

SYNOPSIS INC
Form S-8
December 11, 2017

As filed with the Securities and Exchange Commission on December 11, 2017

Registration No. 333-

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

FORM S-8
REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

SYNOPSIS, INC.

(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction of

Incorporation or Organization)

690 East Middlefield Road

56-1546236
(I.R.S. Employer

Identification Number)

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Mountain View, California 94043

(650) 584-5000

(Address of Principal Executive Offices, including Zip Code)

Black Duck Software, Inc.

Fourth Amended and Restated 2004 Stock Option and Incentive Plan

(Full Title of the Plan)

John F. Runkel, Jr.

General Counsel and Corporate Secretary

Synopsis, Inc.

690 East Middlefield Road

Mountain View, California 94043

(650) 584-5000

(Name, address, including zip code, and telephone number, including area code, of agent for service)

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of large accelerated filer, accelerated filer, smaller reporting company and emerging growth company in Rule 12b-2 of the Securities Exchange Act of 1934 (Check one):

Large accelerated filer

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

Accelerated filer

Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act of 1933.

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Share(2)	Proposed Maximum Aggregate Offering Price(2)	Amount of Registration Fee(2)
Common Stock, \$0.01 par value per share	141,424 shares	\$18.98	\$2,684,227.52	\$334.19
Common Stock, \$0.01 par value per share	184,048 shares	\$87.78	\$16,155,733.44	\$2,011.39
Total	325,472 shares			\$2,345.58

- (1) This Registration Statement on Form S-8 (the Registration Statement) covers the issuance of an aggregate of 325,472 shares of Common Stock of Synopsys, Inc. (the Registrant) issuable under the Black Duck Software, Inc. Fourth Amended and Restated 2004 Stock Option and Incentive Plan (the Plan) consisting of 141,424 shares issuable upon the exercise of outstanding stock options and 184,048 shares issuable pursuant to outstanding restricted stock units under the Plan. In accordance with that certain Agreement and Plan of Merger, dated as of November 2, 2017, by and among the Registrant, Buckeyes Acquisition Corp., a Delaware corporation and wholly-owned subsidiary of the Registrant, Black Duck Software, Inc., a Delaware corporation (Black Duck), and Shareholder Representative Services LLC (as defined therein), as of December 11, 2017, certain outstanding options to purchase shares of Black Duck common stock and certain restricted stock units with respect to shares of Black Duck common stock granted under the Plan were assumed by the Registrant and converted into options to purchase shares of Common Stock of the Registrant and restricted stock units with respect to shares of Common Stock of the Registrant, respectively. Pursuant to Rule 416(a) promulgated under the Securities Act of 1933, as amended (the Securities Act), this Registration Statement shall also cover any additional shares of Common Stock of the Registrant that become issuable in respect of the shares identified in the table above by reason of any stock splits, stock dividends, recapitalization or other similar transaction effected without the Registrant's receipt of consideration which results in an increase in the number of the Registrant's outstanding shares of Common Stock.
- (2) Estimated solely for the purpose of calculating the amount of the registration fee pursuant to Rules 457(c) and 457(h) under the Securities Act, based on (i) in the case of restricted stock units, the average of the high and low prices of the Common Stock of the Registrant reported on the NASDAQ Global Select Market on December 6, 2017 and (ii) in the case of options, the weighted average option exercise prices outstanding under the Plan and assumed by the Registrant, as adjusted upon conversion.

EXPLANATORY NOTE

Synopsis, Inc. (the Registrant) has filed this Registration Statement on Form S-8 (the Registration Statement) to register 325,472 shares of the Registrant's Common Stock, par value \$0.01 per share (the Common Stock), issuable under the Black Duck Software, Inc. Fourth Amended and Restated 2004 Stock Option and Incentive Plan (the Plan) comprised of (a) 141,424 shares of Common Stock issuable pursuant to outstanding but unexercised options under the Plan and (b) 184,048 shares of Common Stock issuable pursuant to outstanding restricted stock units under the Plan. Pursuant to the Agreement and Plan of Merger, dated as of November 2, 2017 (the Merger Agreement), by and among the Registrant, Buckeyes Acquisition Corp., a Delaware corporation and wholly-owned subsidiary of the Registrant, Black Duck Software, Inc., a Delaware corporation (the Black Duck), and Shareholder Representative Services LLC (as defined therein), Black Duck became a wholly-owned subsidiary of the Registrant, on December 11, 2017 (the Effective Date). In accordance with the Merger Agreement, as of the Effective Date, certain outstanding options to purchase shares of Black Duck common stock and certain restricted stock units with respect to shares of Black Duck common stock granted under the Plan were assumed by the Registrant and converted into options to purchase shares of Common Stock and restricted stock units with respect to shares of Common Stock, respectively.

PART I

INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The Registrant files this Registration Statement on Form S-8 in connection with the Plan. The documents containing the information specified in Part I of Form S-8 will be sent or given to each participant in the Plan as specified by Rule 428(b)(1) of the Securities Act of 1933, as amended (the Securities Act). These documents and the documents incorporated by reference herein pursuant to Item 3 of Part II hereof, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

PART II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference

The Registrant hereby incorporates by reference into this Registration Statement the following:

- (a) The Registrant's Annual Report on Form 10-K for the fiscal year ended October 31, 2016, filed with the Securities and Exchange Commission (the Commission), pursuant to the Securities Exchange Act of 1934, as amended (the Exchange Act), on December 12, 2016;
- (b) All other reports filed* with the Commission pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the Registrant's Annual Report on Form 10-K referred to in (a) above; and
- (c) The description of the Common Stock contained in the Registrant's Registration Statement on Form 8-A filed with the Commission on January 24, 1992, including any amendment or report filed for the purpose of updating such description (Commission File No. 000-19807).

* Any report (or portion thereof) furnished on Form 8-K shall not be incorporated herein by reference. In addition, all documents subsequently filed by the Registrant pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act, prior to the filing of a post-effective amendment which indicates that all securities offered have been

sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the respective date of filing of such documents. The Registrant's Exchange Act file number with the Commission is 000-19807. Unless expressly incorporated into this Registration Statement, a report (or portion thereof) furnished on Form 8-K prior or subsequent to the date hereof

shall not be incorporated by reference into this Registration Statement. 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 subsequently filed document which also 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

None.

Item 6. Indemnification of Directors and Officers

Section 145 of the Delaware General Corporation Law (the Delaware Law) authorizes a court to award, or a corporation's board of directors to grant, indemnity to directors and officers in terms sufficiently broad to permit such indemnification under certain circumstances for liabilities (including reimbursement for expenses incurred) arising under the Securities Act.

The Registrant's Restated Certificate of Incorporation provides that a director shall not be personally liable to the Registrant or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Registrant or its stockholders, (ii) for acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware Law, or (iv) for any transaction from which the director derived any improper personal benefit.

The Registrant's Amended and Restated Bylaws provide for the indemnification of officers and directors to the fullest extent permissible under the Delaware Law, which provisions are deemed to be a contract between the Registrant and each director and officer who serves in such capacity while such Amended and Restated Bylaws are in effect.

In addition, the Registrant has entered into indemnification agreements with its directors and executive officers, and intends to enter into indemnification agreements with any new directors and executive officers in the future. The Registrant has also obtained liability insurance for the benefit of its directors and officers.

Item 7. Exemption from Registration Claimed

Not applicable.

Item 8. Exhibits

Exhibit Number	Exhibit Description	Incorporated By Reference				Filed Herewith
		Form	File No.	Exhibit	Filing Date	
3.1	<u>Restated Certificate of Incorporation</u>	10-Q	000-19807	3.1	09/15/03	
3.2	<u>Amended and Restated Bylaws</u>	8-K	000-19807	3.2	05/23/12	

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4.1	Specimen Common Stock Certificate(P)	S-1	33-45138	4.3	02/24/92 (effective date)	
5.1	<u>Opinion of Hogan Lovells US LLP</u>					X
10.1	<u>Black Duck Software, Inc. Fourth Amended and Restated 2004 Stock Option and Incentive Plan</u>					X
23.1	<u>Consent of KPMG LLP, Independent Registered Public Accounting Firm</u>					X
23.2	<u>Consent of Hogan Lovells US LLP (included in Exhibit 5.1)</u>					X
24.1	<u>Power of Attorney (included in signature page)</u>					X

(P) Paper exhibit

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 the 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 the 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 20% change in the maximum aggregate offering price set forth in the Calculation of Registration Fee table in the effective Registration Statement; and

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

Provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in 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 the 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 the 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 and controlling persons of the Registrant pursuant to the foregoing provisions, 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, as amended, 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 Mountain View, State of California, on the 11th day of December, 2017.

SYNOPSIS, INC.

By: /s/ John F. Runkel, Jr.
Name: John F. Runkel, Jr.

Title: General Counsel and Corporate
Secretary

Power of Attorney

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Trac Pham and John F. Runkel, Jr., and each or any one of them, his or her true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, 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 other 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 their, his or her substitutes or substitute, 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 below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated:

Signature	Title	Date
/s/ Aart J. de Geus Aart J. de Geus	Co-Chief Executive Officer (Co-Principal Executive Officer) and Chairman of the Board of Directors	December 11, 2017
/s/ Chi-Foon Chan Chi-Foon Chan	Co-Chief Executive Officer (Co-Principal Executive Officer), President and Director	December 11, 2017
/s/ Trac Pham Trac Pham	Chief Financial Officer (Principal Financial Officer)	December 11, 2017
/s/ Sudhindra Kankanwadi Sudhindra Kankanwadi	Vice President, Corporate Controller (Principal Accounting Officer)	December 11, 2017

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/s/ Janice D. Chaffin Janice D. Chaffin	Director	December 11, 2017
/s/ Bruce R. Chizen Bruce R. Chizen	Director	December 11, 2017
/s/ Deborah A. Coleman Deborah A. Coleman	Director	December 11, 2017

<i>/s/ Mercedes Johnson</i> Mercedes Johnson	Director	December 11, 2017
<i>/s/ Chrysostomos L. Nikias</i> Chrysostomos L. Nikias	Director	December 11, 2017
<i>/s/ John G. Schwarz</i> John G. Schwarz	Director	December 11, 2017
<i>/s/ Roy Vallee</i> Roy Vallee	Director	December 11, 2017
<i>/s/ Steven C. Walske</i> Steven C. Walske	Director	December 11, 2017