

SYBASE INC  
Form SC TO-T/A  
July 02, 2010

# **SECURITIES AND EXCHANGE COMMISSION**

**Washington, D.C. 20549**

## **SCHEDULE TO/A**

**Tender Offer Statement Under Section 14(d)(1) or 13(e)(1)**

**of the Securities Exchange Act of 1934**

**(Amendment No. 2)**

**Sybase, Inc.**

**(Name of Subject Company (Issuer))**

**Sheffield Acquisition Corp.**

**a wholly-owned subsidiary of**

**SAP America, Inc.**

**an indirectly wholly-owned subsidiary of**

**SAP AG**

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(Name of Filing Persons, Offerors)

**Common Stock, par value \$0.001 per share,**

**Associated Preferred Stock Purchase Rights**

(Title of Class of Securities)

**871130100**

(CUSIP Number of Class of Securities)

**Michael Junge**

**General Counsel**

**SAP AG**

**Dietmar-Hopp-Allee 16**

**D-69190 Walldorf**

**Federal Republic of Germany**

**+49 6227 74 7474**

(Name, Address and Telephone Number of Person Authorized

to Receive Notices and Communications on Behalf of Filing Persons)

*Copy to:*

**Jon R. Beeson, Esq.**

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**Daniel R. Mitz, Esq.**

**Jones Day**

**3161 Michelson Drive**

**Irvine, CA 92612**

**Telephone: (949) 851-3939**

**Calculation of Filing Fee**

**Transaction Valuation(1)**  
**\$6,089,473,455**

**Amount of Filing Fee(2)**  
**\$434,179.46**

- (1) Estimated for purposes of calculating the amount of the filing fee only, in accordance with Rule 0-11(d) under the Securities Exchange Act of 1934, as amended (the Exchange Act ). Calculated by multiplying \$65.00, the per share tender offer price, by 93,684,207 shares of common stock of Sybase, Inc., which includes (a) 87,161,835 shares of common stock issued and outstanding (including restricted stock, but excluding treasury shares) and (b) 6,522,372 shares of common stock subject to outstanding stock options and stock appreciation rights with an exercise price less than \$65.00.
- (2) The filing fee was calculated in accordance with Rule 0-11 of the Exchange Act and Fee Rate Advisory #4 for fiscal year 2010, issued December 17, 2009, by multiplying the transaction value by .00007130.
- x Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and date of its filing.

Amount Previously Paid: \$434,179.46  
Form or Registration No.: Schedule TO-T

Filing Party: SAP AG  
Date Filed: May 26, 2010

.. Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.  
Check the appropriate boxes below to designate any transactions to which the statement relates:

x third-party tender offer subject to Rule 14d-1.

.. issuer tender offer subject to Rule 13e-4.

.. going-private transaction subject to Rule 13e-3.

.. amendment to Schedule 13D under Rule 13d-2.

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

This Amendment No. 2 (this *Amendment*) amends and supplements the Tender Offer Statement on Schedule TO filed with the Securities and Exchange Commission on May 26, 2010 (as amended or supplemented, the *Schedule TO*) by Sheffield Acquisition Corp., a Delaware corporation (the *Purchaser*) and a wholly-owned subsidiary of SAP America, Inc., a Delaware corporation (*SAP America*) and an indirectly wholly-owned subsidiary of SAP AG, a stock corporation organized under the laws of the Federal Republic of Germany (*SAP AG*). The Schedule TO relates to the offer by the Purchaser to purchase all of the outstanding shares of common stock, par value \$0.001 per share (the *Sybase Common Stock*), including the associated rights to purchase shares of Series A Participating Preferred Stock issued pursuant to the Preferred Stock Rights Agreement, dated as of July 31, 2002, as amended, by and between Sybase, Inc., a Delaware corporation (*Sybase*), and American Stock Transfer and Trust Company (together with the Sybase Common Stock, the *Shares*), of Sybase, at a price of \$65.00 per Share, net to the holder thereof in cash, without interest and less any required withholding of taxes, upon the terms and subject to the conditions set forth in the offer to purchase, dated May 26, 2010 (as it may be amended or supplemented, the *Offer to Purchase*), and the related letter of transmittal (as it may be amended or supplemented, the *Letter of Transmittal*, and together with the Offer to Purchase, the *Offer*), copies of which were filed with the Schedule TO as Exhibits (a)(1)(A) and (a)(1)(B), respectively. Capitalized terms used and not otherwise defined in this Amendment shall have the meanings assigned to such terms in the Offer to Purchase or in the Schedule TO.

#### Items 1 and 4

Items 1 and 4 of the Schedule TO are hereby amended and supplemented by adding the following paragraph to the end of each Item:

On July 2, 2010, the Purchaser extended the expiration of the Offer until 9:00 p.m., New York City time on Friday, July 16, 2010, unless further extended. The Offer, which was previously scheduled to expire at 9:00 p.m., New York City time, on July 1, 2010, was extended in accordance with the Merger Agreement because certain conditions to the Offer were not yet satisfied, including approval of the EC under the EC Merger Regulation. As previously disclosed, SAP AG provided notice of the transaction to the EC on June 16, 2010, which makes July 22, 2010 the date on which the initial 25 working day review period expires, unless the review period is terminated prior to such expiration by the EC. The Depository has indicated that, as of 9:00 p.m., New York City time, on July 1, 2010, 87,780,002 Shares were issued and outstanding, and 72,515,333 Shares have been tendered into and not withdrawn from the Offer (including 5,299,761 Shares tendered pursuant to the guaranteed delivery procedures set forth in the Offer to Purchase). The full text of the press release issued by SAG AG on July 2, 2010 announcing the Offer's extension is filed as Exhibit (a)(5)(E) to the Schedule TO and is incorporated by reference into the Schedule TO.

#### Item 12. Exhibits.

Item 12 of the Schedule TO is hereby amended and supplemented with the following:

(a)(5)(E) Press release issued by SAP AG on July 2, 2010.

**SIGNATURE**

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.

Dated: July 2, 2010

SHEFFIELD ACQUISITION CORP.

By: /s/ BRAD C. BRUBAKER  
Name: **Brad C. Brubaker**  
Title: **President**

SAP AMERICA, INC.

By: /s/ BRAD C. BRUBAKER  
Name: **Brad C. Brubaker**  
Title: **Corporate Secretary**

SAP AG

By: /s/ DR. WERNER BRANDT  
Name: **Dr. Werner Brandt**  
Title: **CFO**

By: /s/ MICHAEL JUNGE  
Name: **Michael Junge**  
Title: **General Counsel**

**EXHIBIT INDEX**

- (a)(1)(A)\* Offer to Purchase, dated May 26, 2010.
- (a)(1)(B)\* Form of Letter of Transmittal.
- (a)(1)(C)\* Notice of Guaranteed Delivery.
- (a)(1)(D)\* Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.
- (a)(1)(E)\* Form of Letter to Clients for Use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.
- (a)(1)(F)\* Guidelines for Certification of Taxpayer Identification Number on Substitute Form W-9.
- (a)(5)(A)\* Press release issued by SAP AG and Sybase on May 12, 2010, incorporated herein by reference to the Schedule TO-C filed by SAP AG, SAP America and the Purchaser on May 13, 2010.
- (a)(5)(B)\* Summary Advertisement as published in the Wall Street Journal on May 26, 2010.
- (a)(5)(C)\* Press release issued by SAP AG on May 26, 2010.
- (a)(5)(D)\* Press release issued by SAP AG on June 17, 2010.
- (a)(5)(E) Press release issued by SAP AG on July 2, 2010.
- (b)(1)\* Credit Facility Agreement, dated May 21, 2010, among SAP AG, as borrower, Barclays Capital and Deutsche Bank AG, as mandated lead arrangers, the financial institutions listed in Schedule 1 as lenders, as original lenders, and Deutsche Bank Luxembourg S.A., as agent.
- (d)(1)\* Agreement and Plan of Merger, dated as of May 12, 2010, by and among SAP America, the Purchaser and Sybase, incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K filed by Sybase on May 13, 2010.
- (d)(2)\* Mutual Non-Disclosure Agreement, dated as of April 19, 2010, and effective as of April 2, 2010, between SAP AG and Sybase.
- (d)(3)\* Exclusivity Agreement, dated as of April 30, 2010, between SAP AG and Sybase.
- (g) Not applicable.
- (h) Not applicable.

\* Filed Previously