Registrant's Form S-1) and Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on August 13, 2008).
4.2	Specimen Common Stock Certificate of the Registrant (which is incorporated herein by reference to Exhibit 4.1 to the Registrant's Form S-1).
5.1	Opinion of Goodwin Procter LLP, as to the legality of the securities being registered.
23.1	Consent of KPMG LLP, Independent Registered Public Accounting Firm.
23.2	Consent of Goodwin Procter LLP (included in Exhibit 5.1).
24.1	Power of Attorney (included as part of the signature page to this Registration Statement).

**ITEM 9. UNDERTAKINGS.**

A. The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement:

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

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

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement.

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

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

B. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this Registration Statement shall be deemed to be a new Registration Statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial *bona fide* offering thereof.

C. Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or controlling persons of the Registrant pursuant to the indemnification provisions summarized in Item 6 or otherwise, the Registrant has been advised that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.



**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of San Mateo, State of California, on February 10, 2012.

NETSUITE INC.

By: /s/ Zachary Nelson  
Zachary Nelson  
President and Chief Executive Officer

**POWER OF ATTORNEY**

KNOW ALL PERSONS BY THESE PRESENT, that the individuals whose signatures appear below constitute and appoint Zachary Nelson, Ronald Gill and Douglas P. Solomon, and each of them, his or her true and lawful attorneys-in-fact and agents with full power of substitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement and to file the same, with all exhibits thereto and all documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or his or her or their substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed by the following persons in the capacities and on the dates indicated:

<b>Signature</b>	<b>Title</b>	<b>Date</b>
/s/ Zachary Nelson	Director, President and Chief Executive Officer	February 10, 2012
Zachary Nelson	(Principal Executive Officer)	
/s/ Ronald Gill	Chief Financial Officer (Principal Financial and Accounting Officer)	February 10, 2012
Ronald Gill		
/s/ William L. Beane III	Director	February 10, 2012
William L. Beane III		
/s/ Deborah A. Farrington	Director	February 10, 2012
Deborah A. Farrington		
/s/ Evan M. Goldberg	Director	February 10, 2012
Evan M. Goldberg		
/s/ Kevin Thompson	Director	February 10, 2012
Kevin Thompson		
/s/ Catherine R. Kinney	Director	February 10, 2012

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Catherine R. Kinney

/s/ Edward Zander

Edward Zander

Director

February 10, 2012

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**INDEX TO EXHIBITS**

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