

Demandware Inc
Form SC TO-T
June 10, 2016

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

SCHEDULE TO
(Rule 14d-100)
TENDER OFFER STATEMENT UNDER SECTION 14(d)(1) OR 13(e)(1)
OF THE SECURITIES EXCHANGE ACT OF 1934

DEMANDWARE, INC.
(Name of subject company (Issuer))

DYNASTY ACQUISITION CORP.
a wholly-owned subsidiary of

SALESFORCE.COM, INC.
(Name of Filing Persons (Offerors))

Common Stock, par value \$0.01 per share

24802Y105

(Title of classes of securities)

(CUSIP number of common stock)

Burke F. Norton, Esq.

Chief Legal Officer &

Chief of Corporate and Government Affairs

salesforce.com, inc.

The Landmark @ One Market, Suite 300

San Francisco, California 94105

(415) 901-7000

(Name, address, and telephone number of person authorized to receive notices and communications on behalf of Filing Persons)

Copies to:

Steve L. Camahort, Esq.

Michael S. Dorf, Esq.

Shearman & Sterling LLP

535 Mission Street, 25th Floor

San Francisco, CA 94105

(415) 616-1100

CALCULATION OF REGISTRATION FEE

	Amount of
Transaction Valuation⁽¹⁾	Filing Fee⁽²⁾
\$3,035,867,522.66	\$305,711.86

- (1) Estimated solely for the purpose of calculating the filing fee. The transaction value was calculated by adding the sum of (i) 38,208,026 outstanding shares of common stock, par value \$0.01 per share (Shares), of Demandware, Inc. (Demandware), multiplied by the offer price of \$75.00 per Share; (ii) 661,500 Shares subject to outstanding restricted stock units multiplied by the offer price of \$75.00 per Share; and (iii) 2,119,287 Shares issuable pursuant to outstanding stock options multiplied by an amount equal to the offer price of \$75.00 per Share minus the weighted average exercise price for such stock options of \$18.07 per Share. The calculation of the filing fee is based on information provided by Demandware as of June 6, 2016, the most recent practicable date.
- (2) The amount of the filing fee was calculated in accordance with Rule 0-11 of the Securities Exchange Act of 1934, as amended, and Fee Rate Advisory No. 1 for fiscal year 2016 issued by the Securities and Exchange Commission on August 27, 2015, by multiplying the transaction valuation by .0001007.

.. 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 the date of its filing.

Amount Previously Paid:
Form of Registration No.:

None Filing Party: N/A
N/A Date Filed: N/A

.. Check the box if the filing relates solely to preliminary communications made before the commencement of the 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 Tender Offer Statement on Schedule TO (which, together with any amendments and supplements thereto, collectively constitute this Schedule TO) is filed by salesforce.com, inc., a Delaware corporation (Salesforce) and Dynasty Acquisition Corp., a Delaware corporation (the Purchaser) and a wholly-owned subsidiary of Salesforce. This Schedule TO relates to the offer by the Purchaser to purchase all outstanding shares of common stock, par value \$0.01 per share (the Shares), of Demandware, Inc., a Delaware corporation (Demandware), at a purchase price of \$75.00 per Share, net to the seller in cash, without interest thereon, less any required withholding taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase dated June 10, 2016 (which, together with any amendments and supplements thereto, collectively constitute the Offer to Purchase) and in the related Letter of Transmittal, copies of which are attached as Exhibits (a)(1)(i) and (a)(1)(ii) (which, together with any amendments or supplements thereto, collectively constitute the Offer).

Item 1. Summary Term Sheet.

The information set forth in the Summary Term Sheet of the Offer to Purchase is incorporated herein by reference.

Item 2. Subject Company Information.

(a) The name of the subject company and the issuer of the securities to which this Schedule TO relates is Demandware, Inc., a Delaware corporation. Demandware's principal executive offices are located at 5 Wall Street, Burlington, MA 01803. Demandware's telephone number is (888) 553-9216.

(b) This Schedule TO relates to the Shares. According to Demandware, as of the close of business on June 6, 2016, there were 38,208,026 Shares issued and outstanding, 1,332,644 of which Shares were unvested or subject to a repurchase option, risk of forfeiture or other condition, and there were outstanding stock options to purchase 2,119,287 Shares and 661,500 Shares subject to outstanding restricted stock units. The information set forth in the Introduction of the Offer to Purchase is incorporated herein by reference.

(c) The information set forth in Section 6 of the Offer to Purchase entitled Price Range of Shares; Dividends on the Shares is incorporated herein by reference.

Item 3. Identity and Background of Filing Person.

(a), (b) and (c) This Schedule TO is filed by the Purchaser and Salesforce. The information set forth in Section 9 of the Offer to Purchase entitled Certain Information Concerning the Purchaser and Salesforce and Annex I to the Offer to Purchase is incorporated herein by reference.

Item 4. Terms of the Transaction.

The information set forth in the Offer to Purchase is incorporated herein by reference.

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

(a) and (b) The information set forth in Summary Term Sheet, Introduction and Sections 9, 11, 12 and 13 of the Offer to Purchase entitled Certain Information Concerning the Purchaser and Salesforce, Background of Offer; Past Contacts or Negotiations with Demandware, Purpose of the Offer; The Merger; Plans for Demandware and The Transaction Documents, respectively, is incorporated herein by reference. Except as set forth therein, there have been no material contacts, negotiations or transactions during the past two years which would be required to be disclosed in this Item 5 between any of Salesforce, the Purchaser, or any of their respective affiliates or subsidiaries or any of those persons listed on Annex I to the Offer to Purchase, on the one hand, and Demandware or any of its affiliates, on the other hand, concerning a merger, consolidation, acquisition, a tender offer or other acquisition of securities of

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Demandware, an election of directors of Demandware or sale or transfer of a material amount of assets of Demandware.

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

(a) and (c)(1) through (7) The information set forth in Summary Term Sheet, Introduction and Sections 6, 7, 12 and 13 of the Offer to Purchase entitled Price Range of Shares; Dividends on the Shares, Effect of the Offer on Listing, Market for Shares and SEC Registration, Purpose of the Offer; The Merger; Plans for Demandware, and The Transaction Documents, respectively, is incorporated herein by reference.

Item 7. Source and Amount of Funds or Other Consideration.

(a), (b) and (d) The information set forth in Section 10 of the Offer to Purchase entitled Source and Amount of Funds is incorporated herein by reference.

Item 8. Interest in Securities of the Subject Company.

The information set forth in Section 9 of the Offer to Purchase entitled Certain Information Concerning the Purchaser and Salesforce is incorporated herein by reference.

Item 9. Persons/Assets Retained, Employed, Compensated or Used.

(a) The information set forth in the Introduction and Sections 11, 12 and 18 of the Offer to Purchase entitled Background of Offer; Past Contacts or Negotiations with Demandware, Purpose of the Offer; The Merger; Plans for Demandware and Fees and Expenses, respectively, is incorporated herein by reference.

Item 10. Financial Statements.

Not applicable.

Item 11. Additional Information.

(a)(1) The information set forth in Annex I and Sections 9, 11, 12 and 13 of the Offer to Purchase entitled Certain Information Concerning the Purchaser and Salesforce, Background of Offer; Past Contacts or Negotiations with Demandware, Purpose of the Offer; The Merger; Plans for Demandware and The Transaction Documents, respectively, is incorporated herein by reference.

(a)(2), (3) The information set forth in Sections 12, 15 and 16 of the Offer to Purchase entitled Purpose of the Offer; The Merger; Plans for Demandware, Conditions to the Purchaser's Obligations and Certain Regulatory and Legal Matters, respectively, is incorporated herein by reference.

(a)(4) The information set forth in Sections 7, 10 and 16 of the Offer to Purchase entitled Effect of the Offer on Listing, Market for Shares and SEC Registration, Source and Amount of Funds and Certain Regulatory and Legal Matters, respectively, is incorporated herein by reference.

(a)(5) None.

(b) The information set forth in the Offer to Purchase is incorporated herein by reference.

Item 12. Exhibits.

**Exhibit
Number**

Description

(a)(1)(i)	Offer to Purchase, dated June 10, 2016.*
(a)(1)(ii)	Form of Letter of Transmittal.*
(a)(1)(iii)	Form of Notice of Guaranteed Delivery.*
(a)(1)(iv)	Form of Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.*

Exhibit Number	Description
(a)(1)(v)	Form of Letter to Clients for use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.*
(a)(1)(vi)	Form of Summary Advertisement as published on June 10, 2016, in The Wall Street Journal.
(a)(5)(i)	Joint Press Release by Demandware and Salesforce issued June 1, 2016. ⁽¹⁾
(a)(5)(ii)	Press Release issued June 10, 2016.
(b)	Commitment Letter, dated as of May 31, 2016, by and among Salesforce, Bank of America, N.A. and Merrill Lynch, Pierce, Fenner & Smith Incorporated. ⁽²⁾
(d)(1)	Agreement and Plan of Merger, dated as of May 31, 2016, between Salesforce, the Purchaser and Demandware. ⁽³⁾
(d)(2)	Confidentiality Agreement, dated as of May 13, 2016, by and between Salesforce and Demandware.
(d)(3)	Exclusivity Agreement, dated as of May 28, 2016, by and between Salesforce and Demandware.
(g)	None.
(h)	None.

* Included in mailing to stockholders.

(1) Incorporated by reference to Exhibit 99.1 to the Form 8-K filed by salesforce.com, inc. on June 1, 2016.

(2) Incorporated by reference to Exhibit 10.1 to the Form 8-K filed by salesforce.com, inc. on June 1, 2016.

(3) Incorporated by reference to Exhibit 2.1 to the Form 8-K filed by salesforce.com, inc. on June 1, 2016.

Item 13. Information Required by Schedule 13 E-3.

Not applicable.

After due inquiry and to the best of its knowledge and belief, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

DYNASTY ACQUISITION CORP.

By: /s/ Amy E. Weaver

Name: Amy E. Weaver

Title: President and Secretary

SALESFORCE.COM, INC.

By: /s/ Burke F. Norton

Name: Burke F. Norton

**Title: Chief Legal Officer & Chief of
Corporate and Government
Affairs**

Dated: June 10, 2016

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