

RED HAT INC
Form DEFM14A
December 12, 2018
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SCHEDULE 14A
Proxy Statement Pursuant to Section 14(a) of the
Securities Exchange Act of 1934
(Amendment No.)

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

Preliminary Proxy Statement

Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))

Definitive Proxy Statement

Definitive Additional Materials

Soliciting Material under §240.14a-12

RED HAT, INC.

(Name of Registrant as Specified In Its Charter)

N/A

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

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- (2) Aggregate number of securities to which transaction applies:

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- (4) Proposed maximum aggregate value of transaction:

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MERGER PROPOSAL YOUR VOTE IS VERY IMPORTANT

December 12, 2018

Dear Red Hat Stockholders,

It is my pleasure to invite you to a special meeting of stockholders, which we refer to as the special meeting, of Red Hat, Inc., which we refer to as Red Hat, to be held at 100 East Davie Street, Raleigh, North Carolina 27601 on January 16, 2019, at 9:00 a.m., Eastern time. I hope that you will be able to attend.

At the special meeting, you will be asked to consider and vote on a proposal to adopt the Agreement and Plan of Merger (as it may be amended from time to time), dated as of October 28, 2018, which we refer to as the merger agreement, by and among Red Hat, International Business Machines Corporation, which we refer to as IBM, and Socrates Acquisition Corp., which we refer to as Sub, a wholly-owned subsidiary of IBM. Pursuant to the terms of the merger agreement, Sub will merge with and into Red Hat, with Red Hat surviving the merger as a wholly-owned subsidiary of IBM, which we refer to as the merger. You also will be asked to consider and vote on (i) a proposal to approve, by means of a non-binding, advisory vote, compensation that will or may become payable to the named executive officers of Red Hat in connection with the merger and (ii) a proposal to approve one or more adjournments of the special meeting to a later date or dates, if necessary or appropriate, to solicit additional proxies if there are insufficient votes to adopt the merger agreement at the then-scheduled date and time of the special meeting.

If the merger is completed, you will be entitled to receive \$190.00 in cash, without interest, for each share of our common stock, par value \$0.0001, which we refer to as Red Hat common stock, you own (unless you have properly exercised your appraisal rights with respect to such shares), which represents a premium of (i) approximately 62.8% to Red Hat's closing stock price on October 26, 2018, the last trading day prior to the announcement of the merger, (ii) approximately 51.7% to the volume weighted average stock price of Red Hat common stock during the 30 days ended October 26, 2018 and (iii) approximately 7.8% to the highest closing stock price of Red Hat common stock during the 52-week period ended October 26, 2018.

The receipt of cash in exchange for shares of Red Hat common stock pursuant to the merger will generally be a taxable transaction to U.S. holders (as defined in the accompanying proxy statement) for United States federal income tax purposes. For a more complete description, see the section entitled Proposal 1: Adoption of the Merger Agreement The Merger U.S. Federal Income Tax Consequences of the Merger beginning on page 79 of the accompanying proxy statement.

The Red Hat Board of Directors, after considering the reasons more fully described in this proxy statement and after consultation with independent legal and financial advisors, unanimously determined that the terms of the merger agreement, the merger and the other transactions contemplated by the merger agreement are fair to and in the best interests of Red Hat and its stockholders, and adopted, approved and declared advisable the execution, delivery and performance of the merger agreement, the merger and the other transactions contemplated by the merger agreement. The Red Hat Board of Directors recommends that you vote:

- (i) FOR the proposal to adopt the merger agreement, thereby approving the merger and the other transactions contemplated by the merger agreement;**

- (ii) **FOR** the proposal to approve, by means of a non-binding, advisory vote, compensation that will or may become payable to the named executive officers of Red Hat in connection with the merger; and

- (iii) **FOR** the proposal to approve one or more adjournments of the special meeting to a later date or dates, if necessary or appropriate, to solicit additional proxies if there are insufficient votes to adopt the merger agreement at the then-scheduled date and time of the special meeting.

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The enclosed proxy statement provides detailed information about the special meeting, the merger agreement and the merger. A copy of the merger agreement is attached as Annex A to the proxy statement. The proxy statement also describes the actions and determinations of our Board of Directors in connection with its evaluation of the merger agreement and the merger. We encourage you to read the proxy statement and its annexes, including the merger agreement, carefully and in their entirety. You may also obtain more information about Red Hat from documents we file with the U.S. Securities and Exchange Commission, which we refer to as the SEC, from time to time.

Whether or not you plan to attend the special meeting in person, please complete, sign, date and return, as promptly as possible, the enclosed proxy card in the accompanying prepaid reply envelope or grant your proxy electronically over the Internet or by telephone. If you attend the special meeting and vote in person by ballot, your vote will revoke any proxy that you have previously submitted. If you hold your shares in street name, you should instruct your broker, bank or other nominee how to vote in accordance with the voting instruction form you will receive from your broker, bank or other nominee.

Your vote is very important, regardless of the number of shares that you own. We cannot complete the merger unless the proposal to adopt the merger agreement is approved by the affirmative vote of a majority of the shares of Red Hat common stock outstanding and entitled to vote thereon. The failure of any stockholder to vote in person by ballot at the special meeting, to submit a signed proxy card or to grant a proxy electronically over the Internet or by telephone will have the same effect as a vote AGAINST the proposal to adopt the merger agreement. If you hold your shares in street name, the failure to instruct your broker, bank or other nominee on how to vote your shares will have the same effect as a vote AGAINST the proposal to adopt the merger agreement.

If you have any questions or need assistance voting your shares of Red Hat common stock, please contact Innisfree M&A Incorporated, our proxy solicitor, by calling (888) 750-5835 toll-free.

On behalf of our Board of Directors, I thank you for your support and appreciate your consideration of this matter.

Sincerely,

James M. Whitehurst
President and Chief Executive Officer

Neither the SEC nor any state securities regulatory agency has approved or disapproved of the transactions described in this document, including the merger, or determined if the information contained in this document is accurate or adequate. Any representation to the contrary is a criminal offense.

The accompanying proxy statement is dated December 12, 2018 and, together with the enclosed form of proxy card, is first being mailed to Red Hat stockholders on or about December 13, 2018.

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NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

TO BE HELD ON JANUARY 16, 2019

NOTICE IS HEREBY GIVEN that a special meeting of stockholders, which we refer to as the special meeting, of Red Hat, Inc., which we refer to as Red Hat, will be held:

TIME AND DATE: 9:00 a.m., Eastern time, on January 16, 2019

PLACE: 100 East Davie Street, Raleigh, North Carolina 27601

- ITEMS OF BUSINESS:**
1. To consider and vote on the proposal to adopt the Agreement and Plan of Merger (as it may be amended from time to time), dated as of October 28, 2018, which we refer to as the merger agreement, by and among Red Hat, International Business Machines Corporation, which we refer to as IBM, and Socrates Acquisition Corp., a wholly-owned subsidiary of IBM, a copy of which is attached as Annex A to the proxy statement accompanying this notice, which proposal we refer to as the merger proposal;
 2. To consider and vote on the proposal to approve, by means of a non-binding, advisory vote, compensation that will or may become payable to the named executive officers of Red Hat in connection with the merger, which proposal we refer to as the merger-related compensation proposal; and
 3. To consider and vote on the proposal to approve one or more adjournments of the special meeting to a later date or dates, if necessary or appropriate, to solicit additional proxies if there are insufficient votes to adopt the merger agreement at the then-scheduled date and time of the special meeting, which proposal we refer to as the adjournment proposal.

ADJOURNMENTS AND POSTPONEMENTS: Any action on the items of business described above may be considered at the special meeting or at any time and date to which the special meeting may be properly adjourned or postponed.

RECORD DATE: Stockholders of record at the close of business on December 11, 2018 are entitled to notice of, and to vote at, the special meeting and at any adjournments or postponements thereof.

INSPECTION OF LIST OF STOCKHOLDERS OF RECORD: A list of stockholders of record will be available for inspection at our corporate headquarters located at 100 East Davie Street, Raleigh, North Carolina 27601, during ordinary business hours during the 10-day period before the special meeting.

VOTING: Whether or not you plan to attend the special meeting, we urge you to vote your shares via the toll-free telephone number or over the Internet as described in the proxy materials. You may also sign, date and mail the proxy card in the pre-paid envelope provided.

**IMPORTANT
INFORMATION:**

Your vote is very important to us. The merger contemplated by the merger agreement, which we refer to as the merger, is conditioned on the receipt of, and we cannot consummate the merger unless the merger proposal receives, the

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affirmative vote of a majority of the shares of Red Hat's common stock, par value \$0.0001, which we refer to as Red Hat common stock, outstanding and entitled to vote thereon.

The affirmative vote of a majority of the shares of Red Hat common stock outstanding and entitled to vote thereon, provided a quorum is present, is required to approve the merger proposal. The affirmative vote of a majority of the voting power of the shares of Red Hat common stock entitled to vote which are present, in person or by proxy, and voting at the special meeting, provided a quorum is present, is required to approve, by means of a non-binding, advisory vote, the merger-related compensation proposal. The affirmative vote of a majority of the voting power of the shares of Red Hat common stock entitled to vote which are present, in person or by proxy, at the special meeting, whether or not a quorum is present, is required to approve the adjournment proposal.

The failure of any stockholder of record to submit a signed proxy card, grant a proxy electronically over the Internet or by telephone or to vote in person by ballot at the special meeting will have the same effect as a vote **AGAINST** the merger proposal but will not have any effect on the merger-related compensation proposal or the adjournment proposal. If you hold your shares in street name, the failure to instruct your broker, bank or other nominee on how to vote your shares will have the same effect as a vote **AGAINST** the merger proposal but will not have any effect on the merger-related compensation proposal or the adjournment proposal. Abstentions will have the same effect as a vote **AGAINST** the merger proposal and the adjournment proposal, but will not have any effect on the merger-related compensation proposal.

Stockholders who do not vote in favor of the merger proposal will have the right to seek appraisal of the fair value of their shares of Red Hat common stock if they deliver a demand for appraisal before the vote is taken on the merger proposal and comply with all applicable requirements under Delaware law, which are summarized herein and reproduced in their entirety in Annex D to the accompanying proxy statement.

The Board of Directors recommends that you vote (i) FOR the merger proposal, (ii) FOR the merger-related compensation proposal and (iii) FOR the adjournment proposal.

Raleigh, North Carolina

By Order of the Board of Directors,

December 12, 2018

Michael R. Cunningham

Secretary

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YOUR VOTE IS IMPORTANT

WHETHER OR NOT YOU PLAN TO ATTEND THE SPECIAL MEETING, WE URGE YOU TO VOTE YOUR SHARES VIA THE TOLL-FREE TELEPHONE NUMBER OR OVER THE INTERNET AS DESCRIBED IN THE PROXY MATERIALS. YOU MAY ALSO SIGN, DATE AND MAIL THE PROXY CARD IN THE PRE-PAID ENVELOPE PROVIDED. You may revoke your proxy or change your vote at any time before the special meeting. If your shares are held in the name of a broker, bank or other nominee, please follow the instructions on the voting instruction card furnished to you by such broker, bank or other nominee, which is considered the stockholder of record, in order to vote. As a beneficial owner, you have the right to direct your broker, bank or other nominee on how to vote the shares in your account. Your broker, bank or other nominee cannot vote on any of the proposals, including the proposal to adopt the merger agreement, without your instructions.

If you fail to return your proxy card, to grant your proxy electronically over the Internet or by telephone, or to vote by ballot in person at the special meeting, your shares will not be counted for purposes of determining whether a quorum is present at the special meeting. If you are a stockholder of record, voting in person by ballot at the special meeting will revoke any proxy that you previously submitted. If you hold your shares through a broker, bank or other nominee, you must obtain from the record holder a valid proxy issued in your name in order to vote in person at the special meeting.

We encourage you to read the accompanying proxy statement, including all documents incorporated by reference into the accompanying proxy statement, and annexes to the accompanying proxy statement, carefully and in their entirety. If you have any questions concerning the merger, the special meeting or the accompanying proxy statement, would like additional copies of the accompanying proxy statement or need help voting your shares of common stock, please contact our proxy solicitor:

Innisfree M&A Incorporated

501 Madison Avenue, 20th Floor

New York, New York 10022

Toll-free: (888) 750-5835

Banks & Brokers may call collect: (212) 750-5833

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*This summary highlights selected information from this proxy statement related to the merger (as defined below). This summary may not contain all of the information that is important to you. To understand the merger more fully and for a more complete description of the legal terms of the merger, you should read carefully this entire proxy statement, the annexes to this proxy statement, including the merger agreement (as defined below), and the documents incorporated by reference in this proxy statement. You may obtain the documents and information incorporated by reference in this proxy statement without charge by following the instructions under the section entitled *Where You Can Find More Information* beginning on page 123. The merger agreement is attached as Annex A to this proxy statement.*

Except as otherwise specifically noted in this proxy statement or as the context otherwise requires, Red Hat, the Company or we, our, us and similar words in this proxy statement refer to Red Hat, Inc. including, in certain cases, its subsidiaries. Throughout this proxy statement we refer to International Business Machines Corporation, a New York corporation, as IBM and to Socrates Acquisition Corp., a Delaware corporation and wholly-owned subsidiary of IBM, as Sub . In addition, throughout this proxy statement we refer to the Agreement and Plan of Merger (as it may be amended from time to time), dated as of October 28, 2018, by and among Red Hat, IBM and Sub, as the merger agreement . All references to the merger refer to the merger of Sub with and into Red Hat with Red Hat surviving as a wholly-owned subsidiary of IBM. Red Hat, following completion of the merger, is sometimes referred to in this proxy statement as the surviving corporation .

Parties Involved in the Merger (page 31)***Red Hat, Inc.***

Red Hat is a leading provider of open source software solutions, using a community-powered approach to develop and offer reliable and high-performing operating system, virtualization, management, middleware, cloud, mobile and storage technologies. Red Hat employs an open source development model, which allows Red Hat to use the collective input, resources and knowledge of a global community of contributors who can collaborate to develop, maintain and enhance software because the human-readable source code for that software is publicly available and licenses permit modification.

Red Hat's offerings are designed to provide customers with high-performing, scalable, flexible, reliable and secure infrastructure technologies that meet the information technology, which we refer to as IT, needs of enterprises and service providers. Our offerings enable our customers to optimize their IT environments to increase agility and flexibility while adding and managing hybrid cloud infrastructures and building modern applications. Hybrid cloud infrastructures enable customers to deploy their applications using off-premise (public cloud) and on-premise (private cloud, virtual or physical server) IT resources to create a hybrid cloud environment that is designed to enhance efficiency while providing increased security. Red Hat's offerings are designed to perform consistently across hybrid cloud environments to offer greater choices to our customers when deploying their applications.

Red Hat also offers a wide range of services that are designed to help customers receive additional value from Red Hat technologies.

Red Hat's corporate headquarters is located at 100 East Davie Street, Raleigh, North Carolina 27601.

Red Hat was formed in 1993 and is a corporation organized in the State of Delaware. Red Hat common stock, par value \$0.0001 per share, which we refer to as Red Hat common stock, is currently listed on the New York Stock

Exchange, which we refer to as the NYSE, under the symbol RHT.

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Additional information about Red Hat and its subsidiaries is included in documents incorporated by reference in this proxy statement (see the section entitled “Where You Can Find More Information” beginning on page 123) and on its website: www.redhat.com. The information provided or accessible through Red Hat’s website is not part of, or incorporated by reference in, this proxy statement.

International Business Machines Corporation

IBM focuses on the intersection of business insight and technology innovation and creates value for clients through integrated solutions and products. These integrated solutions leverage innovative technologies, deep expertise in industries and business processes, and a commitment to security and trust. IBM solutions typically create value by enabling new capabilities for clients that optimize and transform their businesses and help them engage with their customers and employees in new ways. These solutions draw from an industry-leading portfolio of consulting and IT implementation services, cloud and cognitive offerings, and enterprise systems and software, one of the world’s leading research organizations—all bolstered by a commitment to the secure and responsible management of data and enterprise-grade security.

IBM’s corporate headquarters is located at 1 New Orchard Road, Armonk, New York 10504.

IBM was formed in 1911 as the Computing-Tabulating-Recording Company and is a corporation organized in the State of New York. IBM’s common stock, par value \$0.20 per share, is currently listed on the NYSE, under the symbol IBM.

Additional information about IBM and its subsidiaries is included on its website: www.ibm.com. The information provided or accessible through IBM’s website is not part of, or incorporated by reference in, this proxy statement.

Socrates Acquisition Corp.

Sub is a Delaware corporation and a wholly-owned subsidiary of IBM, formed on October 25, 2018, solely for the purpose of engaging in the merger and the other transactions as contemplated under the merger agreement. Upon completion of the merger, Sub will cease to exist.

Certain Effects of the Merger on Red Hat (page 33)

Upon the terms and subject to the conditions of the merger agreement and in accordance with the applicable provisions of the Delaware General Corporation Law, which we refer to as the DGCL, on the closing date and at the time at which the merger will become effective, which we refer to as the effective time, Sub will merge with and into Red Hat, with Red Hat continuing as the surviving corporation and a wholly-owned subsidiary of IBM.

Effect on Red Hat if the Merger is Not Completed (page 33)

If the merger agreement is not adopted by Red Hat stockholders or if the merger is not completed for any other reason, Red Hat stockholders will not receive any payment for their shares of Red Hat common stock. Instead, Red Hat will remain a public company, Red Hat common stock will continue to be listed and traded on the NYSE and registered under the Securities Exchange Act of 1934, which we refer to as the Exchange Act, and Red Hat will continue to file periodic reports with the U.S. Securities and Exchange Commission, which we refer to as the SEC.

Under certain specified circumstances, Red Hat will be required to pay IBM a termination fee upon the termination of the merger agreement, as described under the section entitled “Terms of the Merger Agreement—Termination of the

Merger Agreement Termination Fees beginning on page 106.

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Merger Consideration (page 84)

If the merger is completed, at the effective time, and without any action on the part of the holder, each share of Red Hat common stock issued and outstanding immediately prior to the effective time (other than (i) shares of Red Hat common stock that are owned directly by Red Hat, including treasury stock, or owned by IBM or Sub immediately prior to the effective time, which we refer to as canceled shares, (ii) dissenting shares (as defined herein) and (iii) shares of Red Hat common stock that are owned by any direct or indirect wholly-owned subsidiary of Red Hat or IBM (other than Sub) immediately prior to the effective time, which we refer to as subsidiary converted shares), and certain equity awards, the treatment of which is described under the sections entitled Proposal 1: Adoption of the Merger Agreement The Merger Interests of the Non-Employee Directors and Executive Officers of Red Hat in the Merger Treatment of Equity Compensation and Terms of the Merger Agreement Merger Consideration Treatment of Equity Compensation beginning on pages 73 and 84, respectively, will be converted into the right to receive \$190.00 per share in cash, without interest, which we refer to as the merger consideration, less any applicable withholding taxes. All shares, when so converted into the right to receive the merger consideration, will automatically be canceled and will cease to exist.

As described under the section entitled Terms of the Merger Agreement Merger Consideration Exchange Procedures beginning on page 85, no later than substantially concurrently with the effective time, IBM will deposit, or cause to be deposited, with a designated paying agent (as defined herein) funds in an amount necessary for the payment of the merger consideration.

After the merger is completed, under the terms of the merger agreement, you will have the right to receive the merger consideration, but you no longer will have any rights as a Red Hat stockholder as a result of the merger (except for the right to receive the merger consideration and except that stockholders who properly exercise and perfect their demand for appraisal will instead have such rights as granted by Section 262 of the DGCL, as described under the section entitled Appraisal Rights beginning on page 116).

The Special Meeting (page 26)

Date, Time and Place

The special meeting of our stockholders, which we refer to as the special meeting, will be held at 100 East Davie Street, Raleigh, North Carolina 27601 on January 16, 2019, at 9:00 a.m., Eastern time.

Purpose

At the special meeting, we will ask our stockholders of record as of the close of business on December 11, 2018, which we refer to as the record date, to consider and vote on the following proposals:

the adoption of the merger agreement, a copy of which is attached as Annex A to the proxy statement accompanying this notice, which we refer to as the merger proposal;

the approval, by means of a non-binding, advisory vote, of compensation that will or may become payable to the named executive officers of Red Hat in connection with the merger, which we refer to as the merger-related compensation proposal; and

the approval of one or more adjournments of the special meeting to a later date or dates, if necessary or appropriate, to solicit additional proxies if there are insufficient votes to adopt the merger agreement at the then-scheduled date and time of the special meeting, which we refer to as the adjournment proposal.

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Record Date; Shares Entitled to Vote

You are entitled to vote at the special meeting if you owned shares of Red Hat common stock as of the close of business on the record date. You will have one vote at the special meeting for each share of Red Hat common stock you owned as of the close of business on the record date.

Quorum

A majority in voting power of Red Hat common stock issued and outstanding and entitled to vote at the special meeting, represented in person or by proxy, constitutes a quorum at the special meeting. As of the close of business on the record date, there were 176,759,752 shares of Red Hat common stock issued and outstanding and entitled to vote. If you submit a properly executed proxy by mail, telephone or the Internet, you will be considered a part of the quorum. In addition, abstentions will be counted for purposes of establishing a quorum. Broker non-votes will not be counted for purposes of establishing a quorum. As a result, 88,379,877 shares of Red Hat common stock must be represented in person or by proxy to have a quorum. If a quorum is not present, the special meeting will be adjourned until a quorum is obtained, subject to the terms of the merger agreement. The affirmative vote of a majority of the voting power of the shares of Red Hat common stock entitled to vote which are present, in person or by proxy, at the special meeting or the chairman of the special meeting, may adjourn the special meeting.

Required Vote

The affirmative vote of a majority of the shares of Red Hat common stock outstanding and entitled to vote thereon, provided a quorum is present, is required to approve the merger proposal, which we refer to as stockholder approval. This means that the proposal will be approved if the number of shares voted **FOR** that proposal is greater than 50% of the total number of the votes that can be cast in respect of our outstanding shares of common stock. Abstentions and broker non-votes will have the same effect as a vote **AGAINST** the merger proposal.

The affirmative vote of a majority of the voting power of the shares of Red Hat common stock entitled to vote which are present, in person or by proxy, and voting at the special meeting, provided a quorum is present, is required to approve, by means of a non-binding, advisory vote, the merger-related compensation proposal. This means that the proposal will be approved if the number of shares voted **FOR** that proposal is greater than 50% of the total number of shares of Red Hat common stock entitled to vote which are present, in person or by proxy, and vote at the special meeting, provided a quorum is present. Abstentions and broker non-votes will not have any effect on the merger-related compensation proposal.

The affirmative vote of a majority of the voting power of the shares of Red Hat common stock entitled to vote which are present, in person or by proxy, at the special meeting, whether or not a quorum is present, is required to approve the adjournment proposal. This means that the proposal will be approved if the number of shares voted **FOR** that proposal is greater than 50% of the total number of shares of Red Hat common stock entitled to vote which are present, in person or by proxy, at the special meeting, whether or not a quorum is present. Abstentions will have the same effect as a vote **AGAINST** the adjournment proposal. Broker non-votes will not have any effect on the adjournment proposal.

Share Ownership of Red Hat Directors and Executive Officers

As of the close of business on the record date, Red Hat directors and executive officers beneficially owned and were entitled to vote, in the aggregate, 898,713 shares of Red Hat common stock (excluding any shares of Red Hat common stock that would be delivered upon exercise or conversion of stock options or other equity-based awards), which

represented approximately 0.51% of the outstanding shares of Red Hat common stock on that date.

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It is expected that Red Hat's directors and executive officers will vote their shares **FOR** the merger proposal, **FOR** the merger related-related compensation proposal and **FOR** the adjournment proposal, although none of them has entered into any agreement requiring them to do so.

Voting of Proxies

Any Red Hat stockholder of record entitled to vote at the special meeting may submit a proxy by returning a signed proxy card by mail or voting electronically over the Internet or by telephone, or may vote in person by appearing at the special meeting. If your shares are held in a brokerage account at a brokerage firm, bank, broker-dealer, or similar organization, then you are the beneficial owner of shares held in street name, and you should instruct your broker, bank or other nominee on how you wish to vote your shares of Red Hat common stock using the instructions provided by your broker, bank or other nominee. Under applicable stock exchange rules, if you fail to instruct your broker, bank or other nominee on how to vote your shares, your broker, bank or other nominee only has discretion to vote your shares on discretionary matters. The merger proposal, the merger-related compensation proposal and the adjournment proposal are non-discretionary matters, and brokers, banks and other nominees therefore cannot vote on these proposals without your instructions. Therefore, it is important that you cast your vote or instruct your broker, bank or other nominee on how you wish to vote your shares.

If you are a stockholder of record, you may change your vote or revoke your proxy at any time before it is voted at the special meeting by submitting a new proxy electronically over the Internet or by telephone after the date of the earlier submitted proxy, signing another proxy card with a later date and returning it to us prior to the special meeting or attending the special meeting and voting in person. Proxies submitted electronically over the Internet or by telephone must be received by 11:59 pm, Eastern time, on January 15, 2019. If you hold your shares of Red Hat common stock in street name, you should contact your broker, bank or other nominee for instructions regarding how to change your vote.

Recommendation of Our Board of Directors and Reasons for the Merger (page 42)

The Board of Directors, after considering various factors described under the section entitled Proposal 1: Adoption of the Merger Agreement The Merger Recommendation of Our Board of Directors beginning on page 42 and after consultation with independent legal and financial advisors, unanimously (i) determined that the terms of the merger agreement, the merger and the other transactions contemplated by the merger agreement are fair to and in the best interests of Red Hat and its stockholders; (ii) adopted, approved and declared advisable the execution, delivery and performance of the merger agreement, the merger and the other transactions contemplated by the merger agreement; (iii) approved, authorized and declared advisable the consummation by Red Hat of the transactions contemplated by the merger agreement; (iv) resolved to recommend that Red Hat stockholders vote in favor of the adoption and approval of the merger agreement, the merger and other transactions contemplated by the merger agreement; and (v) resolved to submit the merger agreement to Red Hat stockholders for adoption at a duly held meeting of such stockholders.

The Red Hat Board of Directors unanimously recommends that you vote (i) **FOR the merger proposal, (ii) **FOR** the merger-related compensation proposal and (iii) **FOR** the adjournment proposal.**

Opinions of Red Hat's Financial Advisors (page 47)

Opinion of Guggenheim Securities, LLC

Red Hat retained Guggenheim Securities, LLC, which we refer to as Guggenheim Securities, as its lead financial advisor in connection with the potential sale of or another extraordinary corporate transaction involving Red Hat, including the merger. Guggenheim Securities has had a long-standing investment banking relationship

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with Red Hat and had been retained by Red Hat since October 2016 in connection with Red Hat's exploration and consideration of various strategic and financial alternatives. In connection with the merger, Guggenheim Securities delivered an opinion to the Red Hat Board of Directors to the effect that, as of October 28, 2018 and based on and subject to the matters considered, the procedures followed, the assumptions made and various limitations of and qualifications to the review undertaken, the merger consideration was fair, from a financial point of view, to Red Hat stockholders. The full text of Guggenheim Securities' written opinion, which is attached as Annex B to this proxy statement and which you should read carefully and in its entirety, is subject to the assumptions, limitations, qualifications and other conditions contained in such opinion and is necessarily based on economic, capital markets and other conditions, and the information made available to Guggenheim Securities, as of the date of such opinion.

Guggenheim Securities' opinion was provided to the Red Hat Board of Directors (in its capacity as such) for its information and assistance in connection with its evaluation of the merger consideration. Guggenheim Securities' opinion and any materials provided in connection therewith did not constitute a recommendation to the Red Hat Board of Directors with respect to the merger, nor does Guggenheim Securities' opinion or the summary of its underlying financial analyses elsewhere in this proxy statement constitute advice or a recommendation to any Red Hat stockholder as to how to vote or act in connection with the merger or otherwise. Guggenheim Securities' opinion addresses only the fairness, from a financial point of view and as of the date of such opinion, of the merger consideration to Red Hat stockholders to the extent expressly specified in such opinion and does not address any other term, aspect or implication of the merger (including, without limitation, the form or structure of the merger), the merger agreement or any other agreement, transaction document or instrument contemplated by the merger agreement or to be entered into or amended in connection with the merger or any financing or other transactions related thereto.

For a more complete description, see the section entitled "Proposal 1: Adoption of the Merger Agreement - The Merger - Opinions of Red Hat's Financial Advisors - Opinion of Guggenheim Securities, LLC" beginning on page 47.

Opinion of Morgan Stanley & Co. LLC

Red Hat retained Morgan Stanley & Co. LLC, which we refer to as Morgan Stanley, to provide it with financial advisory services in connection with the merger. Red Hat selected Morgan Stanley to act as its financial adviser based on Morgan Stanley's qualifications, expertise and reputation, and its knowledge of Red Hat's business and affairs. On October 28, 2018, Morgan Stanley rendered its oral opinion, subsequently confirmed by delivery of a written opinion dated October 28, 2018, to the effect that, as of such date, and based upon and subject to the assumptions made, procedures followed, matters considered and qualifications and limitations on the scope of review undertaken by Morgan Stanley as set forth in its written opinion, the merger consideration to be received by Red Hat stockholders pursuant to the merger agreement was fair from a financial point of view to such Red Hat stockholders.

The full text of the written opinion of Morgan Stanley dated October 28, 2018, is attached as Annex C to this proxy statement, and is incorporated by reference herein in its entirety. The opinion sets forth, among other things, the assumptions made, procedures followed, matters considered and qualifications and limitations on the scope of the review undertaken by Morgan Stanley in rendering its opinion. The summary of the opinion of Morgan Stanley set forth in this proxy statement is qualified in its entirety by reference to the full text of the opinion. You are encouraged to read Morgan Stanley's opinion and the summary of Morgan Stanley's opinion below carefully and in their entirety. Morgan Stanley's opinion was directed to the Red Hat Board of Directors, in its capacity as such, and addressed only the fairness from a financial point of view of the merger consideration to be received by Red Hat stockholders pursuant to the merger agreement as of the date of the opinion and did not address any other aspects or implications of the merger. Morgan Stanley's opinion was not intended to, and

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does not, constitute advice or a recommendation to any Red Hat stockholder as to how to vote at the special meeting to be held in connection with the merger or whether to take any other action with respect to the merger.

For a more complete description, see the section entitled **Proposal 1: Adoption of the Merger Agreement** **The Merger** **Opinions of Red Hat's Financial Advisors** **Opinion of Morgan Stanley & Co. LLC** beginning on page 60.

Financing of the Merger (page 79)

The merger is not conditioned on IBM's ability to obtain financing. IBM and Sub have represented to Red Hat that they will have available to them sufficient funds at the effective time to pay all amounts required to be paid by IBM and Sub pursuant to the terms of the merger agreement, including the amounts payable to the holders of Cash-Out Stock Options (as defined herein), Cash-Out Restricted Shares (as defined herein), Cash-Out RSUs (as defined herein) and Cash-Out PSUs (as defined herein) and to pay all associated fees, costs and expenses. IBM expects to finance the merger through cash on hand and proceeds from debt financing.

IBM has made available to Red Hat copies of a fully executed commitment letter, dated the date of the merger agreement, which we refer to as the commitment letter, with JPMorgan Chase Bank, N.A., Goldman Sachs Bank USA and Goldman Sachs Lending Partners LLC, which we refer to collectively as the commitment parties. Pursuant to the commitment letter, and subject to the terms and conditions set forth therein, the commitment parties have committed to provide IBM with loans under a 364-day senior unsecured bridge term loan facility in an aggregate principal amount of up to \$20.0 billion, which we refer to as the bridge facility. The funding of the bridge facility provided for in the commitment letter is contingent on the satisfaction of customary conditions, including (i) the execution and delivery of definitive documentation with respect to the bridge facility in accordance with the terms sets forth in the commitment letter, and (ii) the consummation of the merger in accordance with the merger agreement.

For a more complete description, see the section entitled **Proposal 1: Adoption of the Merger Agreement** **Financing of the Merger** beginning on page 79.

Treatment of Equity Compensation (page 84)

Our executive officers and employees hold various types of compensatory awards with respect to Red Hat common stock. Our non-employee directors hold awards of restricted shares and deferred stock units, which we refer to as DSUs. The merger agreement provides for the treatment set forth below with respect to the awards described below. None of our non-employee directors or executive officers hold stock options.

Exchange Ratio. For purposes of the conversion of Red Hat equity awards described below, the *Exchange Ratio* is defined as a fraction, the numerator of which is the merger consideration and the denominator of which is the closing price per share of IBM common stock on the New York Stock Exchange Composite Transactions Tape on the trading day immediately preceding the date on which the merger effective time occurs.

Restricted Shares. Each restricted share award of Red Hat common stock that is held by a non-employee director, consultant or independent contractor of Red Hat or a subsidiary immediately prior to the effective time, which we refer to as a Cash-Out Restricted Share, will be converted at the effective time into the right to receive an amount in cash equal to the merger consideration multiplied by the number of shares of Red Hat common stock subject to the award. Each other restricted share award of Red Hat common stock (*i.e.*, those held by employees of Red Hat or a subsidiary immediately prior to the effective time), which we refer to as a Rollover Restricted Share, will be converted at the effective time into a restricted share award consisting of IBM common stock subject to substantially the same terms and conditions as were applicable to the Rollover Restricted Shares

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(other than any performance conditions, which will be deemed satisfied upon the effective time under the terms of the award) with respect to a number of shares of IBM common stock determined by multiplying the number of shares of Red Hat common stock subject to such Rollover Restricted Share award immediately prior to the effective time by the Exchange Ratio (rounded down to the nearest whole share).

Restricted Stock Units; Deferred Stock Units. Each restricted stock unit with respect to Red Hat common stock which is held by a non-employee director, consultant or independent contractor of Red Hat or a subsidiary immediately prior to the effective time, which, together with each DSU, we refer to as a Cash-Out RSU, will be converted at the effective time into the right to receive an amount in cash equal to the merger consideration multiplied by the number of shares of Red Hat common stock subject to the award. Each other restricted stock unit with respect to Red Hat common stock (*i.e.*, those held by employees of Red Hat or a subsidiary immediately prior to the effective time), which we refer to as a Rollover RSU, will be converted at the effective time into a restricted stock unit with respect to IBM common stock subject to substantially the same terms and conditions as were applicable to the Rollover RSUs with respect to a number of shares of IBM common stock determined by multiplying the number of shares of Red Hat common stock subject to such Rollover RSU award immediately prior to the effective time by the Exchange Ratio (rounded down to the nearest whole share).

Performance Share Units. At the effective time, each performance share unit with respect to Red Hat common stock that is held by a non-employee director, consultant or independent contractor of Red Hat or a subsidiary immediately prior to the effective time, which we refer to as a Cash-Out PSU, will be canceled and the holder thereof will be entitled to receive in consideration for such cancellation an amount in cash equal to the product of (i) the applicable PSU Share Number (as defined herein) and (ii) the merger consideration. Each other performance share unit (*i.e.*, those held by employees of Red Hat or a subsidiary immediately prior to the effective time), which we refer to as a Rollover PSU, will be converted at the effective time into a restricted share award consisting of IBM common stock subject to substantially the same terms and conditions as were applicable under such Rollover PSU (other than the performance-based vesting schedule, which will be converted into a service-based vesting schedule in accordance with the applicable award agreement), with respect to a number of shares of IBM common stock determined by multiplying the applicable PSU Share Number by the Exchange Ratio (rounded down to the nearest whole share). For purposes of the treatment of performance share units, the applicable PSU Share Number means, with respect to performance share units that were granted with performance goals relating to operating performance, either the target performance level if the effective time occurs in the first performance segment of the award, or the actual performance level based on the most recently completed fiscal quarter prior to the closing date if the effective time occurs in the second performance segment of the award. For performance share units with performance goals based on total shareholder return, the applicable PSU Share Number will be determined based on the total shareholder return represented by the merger consideration.

Stock Options. At the effective time, each option to acquire Red Hat common stock that is vested and unexercised immediately prior to the effective time, has an exercise price equal to or greater than the merger consideration or is held by a non-employee director, consultant or independent contractor of Red Hat or a subsidiary, which we refer to as a Cash-Out Stock Option, will be canceled and the holder thereof will be entitled to receive in consideration for such cancellation an amount in cash equal to the product of (i) the number of shares of Red Hat common stock that are subject to the Cash-Out Stock Option and (ii) the excess, if any, of the merger consideration over the exercise price per share of Red Hat common stock subject to the Cash-Out Stock Option. All other options to acquire Red Hat common stock (*i.e.*, options which are unvested, have an exercise price less than the merger consideration and are held by employees of Red Hat or a subsidiary immediately prior to the effective time), which we refer to as Rollover Stock Options, will be converted at the effective time into options to acquire, on substantially the same terms and conditions as were applicable under such Rollover Stock Option, the number of shares of IBM common stock (rounded down to the nearest whole share), determined by

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multiplying the number of shares of Red Hat common stock subject to such Rollover Stock Option immediately prior to the effective time by the Exchange Ratio, with an exercise price per share of IBM common stock (rounded up to the nearest whole cent) equal to (a) the exercise price per share of Red Hat common stock applicable to such Rollover Stock Option divided by (b) the Exchange Ratio.

Interests of the Non-Employee Directors and Executive Officers of Red Hat in the Merger (page 72)

Red Hat non-employee directors and executive officers may have interests in the merger that are different from, or in addition to, your interests as a stockholder. The Red Hat Board of Directors was aware of and considered these interests to the extent such interests existed at the time, among other matters, in evaluating and overseeing the negotiation of the merger agreement, in approving the merger agreement and the merger and in recommending that the merger agreement be adopted by the stockholders of Red Hat.

For a more complete description, see the section entitled *Proposal 1: Adoption of the Merger Agreement* *The Merger Interests of the Non-Employee Directors and the Executive Officers of Red Hat in the Merger*, beginning on page 72.

Appraisal Rights (page 116)

Any shares of Red Hat common stock that are issued and outstanding immediately prior to the effective time and as to which the holders thereof have not voted in favor of the merger proposal and are entitled to demand and properly demand appraisal of such shares of Red Hat common stock pursuant to Section 262 of the DGCL and, as of the effective time, have neither failed to perfect, nor effectively withdrawn or lost rights to appraisal under the DGCL, such shares we collectively refer to as the dissenting shares, will not be converted into the right to receive the merger consideration, unless and until such holder will have effectively withdrawn or lost such holder's right to appraisal under the DGCL, or if a court of competent jurisdiction determines that such holder is not entitled to the relief provided by Section 262 of the DGCL, at which time such shares of Red Hat common stock will be treated as if they had been converted into the right to receive, as of the effective time, the merger consideration, less applicable tax withholdings upon surrender of such certificates that formerly represented such shares of Red Hat common stock, and such Red Hat common stock will not be deemed dissenting shares, and such holder thereof will cease to have any other rights with respect to such Red Hat common stock. Each holder of dissenting shares will only be entitled to such consideration as may be due with respect to such dissenting shares pursuant to Section 262 of the DGCL.

To exercise your appraisal rights, you must submit a written demand for appraisal to Red Hat before the vote is taken on the merger proposal, you must not submit a blank proxy or otherwise vote in favor of the merger proposal and you must continue to hold the shares of Red Hat common stock of record through the effective time. Your failure to follow the procedures specified under the DGCL will result in the loss of your appraisal rights. The DGCL requirements for exercising appraisal rights are described in further detail in this proxy statement, and the relevant section of the DGCL regarding appraisal rights is reproduced and attached as Annex D to this proxy statement. If you hold your shares of Red Hat common stock through a broker, bank or other nominee and you wish to exercise appraisal rights, you should consult with your broker, bank or other nominee to determine the appropriate procedures for the making of a demand for appraisal by such broker, bank or other nominee. Stockholders should refer to the discussion under the section entitled *Appraisal Rights* beginning on page 116 and the DGCL requirements for exercising appraisal rights reproduced and attached as Annex D to this proxy statement.

U.S. Federal Income Tax Consequences of the Merger (page 79)

The exchange of Red Hat common stock for cash pursuant to the merger will be a taxable transaction for U.S. federal income tax purposes. Accordingly, a U.S. holder (as defined herein) of Red Hat common stock who

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exchanges shares of Red Hat common stock for cash in the merger generally will recognize gain or loss in an amount equal to the difference, if any, between the amount of cash received with respect to such shares and the U.S. holder's adjusted tax basis in such shares. If you are a non-U.S. holder, the merger generally will not result in tax to you under U.S. federal income tax laws unless you have certain connections with the United States.

This proxy statement contains a general discussion of U.S. federal income tax consequences of the merger. This description does not address any non-U.S. tax consequences, nor does it pertain to state, local or other tax consequences. Consequently, you are urged to contact your own tax advisor to determine the particular tax consequences to you of the merger.

Regulatory Approvals (page 81)

Red Hat and IBM have agreed to use their respective reasonable best efforts to take all actions and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable laws to consummate the merger and the other transactions contemplated by the merger agreement as soon as practicable and no later than the termination date (as defined herein), including obtaining any requisite approvals, subject to certain specified limitations under the merger agreement. These approvals include approvals under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, which we refer to as the HSR Act, and the Council Regulation 139/2004 of the European Union, which we refer to as the Council Regulation. Red Hat and IBM filed their respective HSR Act notifications on November 21, 2018. Although we expect that all required regulatory clearances and approvals will be obtained, we cannot assure you that these regulatory clearances and approvals will be timely obtained or obtained at all, or that the granting of these regulatory clearances and approvals will not involve the imposition of additional conditions on the completion of the merger, including the requirement to divest assets. In furtherance thereof, IBM has agreed to effect certain divestitures and other dispositions and take other actions, including accepting certain restrictions on its operations and assets, if necessary to obtain all approvals and authorizations under antitrust laws. These conditions or changes could result in the conditions to the closing of the merger not being satisfied.

No Solicitation (page 92)

As of the date of the merger agreement, Red Hat and its subsidiaries agreed to immediately cease any and all existing activities, discussions or negotiations with any third party with respect to any takeover proposal (as defined herein).

Under the merger agreement, Red Hat is generally not permitted to solicit or discuss takeover proposals with third parties, subject to certain exceptions.

Except as expressly permitted by the merger agreement, Red Hat will not, and will not authorize or permit any of its subsidiaries to, or any of its subsidiaries' directors, officers or employees to, and it will use its reasonable best efforts to cause the company representatives (as defined herein) not to, and will not publicly announce any intention to, directly or indirectly:

solicit, initiate or knowingly encourage, or knowingly take any other action to facilitate, any takeover proposal or any inquiries or the making of any proposal that would reasonably be expected to lead to a

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takeover proposal, except that ministerial acts that are not otherwise prohibited by the merger agreement (e.g., answering unsolicited phone calls) will not (in and of themselves) be deemed to facilitate for purposes of, or otherwise constitute a violation of, the merger agreement;

enter into, continue or otherwise participate in any discussions or negotiations regarding, or furnish to any person (or any representative thereof) any information with respect to any takeover proposal; or

execute or enter into any letter of intent, memorandum of understanding, agreement in principle, acquisition agreement, merger agreement, option agreement, joint venture agreement, partnership agreement or other agreement, each of which we refer to as an acquisition agreement, relating to any takeover proposal;

Notwithstanding the foregoing, under certain circumstances prior to obtaining the requisite stockholder approval at the special meeting, Red Hat may furnish information with respect to Red Hat and its subsidiaries subject to a confidentiality agreement and participate in discussions or negotiations with the person making a *bona fide*, written, unsolicited takeover proposal received after the date of the merger agreement if the Red Hat Board of Directors determines in good faith that such proposal constitutes, or could reasonably be expected to lead to, a superior proposal (as defined herein), and which takeover proposal did not result from a breach of the merger agreement.

Notwithstanding anything to the contrary in the merger agreement, Red Hat and the company representatives may, in response to a *bona fide* written unsolicited takeover proposal, contact the person who made such takeover proposal solely to determine whether such person intends to provide any documents (or additional documents) containing the terms and conditions of such takeover proposal.

For a more complete description, see the section entitled **Terms of the Merger Agreement – Additional Agreements – No Solicitation** beginning on page 92.

Change of Recommendation (page 94)

As described under the section entitled **The Special Meeting – Board of Directors – Recommendation** beginning on page 28, the Red Hat Board of Directors has recommended that the holders of shares of Red Hat common stock vote **FOR** the merger proposal.

The merger agreement provides that the Red Hat Board of Directors will not (i) withhold, withdraw, qualify or modify, or propose publicly to take such actions, in a manner adverse to IBM or Sub, the recommendation of the Board of Directors to Red Hat stockholders that they vote **FOR** the adoption of the merger agreement, which we refer to as an adverse recommendation change, (ii) recommend, declare advisable or propose to recommend or declare advisable, the approval or adoption of any takeover proposal or resolve or agree to take any such action, or adopt or approve any takeover proposal, or (iii) cause or permit Red Hat to enter into any acquisition agreement constituting or related to, or which is intended to or would reasonably be expected to lead to, any takeover proposal (other than a confidentiality agreement referred to in, and in accordance with, the non-solicitation provisions of the merger agreement), or resolve or agree to take any such action.

However, prior to obtaining stockholder approval, the Red Hat Board of Directors, in certain circumstances and subject to certain limitations set forth in the merger agreement, may make an adverse recommendation change in connection with a takeover proposal that constitutes a superior proposal or in connection with an intervening event that was not known to the Red Hat Board of Directors or the consequences of which were not reasonably foreseeable as of the date of the merger agreement. If the Red Hat Board of Directors makes an adverse recommendation change

or delivers notice of a superior proposal or intervening event under the merger agreement, IBM may terminate the merger agreement and receive a termination fee from Red Hat as further described under Terms of the Merger Agreement Termination of the Merger Agreement Termination Fees beginning on page 106.

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Prior to obtaining stockholder approval, the Red Hat Board of Directors may also, in certain circumstances and subject to certain limitations set forth in the merger agreement, cause Red Hat to terminate the merger agreement in order to enter into a definitive agreement relating to a takeover proposal that constitutes a superior proposal, in each case, subject to specified obligations to IBM to negotiate and consider in good faith any revisions to the merger agreement proposed by IBM.

For a more complete description, see the sections entitled **Terms of the Merger Agreement** **Additional Agreements** **Change of Recommendations** beginning on page 94.

Conditions to the Closing of the Merger (page 102)

The following are some of the conditions that must be satisfied or waived before the merger may be consummated:

receipt of Red Hat stockholder approval of the merger agreement and the transactions contemplated thereby;

(i) any waiting period (and any extension thereof) applicable to the merger under the HSR Act having been terminated or having expired and (ii) any other approval or waiting period under certain other applicable antitrust laws, as set out in the merger agreement, having been obtained or terminated or having expired, in each case without the imposition, individually or in the aggregate, of a burdensome condition (as defined herein);

(i) no order, injunction, judgment or law by certain courts of competent jurisdiction or other governmental entities being in effect that prohibits or makes illegal the consummation of the merger or imposes a burdensome condition, and (ii) no governmental entity having instituted any action or proceeding before any certain courts or other governmental entities of competent jurisdiction, which remains pending at what would otherwise be the closing date, seeking to enjoin, restrain or prohibit the consummation of the merger or impose a legal restraint (as defined herein);

the accuracy of the representations and warranties of Red Hat, IBM and Sub in the merger agreement, subject in some instances to materiality or **material adverse effect** qualifiers, as of the closing date of the merger;

the performance in all material respects by Red Hat, on the one hand, and IBM and Sub on the other hand, of their respective obligations under the merger agreement at or prior to the closing; and

since the date of the merger agreement, no effect having occurred that would reasonably be expected to have, individually or in the aggregate, a material adverse effect, of which the existence or consequences are continuing.

Termination of the Merger Agreement (page 104)

The merger agreement may be terminated and the merger may be abandoned at any time prior to the effective time:

by the mutual written consent of IBM, Sub and Red Hat;

by either IBM or Red Hat, if:

the merger has not been consummated by 11:59 p.m., Eastern time, on October 28, 2019, which we refer to as the initial termination date, which is subject to extension for two consecutive three month periods by either party if all conditions are satisfied other than receipt of regulatory approvals and absence of legal restraints, which date, after giving effect to any extensions, we

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refer to as the termination date; provided that a party will not be able to terminate the merger agreement if it is in breach of the merger agreement and such breach is a principal cause of the failure of the merger to occur on or before the termination date;

an order having the effect of making the merger illegal or otherwise prohibiting consummation of the merger becomes final and non-appealable; provided that a party will not be able to terminate the merger agreement if it is in breach of the merger agreement and such breach is a principal cause of the issuance of such legal restraint; or

the requisite affirmative vote of Red Hat stockholders for the merger proposal has not been obtained at the special meeting of Red Hat stockholders or any adjournment or postponement thereof.

by IBM:

prior to the special meeting of Red Hat stockholders, if the Red Hat Board of Directors makes an adverse recommendation change or has delivered a notice of an intervening event (as defined herein) or a notice of a superior proposal (as defined herein) and IBM has delivered a notice of its intent to terminate the merger agreement and publicly and irrevocably waived its matching rights; or

if Red Hat has breached any representation or warranty or failed to perform any covenant, such that the conditions relating to the accuracy of Red Hat's representations and warranties or performance of covenants would fail to be satisfied (subject to a 30 business day cure period); provided that IBM will not be able to terminate the merger agreement if IBM or Sub is in material breach of the merger agreement or if any representation or warranty of IBM or Sub has become untrue, resulting in the failure of a closing condition.

by Red Hat:

prior to receipt of the requisite stockholder approval at the special meeting, in order to enter into a definitive written agreement providing for a superior proposal, provided that Red Hat pays a termination fee of \$975 million to IBM simultaneously with, and as a condition to the validity of, such termination; or

if IBM has breached any representation or warranty or failed to perform any covenant, such that the conditions relating to the accuracy of IBM's or Sub's representations and warranties or performance of covenants would fail to be satisfied (subject to a 30 business day cure period); provided that Red Hat will not be able to terminate the merger agreement if Red Hat is in material breach of the merger agreement or if any representation or warranty of Red Hat has become untrue, resulting in the failure of a closing condition.

Termination Fee (page 106)

Under the merger agreement, Red Hat will be required to pay a termination fee of \$975 million in connection with a termination of the merger agreement under specified circumstances. In no event will Red Hat be required to pay the termination fee described above on more than one occasion.

Market Prices and Dividend Data (page 111)

On October 26, 2018, the last trading day prior to the announcement of the merger, the closing price of Red Hat common stock was \$116.68 per share. On December 11, 2018, the latest practicable trading day before the date of this proxy statement, the closing price of our common stock on the NYSE was \$176.53 per share.

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We have never declared or paid any cash dividends on our common stock. Under the terms of the merger agreement, from October 28, 2018, until the effective time, Red Hat may not declare, set aside or pay any dividends on, or make any other distributions in respect of, any of its capital stock, other equity interests or voting securities without IBM's prior written consent.

Neither the SEC nor any state securities regulatory agency has approved or disapproved of the transactions described in this document, including the merger, or determined if the information contained in this document is accurate or adequate. Any representation to the contrary is a criminal offense.

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QUESTIONS AND ANSWERS

The following questions and answers are intended to address some commonly asked questions regarding the merger, the merger agreement and the special meeting. These questions and answers may not address all questions that may be important to you as a Red Hat stockholder. We encourage you to read carefully the more detailed information contained elsewhere in this proxy statement, the annexes to this proxy statement (including the merger agreement), and the documents we incorporate by reference in this proxy statement. You may obtain the documents and information incorporated by reference in this proxy statement without charge by following the instructions under the section entitled *Where You Can Find More Information* beginning on page 123. The merger agreement is attached as Annex A to this proxy statement.

***Q:* Why am I receiving these proxy materials?**

A: On October 28, 2018, Red Hat entered into the merger agreement providing for the merger of Sub, with and into Red Hat, with Red Hat surviving the merger as a wholly-owned subsidiary of IBM. The Red Hat Board of Directors is furnishing this proxy statement and form of proxy card to the holders of Red Hat common stock in connection with the solicitation of proxies in favor of the proposal to adopt the merger agreement and to approve the other proposals to be voted on at the special meeting or any adjournments or postponements thereof. This proxy statement includes information that we are required to provide to you under the rules of the SEC and is designed to assist you in voting on the matters presented at the special meeting. Stockholders of record as of the close of business on December 11, 2018 may attend the special meeting and are entitled and requested to vote on the proposals described in this proxy statement.

***Q:* What is included in the proxy materials?**

A: The proxy materials include the proxy statement and the annexes to the proxy statement, including the merger agreement, and a proxy card or voting instruction form.

***Q:* When and where is the special meeting?**

A: The special meeting will take place on January 16, 2019, at 9:00 a.m., Eastern time, at 100 East Davie Street, Raleigh, North Carolina 27601.

***Q:* What is the proposed merger and what effects will it have on Red Hat?**

A: The proposed merger is the acquisition of Red Hat by IBM through the merger of Sub with and into Red Hat pursuant to the merger agreement. If the proposal to adopt the merger agreement is approved by the requisite number of shares of Red Hat common stock and the other closing conditions under the merger agreement have been satisfied or waived, Sub will merge with and into Red Hat, with Red Hat continuing as the surviving

corporation. As a result of the merger, Red Hat will become a wholly-owned subsidiary of IBM and you will no longer own shares of Red Hat common stock. Red Hat expects to delist its common stock from the NYSE as promptly as practicable after the effective time and de-register its common stock under the Exchange Act as promptly as practicable after such delisting. Thereafter, Red Hat would no longer be a publicly-traded company.

Q: What will I receive if the merger is completed?

A: Upon completion of the merger, you will be entitled to receive the merger consideration of \$190.00 in cash, without interest and less applicable tax withholdings, for each share of Red Hat common stock that you own, unless you have properly exercised and perfected and not withdrawn your demand for appraisal rights under the DGCL with respect to such shares. For example, if you own 100 shares of Red Hat common stock, you will receive \$19,000.00 in cash, without interest and less any applicable withholding taxes, in exchange for your shares of Red Hat common stock. In no case will you own shares in the surviving corporation.

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Q: Who is entitled to vote at the special meeting?

A: If your shares of Red Hat common stock are registered in your name in the records of our transfer agent, Computershare Limited, which we refer to as Computershare, as of the close of business on the record date, you are a stockholder of record for purposes of the special meeting and are eligible to attend and vote. If you hold shares of our common stock indirectly through a broker, bank or similar institution, you are not a stockholder of record, but instead hold your shares in street name and the record owner of your shares is your broker, bank or similar institution. Instructions on how to vote shares held in street name are described under the question How do I vote my shares? below.

Q: How many votes do I have?

A: You will have one vote for each share of Red Hat common stock owned by you, as a stockholder of record or in street name, as of the close of business on the record date.

Q: May I attend the special meeting and vote in person?

A: Yes. All Red Hat stockholders as of the close of business on the record date may attend the special meeting and vote in person. All Red Hat stockholders will need to present government-issued photo identification to be admitted to the special meeting. The use of cameras, sound recording equipment, communication devices or any other similar equipment is prohibited at the special meeting without the express written permission of Red Hat. Even if you plan to attend the special meeting in person, we encourage you to complete, sign, date and return the enclosed proxy card or vote electronically over the Internet or via telephone to ensure that your shares will be represented at the special meeting. If you attend the special meeting and vote in person, your vote by ballot will revoke any proxy previously submitted. If you held your shares in street name, because you are not the stockholder of record, you may not vote your shares in person in the special meeting unless you request and obtain a valid proxy from your broker, bank or other nominee.

Q: What am I being asked to vote on at the special meeting?

A: You are being asked to consider and vote on the following proposals:

the adoption of the merger agreement, a copy of which is attached as Annex A to the proxy statement accompanying this notice;

the approval, by means of a non-binding, advisory vote, of compensation that will or may become payable to the named executive officers of Red Hat in connection with the merger; and

the approval of one or more adjournments of the special meeting to a later date or dates, if necessary or appropriate, to solicit additional proxies if there are insufficient votes to adopt the merger agreement at the then-scheduled date and time of the special meeting.

Q: How does Red Hat's Board of Directors recommend that I vote?

A: The Red Hat Board of Directors, after considering various factors described under the section entitled "Proposal 1: Adoption of the Merger Agreement - The Merger - Recommendation of Our Board of Directors and Reasons for the Merger" beginning on page 42 and after consultation with independent legal and financial advisors, unanimously (i) determined that the terms of the merger agreement, the merger and the other transactions contemplated by the merger agreement are fair to and in the best interests of Red Hat and its stockholders; (ii) adopted, approved and declared advisable the execution, delivery and performance of the merger agreement, the merger and the other transactions contemplated by the merger agreement; (iii) approved, authorized and declared advisable the consummation by Red Hat of the transactions contemplated by the merger agreement; (iv) resolved to recommend that Red Hat stockholders vote in favor of the adoption and approval of the merger agreement, the merger and other transactions contemplated by the merger agreement; and (v) resolved to submit the merger agreement to Red Hat stockholders for adoption at a duly held meeting of such stockholders.

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The Red Hat Board of Directors unanimously recommends that you vote

FOR the merger proposal;

FOR the merger-related compensation proposal; and

FOR the adjournment proposal.

Q: How does the merger consideration compare to the market price of Red Hat common stock prior to the date on which the transaction was announced?

A: The merger consideration represents a premium of (i) approximately 62.8% to Red Hat's closing stock price on October 26, 2018, the last trading day prior to the announcement of the merger, (ii) approximately 51.7% to the volume weighted average stock price of Red Hat common stock during the 30 days ended October 26, 2018 and (iii) approximately 7.8% to the highest closing stock price of Red Hat common stock during the 52-week period ended October 26, 2018.

Q: Will Red Hat pay a quarterly dividend before the completion of the merger?

A: Under the terms of the merger agreement, from October 28, 2018 until the effective time, Red Hat may not declare, set aside or pay any dividends on, or make any other distributions in respect of, any of its capital stock, other equity interests or voting securities. See the section entitled "Terms of the Merger Agreement - Conduct of Business Pending the Merger" beginning on page 89.

Q: Does IBM have the financial resources to complete the merger?

A: IBM has secured committed debt financing from lenders providing IBM with sufficient funds, together with other sources of funds available to IBM at the effective time, to consummate the merger and pay all associated fees, costs and expenses with respect to the merger. Consummation of the merger is not conditioned on IBM or Sub obtaining financing. The funding of the bridge facility provided for in the commitment letter is contingent on the satisfaction of customary conditions, including (i) the execution and delivery of definitive documentation with respect to the bridge facility in accordance with the terms sets forth in the commitment letter, and (ii) the consummation of the merger in accordance with the merger agreement.

For a more complete description of sources of funding for the merger and related costs, see "Proposal 1: Adoption of the Merger Agreement - Financing of the Merger" beginning on page 79.

Q: What do I need to do now?

A: We encourage you to read this proxy statement, the annexes to this proxy statement (including the merger agreement), and the documents we refer to in this proxy statement carefully and consider how the merger affects you. Then complete, sign, date and return, as promptly as possible, the enclosed proxy card in the accompanying reply envelope or grant your proxy electronically over the Internet or by telephone, so that your shares can be voted at the special meeting. If you hold your shares in street name, please refer to the voting instruction forms provided by your broker, bank or other nominee to vote your shares.

Q: How do I vote my shares?

A: *For stockholders of record:* If you are eligible to vote at the special meeting and are a stockholder of record, you may submit your proxy or cast your vote in any of four ways:

By Internet If you have Internet access, you may submit your proxy by following the instructions provided with your proxy materials and on your proxy card. Proxies submitted via Internet must be received by 11:59 p.m., Eastern time, on January 15, 2019.

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By Telephone You can also submit your proxy by telephone by following the instructions provided with your proxy materials and on your proxy card. Proxies submitted via telephone must be received by 11:59 p.m., Eastern time, on January 15, 2019.

By Mail You may submit your proxy by completing the proxy card enclosed with those materials, signing and dating it and returning it in the pre-paid envelope we have provided.

In Person at Our Special Meeting You can vote in person at our special meeting. In order to gain admittance, you must present valid government-issued photo identification, such as a driver's license or passport.

For holders in street name: If you hold your shares in street name and, therefore, are not a stockholder of record, you will need to follow the specific voting instructions provided to you by your broker, bank or other similar institution. If you wish to vote your shares in person at our special meeting, you must obtain a valid proxy from your broker, bank or similar institution, granting you authorization to vote your shares. In order to attend and vote your shares held in street name at our special meeting, you will need to present valid government-issued photo identification, such as a driver's license or passport, and hand in the valid proxy from your broker, bank or similar institution, along with a signed ballot that you can request at the special meeting. You will not be able to attend and vote your shares held in street name at the special meeting without valid government-issued photo identification such as a driver's license or passport, a valid proxy from your broker, bank or similar institution and a signed ballot.

If you submit your proxy by Internet, telephone or mail, and you do not subsequently revoke your proxy, your shares of Red Hat common stock will be voted in accordance with your instructions.

Even if you plan to attend the special meeting in person, you are strongly encouraged to vote your shares of Red Hat common stock by proxy. If you are a stockholder of record or if you obtain a valid proxy to vote shares which you beneficially own, you may still vote your shares of Red Hat common stock in person at the special meeting even if you have previously voted by proxy. If you are present at the special meeting and vote in person, your previous vote by proxy will not be counted.

Q: Can I change or revoke my proxy?

A: *For stockholders of record:* Yes. A proxy may be changed or revoked at any time prior to the vote at the special meeting by submitting a later-dated proxy (including a proxy submitted via the Internet or by telephone) or by giving written notice to our Corporate Secretary at our corporate headquarters. You may not change your vote over the Internet or by telephone after 11:59 p.m., Eastern time, on January 15, 2019. You may also attend the special meeting and vote your shares in person.

For holders in street name: Yes. You must follow the specific voting instructions provided to you by your broker, bank or other similar institution to change or revoke any instructions you have already provided to them.

Q: How will my shares be voted if I do not provide specific instructions in the proxy card or voting instructions form that I submit?

A: If you are a stockholder of record and if you sign, date and return your proxy card but do not provide specific voting instructions, your shares of Red Hat common stock will be voted **FOR** the merger proposal, **FOR** the merger-related compensation proposal and **FOR** the adjournment proposal.

If your shares are held in street name at a broker, bank or similar institution, your broker, bank or similar institution may under certain circumstances vote your shares on discretionary matters if you do not timely provide voting instructions in accordance with the instructions provided by them. However, if you do not provide timely instructions, your broker, bank or similar institution does not have the authority to vote on

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any non-discretionary proposals at the special meeting and a broker non-vote would occur, as explained in the following question and explanation.

Q: What is broker discretionary voting ?

A: If you hold your shares in street name, your broker, bank or other similar institution may be able to vote your shares without your instructions depending on whether the matter being voted on is discretionary or non-discretionary. Because brokers, banks and other nominee holders of record do not have discretionary voting authority with respect to any of the three proposals, if a beneficial owner of shares of Red Hat common stock held in street name does not give voting instructions to the broker, bank or other nominee with respect to any of the proposals, then those shares will not be present in person or represented by proxy at the special meeting. If there are any broker non-votes, then such broker non-votes will be counted as a vote **AGAINST** the merger proposal, but will not have any effect on the merger-related compensation proposal or the adjournment proposal. **Therefore, it is important that you instruct your broker, bank or other nominee on how you wish to vote your shares.**

Q: I understand that a quorum is required in order to conduct business at the special meeting. What constitutes a quorum?

A: A majority in voting power of Red Hat common stock issued and outstanding and entitled to vote at the special meeting, represented in person or by proxy, constitutes a quorum at the special meeting. As of the close of business on the record date, there were 176,759,752 shares of Red Hat common stock issued and outstanding and entitled to vote. If you submit a properly executed proxy by mail, telephone or the Internet, you will be considered a part of the quorum. In addition, abstentions will be counted for purposes of establishing a quorum. Broker non-votes will not be counted for purposes of establishing a quorum. As a result, 88,379,877 shares must be represented in person or by proxy to have a quorum. If a quorum is not present, the special meeting will be adjourned until a quorum is obtained, subject to the terms of the merger agreement. The affirmative vote of a majority of the voting power of the shares of Red Hat common stock entitled to vote which are present, in person or by proxy, at the special meeting or the chairman of the special meeting may adjourn the special meeting.

Q: What is required to approve the proposals submitted to a vote at the annual meeting?

A: *The merger proposal:* The affirmative vote of a majority of the shares of Red Hat common stock outstanding and entitled to vote thereon, provided a quorum is present, is required to approve the merger proposal. This means that the proposal will be approved if the number of shares voted **FOR** that proposal is greater than 50% of the total number of the votes that can be cast in respect of our outstanding shares of common stock. Abstentions and broker non-votes will have the same effect as a vote **AGAINST** the merger proposal.

The merger-related compensation proposal: The affirmative vote of a majority of the voting power of the shares of Red Hat common stock entitled to vote which are present, in person or by proxy, and voting at the special meeting, provided a quorum is present, is required to approve, by means of a non-binding, advisory vote, the merger-related compensation proposal. This means that the proposal will be approved if the number of shares voted **FOR** that

proposal is greater than 50% of the shares of Red Hat common stock entitled to vote which are present, in person or by proxy, and vote at the special meeting, provided a quorum is present. Abstentions and broker non-votes will not have any effect on the merger-related compensation proposal.

The adjournment proposal: The affirmative vote of a majority of the voting power of the shares of Red Hat common stock entitled to vote which are present, in person or by proxy, at the special meeting, whether or not a quorum is present, is required to approve the adjournment proposal. This means that the proposal will be approved if the number of shares voted **FOR** that proposal is greater than 50% of the total number of

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shares of Red Hat common stock entitled to vote which are present, in person or by proxy, at the special meeting, whether or not a quorum is present. Abstentions will have the same effect as a vote **AGAINST** the adjournment proposal. Broker non-votes will not have any effect on the adjournment proposal.

Q: How can I obtain a proxy card or voting instruction form?

A: If you lose, misplace or otherwise need to obtain a proxy card or a voting instruction form, please follow the applicable procedure below.

For stockholders of record: Please contact Computershare at 1-888-542-4427.

For holders in street name: Please contact your account representative at your broker, bank or other similar institution.

Q: Should I send in my stock certificates now?

A: No. After the merger is completed, under the terms of the merger agreement, you will receive shortly thereafter the letter of transmittal instructing you to send your stock certificates to the paying agent in order to receive the cash payment of the merger consideration for each share of your Red Hat common stock represented by the stock certificates. You should use the letter of transmittal to exchange your stock certificates for the cash payment to which you are entitled upon completion of the merger. Please do not send in your stock certificates now.

Q: I do not know where my stock certificates are, how will I get the merger consideration for my shares of Red Hat common stock?

A: If the merger is completed, the transmittal materials you will receive after the completion of the merger will include the procedures that you must follow if you cannot locate your stock certificates. This will include an affidavit that you will need to sign attesting to the loss of your stock certificates. You may also be required to post a bond as indemnity against any potential loss.

Q: What happens if I sell or otherwise transfer my shares of Red Hat common stock after the close of business on the record date but before the special meeting?

A: The record date is earlier than the date of the special meeting and the date the merger is expected to be completed. If you sell or transfer your shares of Red Hat common stock after the close of business on the record date but before the special meeting, unless special arrangements (such as the provision of a proxy) are made between you and the person to whom you sell or otherwise transfer your shares and each of you notifies Red Hat in writing of such special arrangements, you will transfer the right to receive the merger consideration if the merger is completed to the person to whom you sell or transfer your shares of Red Hat common stock, but you

will retain your right to vote these shares at the special meeting. Even if you sell or otherwise transfer your shares of Red Hat common stock after the close of business on the record date, we encourage you to complete, date, sign and return the enclosed proxy card or vote via the Internet or telephone.

Q: When do you expect the merger to be completed?

A: We are working toward completing the merger as quickly as possible and currently expect to complete the merger in the latter half of 2019. However, the exact timing of completion of the merger cannot be predicted because the completion of the merger is subject to conditions, including the adoption of the merger agreement by our stockholders and the receipt of regulatory approvals.

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Q: What happens if the merger is not completed?

A: If the merger agreement is not adopted by Red Hat stockholders or if the merger is not completed for any other reason, Red Hat stockholders will not receive any payment for their shares of Red Hat common stock. Instead, Red Hat will remain a public company, Red Hat common stock will continue to be listed and traded on the NYSE and registered under the Exchange Act, and Red Hat will continue to file periodic reports with the SEC. Under certain specified circumstances, Red Hat will be required to pay IBM a termination fee upon the termination of the merger agreement, as described under the section entitled **Terms of the Merger Agreement Termination of the Merger Agreement Termination Fees** beginning on page 106.

Q: Are there any other risks to me from the merger that I should consider?

A: Yes. There are risks associated with all business combinations, including the merger. See the section entitled **Forward-Looking Statements** beginning on page 24.

Q: Do any of Red Hat's directors or officers have interests in the merger that may differ from those of Red Hat stockholders generally?

A: Yes. For a description of the interests of our directors and executive officers in the merger, see **Proposal 1: Adoption of the Merger Agreement The Merger Interests of the Non-Employee Directors and Executive Officers of Red Hat in the Merger** beginning on page 72.

Q: What happens if the merger-related compensation proposal is not approved?

A: Approval of the merger-related compensation proposal is not a condition to completion of the merger. The vote is an advisory vote and is not binding. Accordingly, regardless of the outcome of the advisory vote, if the merger is completed, Red Hat may still pay such compensation to its named executive officers in accordance with the terms and conditions applicable to such compensation.

Q: What should I do if I receive more than one set of voting materials?

A: You may receive more than one set of voting materials, including multiple copies of this proxy statement and multiple proxy cards or voting instruction cards. For example, if you hold your shares in more than one brokerage account, you will receive a separate voting instruction card for each brokerage account in which you hold shares. If you are a stockholder of record and your shares are registered in more than one name, you will receive more than one proxy card. Please complete, date, sign and return (or vote via the Internet or telephone with respect to) each proxy card and voting instruction card that you receive.

Q: Who counts the votes?

A: Votes are counted by Computershare, our transfer agent and registrar, and are then certified by a representative of Computershare appointed by the Red Hat Board of Directors to serve as the inspector of election at the special meeting.

Q: Who may attend the special meeting?

A: Red Hat stockholders who held shares of Red Hat common stock as of the close of business on December 11, 2018.

Q: How can I obtain directions to the special meeting?

A: Red Hat stockholders may contact Red Hat Investor Relations at (919) 754-3700 to obtain directions to the special meeting.

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Q: Who pays for the expenses of this proxy solicitation?

A: Red Hat will bear the entire cost of this proxy solicitation, including the preparation, printing, mailing and distribution of these proxy materials. We may also reimburse brokerage firms and other persons representing stockholders who hold their shares in street name for reasonable expenses incurred by them in forwarding proxy materials to such stockholders. In addition, certain directors, officers and other employees, without additional remuneration, may solicit proxies in person, or by telephone, facsimile, email and other methods of electronic communication.

Q: Where can I find the vote results after the special meeting?

A: We are required to publish final vote results in a Current Report on Form 8-K to be filed with the SEC within four business days after our special meeting.

Q: Will I be subject to U.S. federal income tax upon the exchange of Red Hat common stock for cash pursuant to the merger?

A: The exchange of Red Hat common stock for cash pursuant to the merger will be a taxable transaction for U.S. federal income tax purposes. Accordingly, a U.S. holder of Red Hat common stock who exchanges shares of Red Hat common stock for cash in the merger generally will recognize gain or loss in an amount equal to the difference, if any, between the amount of cash received with respect to such shares and the U.S. holder's adjusted tax basis in such shares. If you are a non-U.S. holder, the merger generally will not result in tax to you under U.S. federal income tax laws unless you have certain connections with the United States.

For a more complete description of the U.S. federal income tax consequences of the merger, see Proposal 1: Adoption of the Merger Agreement The Merger U.S. Federal Income Tax Consequences of the Merger beginning on page 79.

This proxy statement contains a general discussion of U.S. federal income tax consequences of the merger. This description does not address any non-U.S. tax consequences, nor does it pertain to state, local or other tax consequences. Consequently, you are urged to contact your own tax advisor to determine the particular tax consequences to you of the merger.

Q: What will the holders of outstanding Red Hat equity awards receive in the merger?

A: For information regarding the treatment of Red Hat's outstanding equity awards, see the section entitled Terms of the Merger Agreement Merger Consideration Treatment of Equity Compensation beginning on page 84.

Q: Am I entitled to appraisal rights under the DGCL?

- A: If the merger is adopted by Red Hat's stockholders, stockholders who do not vote (whether in person or by proxy) in favor of the adoption of the merger agreement and who properly exercise and perfect their demand for appraisal of their shares will be entitled to appraisal rights in connection with the merger under Section 262 of the DGCL. This means that holders of Red Hat common stock are entitled to have their shares appraised by the Court of Chancery of the State of Delaware and to receive payment in cash of the fair value of the shares of Red Hat common stock, exclusive of any elements of value arising from the accomplishment or expectation of the merger, together with interest to be paid upon the amount determined to be fair value, if any, as determined by the court. Stockholders who wish to seek appraisal of their shares are in any case encouraged to seek the advice of legal counsel with respect to the exercise of appraisal rights due to the complexity of the appraisal process. Stockholders should refer to the discussion under the section entitled Appraisal Rights beginning on page 116 and the DGCL requirements for exercising appraisal rights reproduced and attached as Annex D to this proxy statement.

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Q: What is householding ?

A: Some banks, brokers and similar institutions may be participating in the practice of householding proxy materials. This means that only one copy of our proxy materials may have been sent to multiple stockholders in your household. We will promptly deliver a separate copy of the proxy materials to you if you write to us at the following address or call us at the following phone number:

Red Hat, Inc.

Attention: Investor Relations

100 East Davie Street

Raleigh, North Carolina 27601

Phone: Call (919) 754-3700 and ask to speak to Investor Relations.

To receive separate copies of the proxy materials in the future, or if you are receiving multiple copies and would like to receive only one copy for your household, you should contact your bank, broker or similar institution or you may contact us at the above address or telephone number.

Q: How can I obtain more information about Red Hat?

A: You can find more information about us from various sources described in the section entitled Where You Can Find Additional Information beginning on page 123.

Q: Who can help answer my questions?

A: If you have any questions concerning the merger, the special meeting or this proxy statement, would like additional copies of this proxy statement or need help voting your shares of Red Hat common stock, please contact our proxy solicitor:

Innisfree M&A Incorporated

501 Madison Avenue, 20th Floor

New York, New York 10022

Toll-free: (888) 750-5835

Banks & Brokers may call collect: (212) 750-5833

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FORWARD-LOOKING STATEMENTS

This proxy statement, and the documents to which we refer you in this proxy statement, as well as information included in oral statements or other written statements made or to be made by us or on our behalf, contain forward-looking statements within the meaning of the Private Securities Litigation Reform Act of 1995, including, without limitation, statements relating to the completion of the merger and statements that do not directly or exclusively relate to historical facts. You can typically identify forward-looking statements by the use of forward-looking words such as may, could, should, see, will, would, estimate, project, forecast, intend, anticipate, believe, target, plan, providing guidance and similar expressions and variations or negatives of these that are intended to identify information that is not historical in nature. Forward-looking statements by their nature address matters that are, to different degrees, uncertain, such as statements about the consummation of the proposed merger and the anticipated benefits thereof. These and other forward-looking statements are not guarantees of future results and are subject to risks, uncertainties and assumptions that could cause actual results to differ materially from those expressed in any forward-looking statements, including the failure to consummate the proposed merger or to make any filing or take other action required to consummate such merger in a timely matter or at all. The inclusion of such statements should not be regarded as a representation that any plans, estimates or expectations will be achieved. You should not place undue reliance on such statements.

These risks and uncertainties include, but are not limited to, the risks detailed in our filings with the SEC, including in our most recent filing on Form 10-K and subsequent periodic and interim reports, factors and matters described or incorporated by reference in this proxy statement, and the following factors:

Red Hat may be unable to obtain stockholder approval as required for the merger;

conditions to the closing of the merger, including obtaining required regulatory approvals, may not be satisfied or waived on a timely basis or otherwise;

a governmental entity or a regulatory body may prohibit, delay or refuse to grant approval for the consummation of the merger and may require conditions, limitations or restrictions in connection with such approvals that can adversely affect the anticipated benefits of the proposed merger or cause the parties to abandon the proposed merger;

the merger may involve unexpected costs, liabilities or delays;

Red Hat's business may suffer as a result of uncertainty surrounding the merger or the potential adverse changes to business relationships (including, without limitation, customers and partners) resulting from the proposed merger;

legal proceedings may be initiated related to the merger and the outcome of any legal proceedings related to the merger may be adverse to Red Hat;

Red Hat may be adversely affected by other general industry, economic, business and/or competitive factors;

there may be unforeseen events, changes or other circumstances that could give rise to the termination of the merger agreement or affect the ability to recognize benefits of the merger;

risks that the proposed merger may disrupt current plans and operations and present potential difficulties in employment retention as a result of the merger;

the risk that the merger may be terminated in certain circumstances that require us to pay IBM a termination fee of \$975 million;

risks related to diverting management's attention from the Red Hat's ongoing business operations;

the fact that Red Hat stockholders would forgo the opportunity to realize the potential long-term value of the successful execution of Red Hat's current strategy as an independent company; and

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there may be other risks to consummation of the merger, including the risk that the merger will not be consummated within the expected time period or at all which may affect Red Hat's business and the price of Red Hat common stock.

Consequences of material differences in results as compared with those anticipated in the forward-looking statements could include, among other things, business disruption, operational problems, financial loss, legal liability to third parties and similar risks, any of which could have a material adverse effect on Red Hat's financial condition, results of operations, credit rating or liquidity.

There can be no assurance that the merger will be completed, or if it is completed, that it will close within the anticipated time period or that the expected benefits of the merger will be realized. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date on which such statements were made.

All of the forward-looking statements we make in this proxy statement are qualified by the information contained or incorporated by reference herein, including, but not limited to, (i) the information contained under this heading and (ii) the information in our consolidated financial statements and notes thereto included in our most recent filing on Form 10-K and subsequent periodic and interim report filings (see the section entitled "Where You Can Find More Information" beginning on page 123).

Except as required by applicable law, we undertake no obligation to publicly update forward-looking statements, whether as a result of new information, future events or otherwise. Red Hat stockholders are advised, however, to consult any future disclosures we make on related subjects as may be detailed in our other filings made from time to time with the SEC.

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THE SPECIAL MEETING

The enclosed proxy is solicited on behalf of the Board of Directors for use at the special meeting of stockholders or at any adjournments or postponements thereof.

Date, Time and Place

We will hold the special meeting on January 16, 2019, at 9:00 a.m., Eastern time, at 100 East Davie Street, Raleigh, North Carolina 27601.

Purpose of the Special Meeting

At the special meeting, we will ask our stockholders of record as of the close of business on the record date to consider and vote on the following proposals:

Proposal 1 Adoption of the Merger Agreement. To consider and vote on the merger proposal;

Proposal 2 Approval, by Means of a Non-Binding, Advisory Vote, of Certain Compensatory Arrangements with Named Executive Officers. To consider and vote on the merger-related compensation proposal; and

Proposal 3 Adjournment of the Special Meeting. To consider and vote on the adjournment proposal.

Record Date; Shares Entitled to Vote; Quorum

Only stockholders of record as of the close of business on December 11, 2018 are entitled to notice of the special meeting and to vote at the special meeting or at any adjournments or postponements thereof. A list of stockholders entitled to vote at the special meeting will be available in Red Hat's corporate headquarters located at 100 East Davie Street, Raleigh, North Carolina 27601, during regular business hours for a period of at least 10 days before the special meeting and at the place of the special meeting during the special meeting.

A majority in voting power of Red Hat common stock issued and outstanding and entitled to vote at the special meeting, represented in person or by proxy, constitutes a quorum at the special meeting. As of the close of business on the record date for the special meeting, there were 176,759,752 shares of Red Hat common stock issued and outstanding and entitled to vote. If you submit a properly executed proxy by mail, telephone or the Internet, you will be considered a part of the quorum. In addition, abstentions will be counted for purposes of establishing a quorum. Broker non-votes will not be counted for purposes of establishing a quorum. As a result, 88,379,877 shares must be represented in person or by proxy to have a quorum. If a quorum is not present, the special meeting will be adjourned until a quorum is obtained, subject to the terms of the merger agreement. The affirmative vote of a majority of the voting power of the shares of Red Hat common stock entitled to vote which are present, in person or by proxy, at the special meeting or the chairman of the special meeting may adjourn the special meeting.

Vote Required; Abstentions and Broker Non-Votes

The affirmative vote of a majority of the shares of Red Hat common stock outstanding and entitled to vote thereon, provided a quorum is present, is required to approve the merger proposal. This means that the proposal will be approved if the number of shares voted **FOR** that proposal is greater than 50% of the total number of the votes that can be cast in respect of our outstanding shares of common stock. Abstentions and broker non-votes will have the same effect as a vote **AGAINST** the merger proposal.

The affirmative vote of a majority of the voting power of the shares of Red Hat common stock entitled to vote which are present, in person or by proxy, and voting at the special meeting, provided a quorum is present, is

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required to approve, by means of a non-binding, advisory vote, the merger-related compensation proposal. This means that the proposal will be approved if the number of shares voted **FOR** that proposal is greater than 50% of the total number of shares of Red Hat common stock entitled to vote which are present, in person or by proxy, and vote at the special meeting, provided a quorum is present. Abstentions and broker non-votes will not have any effect on the merger-related compensation proposal.

The affirmative vote of a majority of the voting power of the shares of Red Hat common stock entitled to vote which are present, in person or by proxy, at the special meeting, whether or not a quorum is present, is required to approve the adjournment proposal. This means that the proposal will be approved if the number of shares voted **FOR** that proposal is greater than 50% of the total number of shares of Red Hat common stock entitled to vote which are present, in person or by proxy, at the special meeting, whether or not a quorum is present. Abstentions will have the same effect as a vote **AGAINST** the adjournment proposal. Broker non-votes will not have any effect on the adjournment proposal.

Broker non-votes are shares held by a broker, bank or other nominee that are present in person or represented by proxy at the special meeting, but with respect to which the broker, bank or other nominee is not instructed by the beneficial owner of such shares on how to vote on a particular proposal and the broker does not have discretionary voting power on such proposal. Because brokers, banks and other nominee holders of record do not have discretionary voting authority with respect to any of the three proposals, if a beneficial owner of shares of Red Hat common stock held in street name does not give voting instructions to the broker, bank or other nominee with respect to any of the proposals, then those shares will not be present in person or represented by proxy at the special meeting. If there are any broker non-votes, then such broker non-votes will be counted as a vote **AGAINST** the merger proposal, but will have no effect on the merger-related compensation proposal and the adjournment proposal.

Shares Held by Red Hat's Directors and Executive Officers

As of the close of business on the record date, Red Hat directors and executive officers beneficially owned and were entitled to vote, in the aggregate, 898,713 shares of Red Hat common stock (excluding any shares of Red Hat common stock that would be delivered upon exercise or conversion of stock options or other equity-based awards), which represented approximately 0.51% of the outstanding shares of Red Hat common stock on that date. It is expected that Red Hat's directors and executive officers will vote their shares **FOR** the merger proposal, **FOR** the merger-related compensation proposal and **FOR** the adjournment proposal, although none of them has entered into any agreement requiring them to do so.

Voting of Proxies

If your shares are registered in your name with our transfer agent, Computershare, you may cause your shares to be voted by returning a signed proxy card, or you may vote in person at the special meeting. Additionally, you may submit electronically over the Internet or by phone a proxy authorizing the voting of your shares by following the instructions on your proxy card. You must have the enclosed proxy card available, and follow the instructions on the proxy card, in order to submit a proxy electronically over the Internet or by telephone. Based on your proxy cards or Internet and telephone proxies, the proxy holders will vote your shares according to your directions.

If you plan to attend the special meeting and wish to vote in person, you will be given a ballot at the meeting. If your shares are registered in your name, you are encouraged to vote by proxy even if you plan to attend the special meeting in person. If you attend the special meeting and vote in person, your vote by ballot will revoke any proxy previously submitted.

Voting instructions are included on your proxy card. All shares represented by properly executed proxies received in time for the special meeting will be voted at the special meeting in accordance with the instructions

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of the stockholder. Properly executed proxies that do not contain voting instructions will be voted (i) **FOR** the merger proposal, (ii) **FOR** the merger-related compensation proposal and (iii) **FOR** the adjournment proposal. No proxy that is specifically marked against the merger proposal will be voted in favor of the merger-related compensation, unless it is specifically marked **FOR** the approval of such proposal.

If your shares are held in street name through a broker, bank or other nominee, you may vote through your broker, bank or other nominee by completing and returning the voting form provided by your broker, bank or other nominee, or by the Internet or telephone through your broker, bank or other nominee if such a service is provided. To vote via the Internet or telephone through your broker, bank or other nominee, you should follow the instructions on the voting form provided by your broker, bank or other nominee. Under applicable stock exchange rules, brokers, banks or other nominees have the discretion to vote your shares on discretionary matters if you fail to instruct your broker, bank or other nominee on how to vote your shares with respect to such matters. The merger proposal, merger-related compensation proposal and the adjournment proposal are non-discretionary matters, and brokers, banks and other nominees therefore cannot vote on these proposals without your instructions. If you do not return your broker's, bank's or other nominee's voting form, do not vote via the Internet or telephone through your broker, bank or other nominee, if applicable, or do not attend the special meeting and vote in person with a proxy from your broker, bank or other nominee, such actions will have the same effect as if you voted **AGAINST** the merger proposal but will not have any effect on the adjournment proposal or the merger-related compensation proposal.

Revocability of Proxies

If you are a stockholder of record, you may change your vote or revoke your proxy at any time before it is voted at the special meeting by:

submitting a new proxy electronically over the Internet or by telephone after the date of the earlier submitted proxy;

delivering a written notice of revocation to our Corporate Secretary;

signing another proxy card with a later date and returning it to us prior to the special meeting; or

attending the special meeting and voting in person.

Please note that to be effective, your new proxy card, Internet or telephonic voting instructions or written notice of revocation must be received by our Corporate Secretary prior to the special meeting and, in the case of Internet or telephonic voting instructions, must be received before 11:59 p.m., Eastern time, on January 15, 2019. If you have submitted a proxy, your appearance at the special meeting, in the absence of voting in person or submitting an additional proxy or revocation, will not have the effect of revoking your prior proxy.

If you hold your shares of Red Hat common stock in street name, you should contact your broker, bank or other nominee for instructions regarding how to change your vote. You may also vote in person at the special meeting if you obtain a valid proxy from your broker, bank or other nominee. Any adjournment of the special meeting for the purpose of soliciting additional proxies will allow Red Hat stockholders who have already sent in their proxies to revoke them at any time prior to their use at the special meeting, as adjourned.

Board of Directors Recommendation

The Board of Directors, after considering various factors described under the section entitled Proposal 1: Adoption of the Merger Agreement The Merger Recommendation of Our Board of Directors beginning on page 42 and after consultation with independent legal and financial advisors, unanimously (i) determined that the terms of the merger agreement, the merger and the other transactions contemplated by the merger agreement are fair to and in the best interests of Red Hat and its stockholders; (ii) adopted, approved and declared advisable the execution, delivery and performance of the merger agreement, the merger and the other transactions

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contemplated by the merger agreement; (iii) approved, authorized and declared advisable the consummation by Red Hat of the transactions contemplated by the merger agreement; (iv) resolved to recommend that Red Hat stockholders vote in favor of the adoption and approval of the merger agreement, the merger and other transactions contemplated by the merger agreement; and (v) resolved to submit the merger agreement to Red Hat stockholders for adoption at a duly held meeting of such stockholders.

The Red Hat Board of Directors unanimously recommends that you vote (i) FOR the merger proposal, (ii) FOR the merger-related compensation proposal and (iii) FOR the adjournment proposal.

Tabulation of Votes

All votes will be tabulated by a representative of Computershare, who will act as the inspector of election appointed for the special meeting and will separately tabulate affirmative and negative votes, abstentions and broker non-votes.

Solicitation of Proxies

The expense of soliciting proxies in the enclosed form will be borne by Red Hat. We have retained Innisfree M&A Incorporated, a proxy solicitation firm, to solicit proxies in connection with the special meeting at a cost of approximately \$50,000 and an additional success fee of \$25,000 if the merger proposal is approved by our stockholders plus expenses. We have also agreed to indemnify Innisfree M&A Incorporated against losses arising out of its provision of these services as requested by Red Hat. In addition, we may reimburse brokers, banks and other custodians, nominees and fiduciaries representing beneficial owners of shares for their expenses in forwarding soliciting materials to such beneficial owners. Proxies may also be solicited by certain of our directors, officers and employees, personally or by telephone, facsimile or other means of communication. No additional compensation will be paid for such services.

Anticipated Date of Completion of the Merger

Assuming timely satisfaction of necessary closing conditions, including the approval by our stockholders of the merger proposal, we anticipate that the merger will be consummated during the latter half of 2019.

Attending the Special Meeting

Red Hat stockholders as of the close of business on the record date may attend the special meeting in person. All Red Hat stockholders should bring valid government-issued photo identification, such as a driver's license or passport.

If you hold your shares in street name and wish to vote your shares in person at our special meeting, you must obtain a valid proxy from your broker, bank or similar institution, granting you authorization to vote your shares. In order to attend and vote your shares held in street name at our special meeting, you will need to present valid government-issued photo identification, such as a driver's license or passport, and hand in the valid proxy from your broker, bank or similar institution, along with a signed ballot that you can request at the special meeting. You will not be able to attend and vote your shares held in street name at the special meeting without valid government-issued photo identification, such as a driver's license or passport, a valid proxy from your broker, bank or similar institution and a signed ballot.

The use of cameras, sound recording equipment, communication devices or any other similar equipment is prohibited at the special meeting without the express written permission of Red Hat.

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Even if you plan to attend the special meeting in person, we encourage you to complete, sign, date and return the enclosed proxy card or vote electronically over the Internet or via telephone to ensure that your shares

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will be represented at the special meeting. If you attend the special meeting and vote in person, your vote by ballot will revoke any proxy previously submitted. If you hold your shares in street name, because you are not the stockholder of record, you may not vote your shares in person at the special meeting unless you follow the procedures set forth above.

Assistance

If you need assistance in completing your proxy card or have questions regarding Red Hat's special meeting, please contact Innisfree M&A Incorporated by mail at 501 Madison Avenue, 20th Floor, New York, New York 10022 or by telephone. Stockholders may call toll-free at (888) 750-5834 and banks and brokers may call collect: (212) 750-5833.

Rights of Stockholders Who Seek Appraisal

If the merger proposal is approved by Red Hat stockholders, stockholders who do not vote (whether in person or by proxy) in favor of the adoption of the merger agreement and who properly exercise and perfect their demand for appraisal of their shares will be entitled to appraisal rights in connection with the merger under Section 262 of the DGCL. This means that holders of Red Hat common stock are entitled to have their shares appraised by the Court of Chancery of the State of Delaware and to receive payment in cash of the fair value of the shares of Red Hat common stock, exclusive of any elements of value arising from the accomplishment or expectation of the merger, together with interest to be paid upon the amount determined to be fair value, if any, as determined by the court. Stockholders who wish to seek appraisal of their shares are in any case encouraged to seek the advice of legal counsel with respect to the exercise of appraisal rights due to the complexity of the appraisal process.

Stockholders considering seeking appraisal should be aware that the fair value of their shares as determined pursuant to Section 262 of the DGCL could be more than, the same as or less than \$190.00 per share consideration payable pursuant to the merger agreement if they did not seek appraisal of their shares.

To exercise your appraisal rights, you must submit a written demand for appraisal to Red Hat before the vote is taken on the merger proposal, you must not submit a blank proxy or otherwise vote in favor of the merger proposal and you must continue to hold the shares of Red Hat common stock of record through the effective time. Your failure to follow the procedures specified under the DGCL will result in the loss of your appraisal rights. The DGCL requirements for exercising appraisal rights are described in further detail in this proxy statement, and the relevant section of the DGCL regarding appraisal rights is reproduced and attached as Annex D to this proxy statement. If you hold your shares of Red Hat common stock through a broker, bank or other nominee and you wish to exercise appraisal rights, you should consult with your broker, bank or other nominee to determine the appropriate procedures for the making of a demand for appraisal by such broker, bank or other nominee. Stockholders should refer to the discussion under the section entitled Appraisal Rights beginning on page 116 and the DGCL requirements for exercising appraisal rights reproduced and attached as Annex D to this proxy statement.

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PARTIES INVOLVED IN THE MERGER

Red Hat, Inc.

Red Hat is a leading provider of open source software solutions, using a community-powered approach to develop and offer reliable and high-performing operating system, virtualization, management, middleware, cloud, mobile and storage technologies. Red Hat employs an open source development model, which allows Red Hat to use the collective input, resources and knowledge of a global community of contributors who can collaborate to develop, maintain and enhance software because the human-readable source code for that software is publicly available and licenses permit modification.

Red Hat's offerings are designed to provide customers with high-performing, scalable, flexible, reliable and secure infrastructure technologies that meet the information technology, which we refer to as IT, needs of enterprises and service providers. Our offerings enable our customers to optimize their IT environments to increase agility and flexibility while adding and managing hybrid cloud infrastructures and building modern applications. Hybrid cloud infrastructures enable customers to deploy their applications using off-premise (public cloud) and on-premise (private cloud, virtual or physical server) IT resources to create a hybrid cloud environment that is designed to enhance efficiency while providing increased security. Red Hat's offerings are designed to perform consistently across hybrid cloud environments to offer greater choices to our customers when deploying their applications.

Red Hat also offers a wide range of services that are designed to help customers receive additional value from Red Hat technologies.

Red Hat's corporate headquarters is located at 100 East Davie Street, Raleigh, North Carolina 27601.

Red Hat was formed in 1993 and is a corporation organized in the State of Delaware. Red Hat common stock is currently listed on the NYSE under the symbol RHT.

Additional information about Red Hat and its subsidiaries is included in documents incorporated by reference in this proxy statement (see the section entitled "Where You Can Find More Information" beginning on page 123) and on its website: www.redhat.com. The information provided or accessible through Red Hat's website is not part of, or incorporated by reference in, this proxy statement.

International Business Machines Corporation

IBM focuses on the intersection of business insight and technology innovation and creates value for clients through integrated solutions and products. These integrated solutions leverage innovative technologies, deep expertise in industries and business processes, and a commitment to security and trust. IBM solutions typically create value by enabling new capabilities for clients that optimize and transform their businesses and help them engage with their customers and employees in new ways. These solutions draw from an industry-leading portfolio of consulting and IT implementation services, cloud and cognitive offerings, and enterprise systems and software, one of the world's leading research organizations all bolstered by a commitment to the secure and responsible management of data and enterprise-grade security.

IBM's corporate headquarters is located at 1 New Orchard Road, Armonk, New York 10504.

IBM was formed in 1911 as the Computing-Tabulating-Recording Company and is a corporation organized in the State of New York. IBM's common stock, par value \$0.20 per share, is currently listed on the NYSE, under the symbol

IBM.

Additional information about IBM and its subsidiaries is included on its website: www.ibm.com. The information provided or accessible through IBM's website is not part of, or incorporated by reference in, this proxy statement.

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Socrates Acquisition Corp.

Sub is a Delaware corporation and a wholly-owned subsidiary of IBM, formed on October 25, 2018, solely for the purpose of engaging in the merger and the other transactions as contemplated under the merger agreement. Upon completion of the merger, Sub will cease to exist.

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PROPOSAL 1: ADOPTION OF THE MERGER AGREEMENT

THE MERGER

This discussion of the merger is qualified in its entirety by reference to the merger agreement, which is attached to this proxy statement as Annex A and incorporated into this proxy statement by reference. You should read the entire merger agreement carefully as it is the legal document that governs the merger.

Certain Effects of the Merger on Red Hat

Upon the terms and subject to the conditions of the merger agreement and in accordance with the applicable provisions of the DGCL, on the closing date and at the effective time, Sub will merge with and into Red Hat, with Red Hat continuing as the surviving corporation and a wholly-owned subsidiary of IBM. Red Hat expects to delist its common stock from the NYSE as promptly as practicable after the effective time and de-register its common stock under the Exchange Act as promptly as practicable after such delisting. Thereafter, Red Hat would no longer be a publicly-traded company. If the merger is completed, you will not own any shares of the capital stock of the surviving corporation, and instead will only be entitled to receive the merger consideration, as described under the section entitled **Terms of the Merger Agreement – Merger Consideration** beginning on page 84.

The effective time will occur upon the filing of a certificate of merger with the Secretary of State of the State of Delaware (or at such later time as Red Hat and IBM may agree and specify in the certificate of merger).

Effect on Red Hat if the Merger is Not Completed

If the merger agreement is not adopted by Red Hat stockholders or if the merger is not completed for any other reason, Red Hat stockholders will not receive any payment for their shares of Red Hat common stock. Instead, Red Hat will remain a public company, Red Hat common stock will continue to be listed and traded on the NYSE and registered under the Exchange Act and Red Hat will continue to file periodic reports with the SEC.

Furthermore, if the merger is not consummated, and depending on the circumstances that caused the merger not to be consummated, it is likely that the price of Red Hat common stock will decline significantly. If that were to occur, it is uncertain when, if ever, the price of Red Hat common stock would return to the price at which it trades as of the date of this proxy statement.

Accordingly, if the merger is not consummated, there can be no assurance as to the effect of these risks and opportunities on the future value of your shares of Red Hat common stock. If the merger is not consummated, the Board of Directors will continue to evaluate and review Red Hat's business operations, properties and capitalization, among other things, make such changes as are deemed appropriate and continue to seek to enhance stockholder value. If the merger agreement is not adopted by Red Hat stockholders or if the merger is not consummated for any other reason, there can be no assurance that any other transaction acceptable to Red Hat or its stockholders will be offered or that Red Hat's business, prospects or results of operations will not be adversely impacted.

Under certain specified circumstances, Red Hat will be required to pay IBM a termination fee upon the termination of the merger agreement, as described under the section entitled **Terms of the Merger Agreement – Termination of the Merger Agreement – Termination Fees** beginning on page 106.

Background of the Merger

As part of Red Hat's strategic planning process, the Red Hat Board of Directors regularly reviews and discusses with Red Hat's senior management the company's performance, business strategy and competitive

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position in the industries in which it operates. In addition, the Red Hat Board of Directors and Red Hat's senior management regularly review and evaluate various strategic alternatives, including acquisitions, dispositions, major commercial partnerships and other strategic transactions, as part of ongoing efforts to strengthen Red Hat's overall business and enhance stockholder value.

As part of this ongoing process, the Red Hat Board of Directors has considered and implemented actions to enhance stockholder value, including executing a number of strategic acquisitions, including, among others, CoreOS, Inc. on January 30, 2018, Permabit Technology Corporation on July 31, 2017 and Codenvy S.A. on June 1, 2017. In the course of Red Hat's strategic planning process, representatives of Red Hat have, in the ordinary course and from time to time, discussed with various companies in the software and technology industries potential commercial partnerships that might expand their respective businesses, improve their respective customer offerings and create value for Red Hat stockholders.

Since October 2016, Guggenheim Securities has rendered advice to Red Hat regarding various strategic and financial matters. During the course of Guggenheim Securities' engagement, representatives of Guggenheim Securities interacted, on Red Hat's behalf, with various companies in the software and technology industries, including IBM, and offered general perspectives on the technology landscape and operating environment for Red Hat's offerings including hybrid multi-cloud solutions. During the period from October 2017 to December 2017, representatives of Guggenheim Securities met with representatives of IBM to discuss Red Hat, including regarding a potential commercial partnership and other strategic alternatives.

During this time period, certain members of Red Hat's senior management also met with representatives of IBM to discuss expanding the commercial partnership between the two parties. Thereafter, and until IBM and Red Hat announced the expansion of that partnership on May 8, 2018, representatives of both Red Hat and IBM were in contact regarding the implementation of the expanded commercial partnership.

In February 2018, James M. Whitehurst, Chief Executive Officer of Red Hat met the Chief Executive Officer of Party A, a technology company offering software, services, and other solutions, at a meeting of CEOs for the purposes of professional and leadership development. During the course of the discussion, the Chief Executive Officer of Party A indicated a possible interest in an acquisition of Red Hat through a transaction structured to maintain Red Hat's independence, potentially with Red Hat remaining a separate public company in which Party A would have a significant stake.

On March 22, 2018, representatives of Guggenheim Securities met with representatives of Party A (including its Chief Executive Officer) to discuss Red Hat, including regarding a potential commercial partnership and other strategic alternatives.

During the spring of 2018, representatives of Red Hat, including Paul Cormier, Executive Vice President and President, Products and Technologies, met with representatives of Party B, a technology company that specializes in Internet-related services and products, on several occasions to discuss a potential commercial partnership in the software industry.

On April 11, 2018, Mr. Whitehurst met with Ginni Rometty, Chairman, President and Chief Executive Officer of IBM, at Mrs. Rometty's invitation, to discuss the strategic landscape in which Red Hat and IBM operate, as well as ways in which the two companies could expand upon the commercial partnership that IBM and Red Hat planned to announce in May 2018.

On May 8, 2018, Red Hat and IBM announced an expansion of their existing commercial partnership in order to fuel hybrid cloud adoption in the enterprise.

On May 31, 2018, Mr. Whitehurst and Mr. Cormier met with representatives of Party A, as they had from time to time in the past, regarding commercial relationships and other potential strategic opportunities. During

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the course of these discussions, Party A reiterated an interest in pursuing an acquisition of Red Hat through a transaction structured to maintain Red Hat's independence, potentially with Red Hat remaining a separate public company in which Party A would have a significant stake. Thereafter, Mr. Whitehurst and the Chief Executive Officer of Party A planned to continue discussions later that summer. On August 1, 2018, Mr. Whitehurst contacted the Chief Executive Officer of Party A to discuss whether Party A was interested in continuing the discussion of commercial and strategic opportunities. The Chief Executive Officer of Party A indicated that Party A remained interested in pursuing a transaction with Red Hat and the two CEOs should continue the discussion about this opportunity towards the end of the year.

Thereafter, Mr. Cormier remained in contact with other representatives of Party A for purposes of discussing certain other commercial matters. Following these discussions, on September 19, 2018, Mr. Cormier and a representative of Party A agreed to schedule a meeting between senior executives of Party A (including its Chief Executive Officer) and Red Hat (including Messrs. Cormier and Whitehurst) to discuss with more specificity Party A's interest in pursuing a strategic transaction with Red Hat. This meeting was scheduled to occur and did occur on October 10, 2018.

On September 23, 2018, representatives of Guggenheim Securities met with a senior executive of IBM at the senior executive's request to discuss the businesses and prospects of each of IBM and Red Hat generally and more specifically, IBM's interest in potentially pursuing a strategic transaction with Red Hat.

On September 25, 2018, Mrs. Rometty contacted Mr. Whitehurst to schedule a meeting on the morning of September 27, 2018 when both would be in New York City, NY.

Also, on September 25, 2018, representatives of Guggenheim Securities met with the Chairman of Party A to discuss Party A's and Red Hat's commercial relationship and the potential for a strategic transaction between Party A and Red Hat.

On September 27, 2018, Mrs. Rometty and Mr. Whitehurst met in New York City, NY. At that meeting, Mrs. Rometty provided Mr. Whitehurst with a written proposal outlining IBM's offer to acquire 100% of the equity securities of Red Hat at a price of \$185 per share in cash, with the goal to preserve the independent brand and culture of Red Hat, including the goal of retaining substantially all of Red Hat's management team. Mrs. Rometty indicated that IBM was willing to work diligently to announce a transaction in approximately three weeks.

On September 30, 2018, the Red Hat Board of Directors held a special meeting to discuss IBM's proposal. Representatives of Red Hat's senior management and representatives of Guggenheim Securities and Skadden, Arps, Slate, Meagher & Flom LLP, Red Hat's external legal counsel, which we refer to as Skadden, were present during the meeting. Representatives of Skadden discussed with the Red Hat Board of Directors their fiduciary duties in considering IBM's offer and strategic alternatives. The Red Hat Board of Directors discussed, among other things, their initial views on IBM's offer, including the price offered relative to Red Hat's market valuation and recent trading history and the need to compare the value of IBM's offer to the value reflected in Red Hat's stand-alone business prospects to determine, among other things, whether any strategic third party transaction should be pursued at that time. The Red Hat Board of Directors sought the advice of Guggenheim Securities regarding IBM's offer and also potential additional counterparties that might be able to offer a compelling value in excess of the price offered by IBM. Representatives of Guggenheim Securities discussed with the Red Hat Board of Directors the industrial logic for IBM to pursue an acquisition of Red Hat and compared the industrial logic for a company like IBM to the logic that might be applicable to other potential counterparties. The Red Hat Board of Directors requested Guggenheim Securities and management to develop a list of potentially interested parties and an assessment of the parties' strategic rationale for potentially acquiring Red Hat. Following discussion among the Red Hat Board of Directors, the Red Hat Board of Directors concluded that the initial offer from IBM was inadequate. However, the Red Hat Board of

Directors authorized further exploration of a transaction with IBM and also authorized Red Hat's senior management to engage in limited, price-confirmatory due diligence discussions with IBM in order to provide IBM with information necessary to enable IBM to

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increase its offer price. The Red Hat Board of Directors also directed Red Hat management to review with the Red Hat Board of Directors management's view of Red Hat's stand-alone business prospects.

On October 1, 2018, Mr. Whitehurst called Mrs. Rometty to inform her that the Red Hat Board of Directors had evaluated IBM's proposal, but that IBM would need to present a more compelling price in order for the Red Hat Board of Directors to consider a transaction with IBM. Mr. Whitehurst also indicated that Red Hat was willing to provide limited, price-confirmatory due diligence to IBM to enable IBM to put forward a more compelling offer price. During the course of the discussion, Mrs. Rometty indicated that IBM would require that Red Hat enter into an exclusivity agreement prohibiting Red Hat from discussing or pursuing a strategic transaction with a third party for an agreed upon period, in consideration for IBM's evaluation of the transaction. On the same day, James Kavanaugh, Chief Financial Officer of IBM, called Eric Shander, Chief Financial Officer of Red Hat to discuss the scope of IBM's confirmatory due diligence process and the appropriate next steps required to facilitate information sharing, including execution of a confidentiality agreement.

Also, on October 1, 2018, a representative of Red Hat sent a draft confidentiality agreement, which we refer to as the confidentiality agreement, to a representative of IBM, which was negotiated over the ensuing days by representatives of Red Hat, IBM, Skadden and Paul, Weiss, Rifkind, Wharton, & Garrison LLP, counsel to IBM, which we refer to as Paul Weiss. On October 3, 2018, Red Hat and IBM executed the confidentiality agreement.

That same day, Paul Weiss, on behalf of IBM, provided Skadden with a draft exclusivity agreement, which provided for an exclusivity period of four weeks.

In the evening on October 1, 2018, the Red Hat Board of Directors held a special meeting, with certain members of Red Hat's senior management, Guggenheim Securities and Skadden in attendance, to continue its discussions regarding a potential transaction with IBM. During the meeting, Mr. Whitehurst and Mr. Shander reported on the discussions with Mrs. Rometty and Mr. Kavanaugh, including IBM's request for exclusivity. The Red Hat Board of Directors discussed and evaluated the benefits of contacting Party A in advance of a previously scheduled meeting with Party A on October 10, 2018, as well other third parties. Following discussion among the Red Hat Board of Directors, the Red Hat Board of Directors directed Mr. Whitehurst to call the Chief Executive Officer of Party A to inform the Chief Executive Officer of Party A that Red Hat was in the process of reviewing a potential business combination with another counterparty. The Red Hat Board of Directors also concluded that an exclusivity arrangement between IBM and Red Hat was premature under the circumstances.

On October 2, 2018, Mr. Whitehurst, at the direction of the Red Hat Board of Directors, called the Chief Executive Officer of Party A. Mr. Whitehurst informed the Chief Executive Officer of Party A that, since Red Hat's discussions with Party A, Red Hat had continued to evaluate commercial and strategic alternatives and that Red Hat was in discussions regarding a potential business combination transaction with another counterparty. Mr. Whitehurst encouraged the Chief Executive Officer of Party A to prepare any proposals for potential strategic opportunities for the previously scheduled meeting on October 10, 2018.

Also, on October 2, 2018, an executive of Party A contacted representatives of Guggenheim Securities to determine whether Red Hat had established a formal sale process. Representatives of Guggenheim Securities informed the executive of Party A that Red Hat was considering a potential business combination transaction.

On October 3, 2018, a representative of Party B contacted Mr. Cormier of Red Hat to arrange a meeting, as they had from time to time in the past.

On October 4, 2018, Mr. Kavanaugh sent a written confirmatory due diligence list to Mr. Shander.

On October 5, 2018, Mr. Cormier met with senior executives from Party B. Mr. Cormier and the executives from Party B discussed the commercial relationship between Party B and Red Hat and other potential strategic opportunities as they had discussed from time to time in the past. One of the senior executives of Party B requested that Red Hat notify Party B if Red Hat was to ever explore other strategic opportunities.

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On October 7, 2018, a member of the board of Party B contacted representatives of Guggenheim Securities to determine whether Red Hat had established a formal sale process. Representatives of Guggenheim Securities informed the board member of Party B that Red Hat was considering a potential business combination transaction. The board member of Party B asked that Red Hat afford Party B sufficient time to assess its interest in pursuing a strategic transaction with Red Hat and indicated that Party B would revert promptly.

On October 8, 2018, the Red Hat Board of Directors held a special meeting with certain representatives of Red Hat's senior management, Guggenheim Securities and Skadden in attendance. Mr. Shander reviewed with the Red Hat Board of Directors Red Hat's historical performance and, in response to the Red Hat Board of Directors' request to understand Red Hat management's view of Red Hat's stand-alone business prospects, presented three long-term forecasts, including the methodology used to create the forecasts, the assumptions underlying each forecast and the perceived challenges and risks associated with Red Hat's ability to meet such forecasts, including, among other things, the challenges of maintaining high rates of growth in the rapidly evolving technology sector. Representatives of Guggenheim Securities then discussed with the Red Hat Board of Directors matters relating to, among other things, the competitive landscape in which Red Hat operates and a preliminary review of the financial aspects of IBM's proposal, including trading multiples of peer companies, recent M&A activity in the technology and software sectors, the increased competitive and pricing pressures that Red Hat could expect to confront as enterprises moved to public, private and hybrid cloud solutions and preliminary financial analyses with respect to Red Hat based on the forecasts. Thereafter, Skadden reviewed the current regulatory environment and provided a preliminary assessment of the regulatory considerations associated with completing a transaction with either IBM or Party A. Finally, the Red Hat Board of Directors discussed and considered whether Red Hat should engage a second financial advisor. Following discussion among the directors the Red Hat Board of Directors directed Mr. Whitehurst to contact Morgan Stanley.

Also, on October 8, 2018, Mr. Whitehurst contacted Morgan Stanley to discuss engaging Morgan Stanley to act as a financial advisor in connection with a potential transaction. Red Hat retained Morgan Stanley as its financial advisor based on Morgan Stanley's qualifications, expertise and reputation, its knowledge of and involvement in recent transactions in the software industry and its knowledge of Red Hat's business and affairs.

On October 10, 2018, Red Hat senior management met with representatives from Party A. During that meeting Party A presented the high-level framework of a possible expanded commercial partnership arrangement with Red Hat. Party A indicated that it was not prepared to pursue a strategic transaction with Red Hat, citing concerns about securing regulatory approvals of a strategic transaction in the US and Europe.

On October 11, 2018, senior management from Red Hat and IBM met at the offices of Paul Weiss in New York City, NY for business due diligence sessions.

Also, on October 11, 2018, representatives from Morgan Stanley had two separate conversations with senior executives at Party B to inform the senior executives at Party B that Red Hat was in discussions regarding a potential business combination transaction with another counterparty and to ascertain Party B's interest in pursuing an acquisition.

Also, on October 11, 2018, senior executives of Party B discussed with representatives of Guggenheim Securities the process regarding a potential acquisition of Red Hat.

On October 12, 2018, the Red Hat Board of Directors held a special meeting with certain members of Red Hat's senior management, Guggenheim Securities, Morgan Stanley and Skadden in attendance. During the meeting, Mr. Whitehurst provided an update regarding the status of discussions with Party A and Party B. Thereafter, the Red Hat Board of Directors discussed whether to contact Party C, a technology company that specializes in Internet-related

services and products, to ascertain whether Party C might be interested in a strategic transaction. Following the discussion, the Red Hat Board of Directors determined that it would be in the best interests of Red Hat for Mr. Whitehurst to contact Party C regarding its interest in a potential strategic transaction and directed Mr. Whitehurst to contact Party C.

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Also, on October 12, 2018, at the direction of the Red Hat Board of Directors, Mr. Whitehurst contacted a senior executive of Party C. Mr. Whitehurst informed the senior executive of Party C that Red Hat was in discussions regarding a potential business combination transaction. That same day, a senior executive of Party C called Morgan Stanley to discuss the situation and understand the process for a potential acquisition of Red Hat.

On October 13, 2018, a senior executive of Party B discussed with representatives of Morgan Stanley, the process regarding a potential acquisition of Red Hat. Morgan Stanley advised Party B that if they were interested in pursuing an acquisition, they would need to meet Red Hat management promptly and should they submit any proposal it would need to be in excess of the 52 week high of \$176.27 in order for it to be considered by the Red Hat Board of Directors.

Also, on October 13, 2018, a senior executive from Party C spoke with Morgan Stanley and indicated that Party C was working quickly to evaluate the viability of a potential acquisition of Red Hat. Morgan Stanley advised Party C that if they were interested in pursuing an acquisition, they would need to meet Red Hat management promptly and should they submit any proposal it would need to be in excess of the 52 week high of \$176.27 in order for it to be considered by the Red Hat Board of Directors.

On October 14, 2018, representatives of Morgan Stanley sent to a senior executive of Party C a document outlining the strategic rationale of a potential acquisition of Red Hat by Party C.

On October 15, 2018, representatives of Red Hat and IBM met telephonically to discuss additional price confirmatory due diligence matters.

On October 16, 2018, the CEO of Party B contacted Mr. Whitehurst to express interest in exploring a strategic transaction between Red Hat and Party B and requested an in-person meeting with representatives of Red Hat management later that week.

Also, on October 16, 2018, the Red Hat Board of Directors held a special meeting with certain representatives of Red Hat's senior management, Guggenheim Securities, Morgan Stanley and Skadden in attendance. During the meeting, Mr. Whitehurst provided an update regarding the status of discussions with Party B, Party C and IBM. Representatives of Morgan Stanley then reviewed with the Red Hat Board of Directors the potential accretive effects of the transaction on IBM, and Morgan Stanley's preliminary assessment of IBM's capability and willingness to pay more than its then current offer of \$185 per share. Thereafter, representatives of Guggenheim Securities discussed with the Red Hat Board of Directors the potential strategic benefits to IBM of acquiring Red Hat, including the realization by incumbent technology providers, such as IBM, that Kubernetes-based orchestration platforms such as Red Hat's OpenShift are a key element of the emerging hybrid multi-cloud architecture and infrastructure.

On October 17, 2018, a senior executive from Party C called Mr. Whitehurst to share Party C's interest in pursuing an acquisition. Separately, a senior executive from Party C called representatives of Morgan Stanley to schedule an in-person meeting with representatives of Red Hat senior management later that week.

Also, on October 17, 2018, a representative of Red Hat sent a draft mutual confidentiality agreement, which we refer to as the Party B confidentiality agreement, to Party B. The Party B confidentiality agreement was negotiated over the ensuing days by representatives of Red Hat, Party B, Skadden and Party's B counsel. On October 18, 2018, Red Hat and Party B executed the Party B confidentiality agreement.

Also, on October 18, 2018, executives of Red Hat and Party B met to discuss a possible transaction. Representatives of Red Hat provided Party B with an overview of Red Hat's products, go-to-market strategy and certain financial information. Party B received information that was substantially similar to the information previously provided to

IBM.

Also, on October 17, 2018, a representative of Morgan Stanley sent a draft mutual confidentiality agreement, which we refer to as the Party C confidentiality agreement, to a senior executive of Party C. The Party C

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confidentiality agreement was negotiated over the ensuing days by representatives of Red Hat, Party C and Skadden. On October 19, 2018, Red Hat and Party C executed the Party C confidentiality agreement. Thereafter, executives of Red Hat and Party C met to discuss a possible transaction. Representatives of Red Hat provided Party C with an overview of Red Hat's products, go-to-market strategy and certain financial information. Party C received information that was substantially similar to the information previously provided to IBM.

Also, on October 19, 2018, Mrs. Rometty contacted Mr. Whitehurst to present a revised proposal to acquire all outstanding shares of Red Hat common stock at a price of \$190.00 per share in cash. The offer was conditioned upon IBM and Red Hat finalizing and announcing the transaction early in the week of October 29, 2018 and entering into an exclusivity agreement through the end of that week.

That same day, Paul Weiss, on behalf of IBM, provided Skadden with a revised draft of the exclusivity agreement, which provided for an exclusivity period through 11:59 p.m. on Friday, November 2, 2018.

Also, on October 18 and October 19, 2018, Morgan Stanley had various conversations with representatives of Party B and Party C to reiterate the necessary timing of any proposal by Party B or Party C if they were to be considered by the Red Hat Board of Directors in light of Red Hat's ongoing discussions with other parties.

On October 20, 2018, a senior executive of Party C contacted Mr. Whitehurst and indicated that Party C would not pursue an acquisition of Red Hat.

Also, on October 20, 2018, a senior executive of Party C also contacted representatives of Morgan Stanley to confirm that Party C would not pursue an acquisition of Red Hat. Party C stated it was not in a position to submit a proposal that exceeded the 52 week high of \$176.27.

That same day, a representative of Party B contacted Mr. Cormier and indicated that Party B would decline to make a proposal to acquire Red Hat; however, Party B remained interested in exploring a commercial partnership with a minority equity investment in Red Hat. Separately, a senior executive from Party B contacted Morgan Stanley and indicated that Party B would decline to make a proposal to acquire Red Hat. Party B stated it was not in a position to submit a proposal that exceeded the 52 week high of \$176.27.

On October 21, 2018, the Red Hat Board of Directors held a special meeting with certain representatives of Red Hat's senior management, Guggenheim Securities, Morgan Stanley and Skadden in attendance. During the meeting, Mr. Whitehurst and Mr. Cormier provided an update regarding the status of discussions with Party B and Party C. Thereafter, Mr. Whitehurst reviewed with the Red Hat Board of Directors Red Hat management's view of Red Hat's stand-alone business prospects. Representatives of Skadden then provided an update regarding the preliminary antitrust analysis of a potential transaction with IBM and the likely timeline for completing such a transaction. Following discussion among the Red Hat Board of Directors, Mr. Whitehurst recommended that Red Hat pursue the negotiation of a transaction with IBM at \$190 per share and grant IBM exclusivity for a limited duration through the morning of October 29, 2018. After further discussion, the Red Hat Board of Directors decided to work towards a definitive agreement on terms and conditions which maximized value for Red Hat's stockholders.

Following the special meeting, on October 21, 2018, Skadden, on behalf of Red Hat provided Paul Weiss with a revised draft of the exclusivity agreement. Red Hat and IBM executed the exclusivity agreement on October 21, 2018, which provided for an exclusivity period through 7:30 a.m. on October 29, 2018. Later that day, Paul Weiss, on behalf of IBM, provided Skadden with a draft merger agreement, which included, among other provisions, a proposed termination fee in an amount to equal 4% of Red Hat's fully diluted equity value payable by Red Hat in connection with accepting a superior proposal from a third party and no termination fee payable by IBM in the event that the

parties could not complete the transaction due to a failure to obtain antitrust and competition approvals.

During the week of October 22, 2018, certain members of Red Hat's senior management held a series of diligence calls with IBM and its representatives relating to various aspects of Red Hat's business.

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On October 22, 2018, a senior executive of IBM indicated to Mr. Whitehurst that IBM expected certain members of Red Hat's management team to execute a holder agreement, containing restrictive covenants, including a non-compete and non-solicit. On October 23, 2018, a representative of IBM provided a draft of the holder agreement to Mr. Shander.

On October 23, 2018, Skadden, on behalf of Red Hat, provided Paul Weiss with a revised draft of the merger agreement, which included a termination fee payable by Red Hat equal to 2.5% of Red Hat's fully diluted equity value and a regulatory termination fee, in an amount equal to 6% of Red Hat's fully diluted equity value, payable by IBM in the event that the parties could not complete the transaction due to a failure to obtain antitrust and competition approvals.

On October 24, 2018, Paul Weiss, on behalf of IBM, provided Skadden with a revised draft of the merger agreement. Late in the evening on October 24, 2018, representatives of Skadden and Paul Weiss discussed the merger agreement. The revised draft merger agreement did not include a regulatory termination fee and proposed a termination fee equal to 3.75% payable by Red Hat of Red Hat's fully diluted equity value.

On October 25, 2018, Skadden, on behalf of Red Hat, provided Paul Weiss with a revised draft of the merger agreement, which included a termination fee payable by Red Hat equal to 2.5% of Red Hat's fully diluted equity value and a regulatory termination fee payable by IBM, in an amount equal to 6% of Red Hat's fully diluted equity value.

Also, on October 25, 2018, a senior executive of IBM provided Red Hat with a summary proposal outlining the key terms of retention arrangements with key executives of Red Hat.

On October 25, 2018, the Red Hat Board of Directors held a special meeting with certain representatives of Red Hat's senior management, Guggenheim Securities, Morgan Stanley and Skadden in attendance. During the meeting, Mr. Whitehurst provided an update regarding the status of discussions with IBM. Thereafter, Skadden again discussed with the Red Hat Board of Directors the fiduciary duties of directors in connection with evaluating Red Hat's other strategic alternatives. Skadden also provided the Red Hat Board of Directors with an update on the antitrust analysis of a potential transaction with IBM, including anticipated timing and areas of risk. Thereafter, representatives of Skadden reviewed the key terms of the proposed merger agreement relating to deal certainty and the parties' required efforts to obtain applicable regulatory approvals, including certain open issues between the parties, including whether IBM would be required to pay a regulatory termination fee in the event that the parties could not complete the transaction due to a failure to obtain antitrust and competition approvals and the size of the termination fee payable by Red Hat in connection with accepting a superior proposal from a third party. Thereafter, Mr. Whitehurst reviewed with the Red Hat Board of Directors the proposed provisions regarding employee retention and the amount of retention awards available, as well as the retention arrangements offered by IBM to certain executive officers, which were conditional upon the closing of the merger, in consideration for such executive officer entering into the holder agreements requested by IBM. Representatives of Guggenheim Securities then discussed with the Red Hat Board of Directors matters relating to, among other things, the price per share offered by IBM compared to certain precedent transactions based upon certain valuation metrics and delivered a presentation to the Red Hat Board of Directors regarding preliminary financial analyses with respect to Red Hat based on the forecasts. Representatives of Morgan Stanley also discussed with the Red Hat Board of Directors matters relating to the premium offered by IBM compared with premiums paid in other software transactions during the past five years and delivered a presentation to the Red Hat Board of Directors regarding preliminary financial analyses with respect to Red Hat based on the forecasts.

On October 25, 2018, Mr. Whitehurst and Mrs. Rometty spoke to discuss the terms of the proposed transaction, including the regulatory termination fee and other key provisions. During this call, Mrs. Rometty indicated that IBM was unwilling to proceed with any transaction on terms that provided for a regulatory termination fee and informed

Mr. Whitehurst that if the Red Hat Board of Directors ultimately insisted on the inclusion of a regulatory termination fee IBM would terminate discussions.

On October 26, 2018, Paul Weiss, on behalf of IBM, provided Skadden with a revised draft of the merger agreement. The revised draft merger agreement did not include a regulatory termination fee and proposed a termination fee equal to 3.75% of Red Hat's fully diluted equity value.

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Late in the evening on October 26, 2018, Skadden, on behalf of Red Hat, provided Paul Weiss with a revised draft of the merger agreement. The revised draft of the merger agreement indicated that the regulatory termination fee payable by IBM remained an open issue between the principals and proposed a termination fee equal to 2.5% of Red Hat's fully diluted equity value. In the morning of October 27, 2018, representatives of Skadden and Paul Weiss discussed the merger agreement.

On October 27, 2018, the Red Hat Board of Directors held a special meeting with certain representatives of Red Hat's senior management, Guggenheim Securities, Morgan Stanley and Skadden in attendance. Representatives of Skadden reviewed with the Red Hat Board of Directors the current status of discussions regarding the inclusion of a regulatory termination fee, the parties' required efforts to obtain applicable regulatory approvals, and a clear market provision, which would prohibit IBM from acquiring any assets or business, if such acquisition would reasonably be expected to increase the risk of not obtaining, or the risk of materially delaying the obtaining of, regulatory approvals. Thereafter, the Red Hat Board of Directors considered the terms of the proposed merger agreement relating to deal certainty, including the reasonable likelihood of the consummation of the transactions contemplated by the merger agreement in light of the conditions in the merger agreement and the fact that the proposed merger agreement required that IBM use its reasonable best efforts to take certain actions necessary to obtain regulatory clearance and satisfy the regulatory conditions, including the fact that IBM agreed to accept potential structural and behavioral remedies in order to obtain regulatory approval up to a level of a material adverse effect on Red Hat or IBM (measured on a scale relative to the size of Red Hat). In light of the totality of the terms then available for the Red Hat Board of Directors' consideration and Mrs. Rometty's statement that IBM would not proceed with a transaction that provided for a regulatory termination fee, the Red Hat Board concluded that the proposed merger agreement offered a sufficiently high level of transaction certainty such that the Red Hat Board of Directors need not risk the substantial benefits of the transaction by conditioning the transaction on the inclusion of a regulatory termination fee, which was likely unobtainable from IBM, and concluded that a regulatory termination fee was not required. Mr. Whitehurst then reviewed with the Red Hat Board of Directors the status of the retention arrangements and holders agreements for certain executive officers of Red Hat.

During the day on October 27, 2018 and into October 28, 2018, representatives of the parties further negotiated, and reached resolution on, the remaining open points of the merger agreement, which included issues with respect to the parties' required efforts to obtain applicable regulatory approvals, the size of the termination fee and obligations under the interim operating covenants, including Red Hat's ability to make certain grants of equity awards prior to closing.

During the morning of October 28, 2018, the Red Hat Board of Directors met to consider IBM's offer and the terms of the merger agreement. Representatives of Red Hat senior management and representatives of Guggenheim Securities, Morgan Stanley and Skadden also were in attendance. Representatives of Skadden discussed with the Red Hat Board of Directors the fiduciary duties of directors in connection with evaluating Red Hat's strategic alternatives and the terms of the merger agreement, including, among other things, the parties' respective termination rights (including Red Hat's right to terminate the merger agreement to enter into an alternative acquisition agreement with respect to a superior proposal), the termination fee, the obligations of the parties to obtain applicable regulatory approvals, the definition of a material adverse effect and the applicable closing conditions. Also at this meeting, Guggenheim Securities reviewed with the Red Hat Board of Directors Guggenheim Securities' financial analysis of the merger consideration, as more fully described below under the section entitled Proposal 1: Adoption of the Merger Agreement

The Merger Opinions of Red Hat's Financial Advisors' Opinion of Guggenheim Securities, LLC beginning on page 47, and rendered an oral opinion, confirmed by delivery of a written opinion dated October 28, 2018, to the Red Hat Board of Directors to the effect that, as of that date and based on and subject to the matters considered, the procedures followed, the assumptions made and various limitations of and qualifications to the review undertaken, the merger consideration was fair, from a financial point of view, to Red Hat stockholders. Representatives of Morgan Stanley then reviewed with the Red Hat Board of Directors Morgan Stanley's financial analysis of the merger consideration, as

more fully described below under the section entitled "Proposal 1: Adoption of the Merger Agreement - The Merger Opinions of Red Hat's Financial Advisors - Opinion of Morgan Stanley & Co. LLC" beginning on page 60, and rendered to the Red Hat Board of Directors its oral opinion that, as of October 28, 2018 and based upon and subject to the

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assumptions made, procedures followed, matters considered and qualifications and limitations on the scope of review undertaken by Morgan Stanley as set forth in its written opinion, the merger consideration to be received by Red Hat stockholders pursuant to the merger agreement was fair, from a financial point of view, to such Red Hat stockholders (such opinion was subsequently confirmed by delivery of a written opinion dated October 28, 2018 following the meeting). After discussing the proposed transaction and considering the presentations by Skadden, Guggenheim Securities and Morgan Stanley, the Red Hat Board of Directors unanimously (i) determined that the terms of the merger agreement, the merger and the other transactions contemplated by the merger agreement are fair to and in the best interests of Red Hat and its stockholders; (ii) adopted, approved and declared advisable the execution, delivery and performance of the merger agreement, the merger and the other transactions contemplated by the merger agreement; (iii) approved, authorized and declared advisable the consummation by Red Hat of the transactions contemplated by the merger agreement; (iv) resolved to recommend that Red Hat stockholders vote in favor of the adoption and approval of the merger agreement, the merger and other transactions contemplated by the merger agreement; and (v) resolved to submit the merger agreement to Red Hat stockholders for adoption at a duly held meeting of such stockholders. In connection with the execution of the merger agreement, certain of Red Hat's executive officers entered into retention arrangements with IBM and new restrictive covenant agreements with IBM.

On October 28, 2018, Red Hat and IBM issued a joint press release announcing the execution of the merger agreement.

Recommendation of Our Board of Directors and Reasons for the Merger

Recommendation of the Red Hat Board of Directors to Adopt the Merger Agreement, thereby Approving the Transactions Contemplated by the Merger Agreement.

On October 28, 2018, the Red Hat Board of Directors, after considering various factors described below, and after consultation with independent legal and financial advisors, unanimously (i) determined that the terms of the merger agreement, the merger and the other transactions contemplated by the merger agreement are fair to and in the best interests of Red Hat and its stockholders; (ii) adopted, approved and declared advisable the execution, delivery and performance of the merger agreement, the merger and the other transactions contemplated by the merger agreement; (iii) approved, authorized and declared advisable the consummation by Red Hat of the transactions contemplated by the merger agreement; (iv) resolved to recommend that Red Hat stockholders vote in favor of the adoption and approval of the merger agreement, the merger and other transactions contemplated by the merger agreement; and (v) resolved to submit the merger agreement to Red Hat stockholders for adoption at a duly held meeting of such stockholders.

The Red Hat Board of Directors unanimously recommends that you vote FOR the proposal to adopt the merger agreement, thereby approving the transactions contemplated by the merger agreement, including the merger.

Reasons for the Merger

In recommending that Red Hat's stockholders vote in favor of the merger proposal, the Red Hat Board of Directors considered a number of potentially positive factors, including, but not limited to, the following (which factors are not necessarily presented in order of relative importance):

Premium to Market Price. The fact that the merger consideration of \$190.00 per share in cash to be received by the holders of shares of Red Hat common stock in the merger represents a significant premium over the market price at which shares of Red Hat common stock traded prior to the announcement of the execution of the merger agreement, including the fact that the merger consideration represents a premium of:

approximately 62.8% over the closing stock price on October 26, 2018, the last trading day prior to the announcement of the transaction;

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approximately 51.7% over the volume weighted average stock price of shares of Red Hat common stock during the 30 days ended October 26, 2018; and

approximately 7.8% over the highest closing stock price of shares of Red Hat common stock during the 52-week period ended October 26, 2018.

Form of Consideration. The fact that the proposed merger consideration is all cash, which provides stockholders certainty of value and liquidity for their shares of Red Hat common stock while eliminating long term business and execution risks.

Opinion of Guggenheim Securities, LLC. The opinion of Guggenheim Securities, dated October 28, 2018, to the Red Hat Board of Directors as to the fairness, from a financial point of view and as of the date of the opinion, of the merger consideration to the holders of Red Hat common stock, which opinion was based on and subject to the matters considered, the procedures followed, the assumptions made and various limitations of and qualifications to the review undertaken as more fully described below in the section entitled Proposal 1: Adoption of the Merger Agreement The Merger Opinions of Red Hat s Financial Advisors Opinion of Guggenheim Securities, LLC beginning on page 47.

Opinion of Morgan Stanley & Co. LLC. The opinion of Morgan Stanley to the Red Hat Board of Directors on October 28, 2018, which was subsequently confirmed in writing on such date, that, as of such date and based upon and subject to the assumptions made, procedures followed, matters considered and qualifications and limitations on the scope of review undertaken by Morgan Stanley as set forth in its written opinion, the merger consideration to be received by Red Hat stockholders pursuant to the merger agreement was fair, from a financial point of view, to such Red Hat stockholders as more fully described below in the section entitled Proposal 1: Adoption of the Merger Agreement The Merger Opinions of Red Hat s Financial Advisors Opinion of Morgan Stanley & Co. LLC beginning on page 60.

Fair Value. The Red Hat Board of Directors believed that the merger represents fair value for the shares of Red Hat common stock, taking into account the Red Hat Board of Directors familiarity with Red Hat s current and historical financial condition, results of operations, business, competitive position and prospects, as well as Red Hat s future business plan and potential long-term value.

Loss of Opportunity. The Red Hat Board of Directors considered the possibility that, if it declined to adopt the merger agreement, there may not be another opportunity for Red Hat s stockholders to receive a comparably priced transaction.

Market Check. In addition to continuing then ongoing discussions with Party A, after receipt of IBM s merger proposal, the Red Hat Board of Directors, with the assistance of Guggenheim Securities and Morgan Stanley, considered other parties that would be most likely to have an interest in acquiring Red Hat. After considering advice that Party A, Party B and Party C were the most likely of the strategic buyers considered to have a strategic interest in, and be willing to pay a competitive price for, Red Hat, the Red Hat Board of

Directors solicited the interest of Party A, Party B and Party C. The Red Hat Board of Directors considered the fact that, following discussions with each of Party A, Party B and Party C, Party A was only willing to pursue a commercial partnership arrangement with Red Hat on terms to be developed by Party A and Red Hat, Party B only offered to explore a commercial partnership with an investment in Red Hat and that none of the parties contacted were willing to pursue a strategic transaction with Red Hat at a price more favorable than the price offered by IBM.

Arms-Length Negotiations. The fact that the Red Hat Board of Directors and Red Hat's senior management, in coordination with Red Hat's outside legal and financial advisors, vigorously negotiated on an arms-length basis with IBM with respect to price and other terms and conditions of the merger agreement, including obtaining a price increase by IBM from its initial price of \$185.00 per share to a price of \$190.00 per share as well as the stated position of IBM that the agreed price was the highest price per share to which IBM was willing to agree. In addition, the Red Hat Board of Directors noted that as to matters related to retention arrangements for key executives, arrangements were not discussed with IBM until after discussions with Party A, Party B and Party C ceased, IBM increased its

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price per share to a price of \$190.00 per share and substantially all terms of the merger agreement were agreed.

Review of Strategic Alternatives. The Red Hat Board of Directors considered, after a thorough review of Red Hat's long-term strategic goals and opportunities, competitive environment and short- and long-term performance in light of Red Hat's strategic plan, and discussions with Red Hat's senior management and Red Hat's outside legal and financial advisors, the challenges and risks of continuing as a stand-alone public company and the potential strategic alternatives available to Red Hat including the potential commercial partnerships proposed by Party A and Party B. Following such review, the Red Hat Board of Directors determined that the value offered to Red Hat's stockholders pursuant to the merger agreement is more favorable to Red Hat's stockholders than the alternative of remaining an independent public company and pursuing Red Hat's long-term plan (taking into account the potential risks, rewards and uncertainties associated therewith) and/or exploring the terms and scope of any potential commercial partnership with either Party A or Party B.

Risks Inherent in Red Hat's Business Plan. The Red Hat Board of Directors considered Red Hat's short-term and long-term financial projections and the perceived challenges and risks associated with Red Hat's ability to meet such projections, including the challenges of maintaining high rates of growth in the rapidly evolving technology sector, as well as the risks and uncertainties described in the risk factors and forward looking statements sections of Red Hat's disclosures filed with the SEC, including the fact that Red Hat's actual financial results in future periods could differ materially and adversely from the projected results.

Board Carefully Studied the Transaction. The fact that the Red Hat Board of Directors met, along with Red Hat's financial and legal advisors, to evaluate and discuss the material terms and conditions of, and other matters related to, the merger, in person and telephonically nine times between September 27, 2018, the date that representatives of IBM first proposed a business transaction to representatives of Red Hat, and October 28, 2018, the date the merger agreement was signed.

Best Value Reasonably Available. The Red Hat Board of Directors considered, after a thorough review of the process conducted, that \$190.00 per share in cash and the terms of the merger agreement offer the best value reasonably attainable for holders of Red Hat common stock.

Terms of the Merger Agreement. The Red Hat Board of Directors considered that the provisions of the merger agreement, including the respective representations, warranties and covenants and termination rights of the parties and termination fees payable by Red Hat, are reasonable and customary. The Red Hat Board of Directors also believed that the terms of the merger agreement include the most favorable terms reasonably attainable from IBM.

Conditions to the Consummation of the Merger; Likelihood of Closing. The Red Hat Board of Directors considered the reasonable likelihood of the consummation of the transactions contemplated by the merger agreement in light of the conditions in the merger agreement to the obligations of IBM, as well as Red Hat's ability to seek specific performance to prevent breaches of the merger agreement, including to cause the

merger to be consummated if all of the conditions to IBM's obligations to effect the merger closing have been satisfied or waived.

Regulatory Approvals. The Red Hat Board of Directors considered the fact that the merger agreement requires that IBM use its reasonable best efforts to take certain actions necessary to obtain regulatory clearance and satisfy the regulatory conditions, including the fact that IBM agreed to accept potential structural and behavioral remedies in order to obtain regulatory approval, including IBM's commitment to divest certain assets or businesses of Red Hat and other additional remedies on Red Hat or IBM, unless such additional remedies would result in, or would reasonably be expected to result in a material adverse effect on Red Hat or IBM (measured on a scale relative to the size of Red Hat). The Red Hat Board of Directors also considered the fact that actions taken to maintain Red Hat as an open and neutral platform would not be taken into account when determining whether a remedy would result in a material adverse effect. For a more complete description of IBM's obligations to obtain required regulatory approvals, see the section below entitled "Terms of the Merger Agreement - Additional Agreements - Efforts to Complete the Merger" beginning on page 97. The merger agreement also provides an appropriate termination date by which time

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Form 10-K
(Page No.)

Consent of Independent Registered Public Accounting Firm 42

All other schedules are not submitted because they are not applicable or not required or because the required information is included in the financial statements or notes thereto.

Except for those portions thereof incorporated by reference in this Form 10-K, the 2004 Annual Report and the Proxy Statement are not to be deemed filed as part of this report.

(a)(3) Exhibits

Reference is made to the Exhibit Index which is found on page 40 of this Annual Report on Form 10-K.

(b) Reports on Form 8-K

Form 8-K filed on February 5, 2004, reporting under Items 7 and 12, announcing the Company's results for the fiscal quarter ended December 27, 2003.

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SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

GIGA-TRONICS INCORPORATED

By /s/ GEORGE H. BRUNS JR.
George H. Bruns, Jr.
Chairman of the Board and Chief
Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

<u>/s/ GEORGE H. BRUNS JR</u>	Chairman of the Board and Chief Executive Officer	<u>6/3/2004</u>
George H. Bruns, Jr.	(Principal Executive Officer)	(Date)
<u>/s/ MARK H. COSMEZ II</u>	Vice President, Finance, Chief Financial Officer and Secretary	<u>6/15/2004</u>
Mark H. Cosmez II	(Principal Accounting Officer)	(Date)
<u>/s/ JAMES A. COLE</u>	Director	<u>6/3/2004</u>
James A. Cole		(Date)
<u>/s/ KENNETH A HARVEY</u>	Director	<u>6/4/2004</u>
Kenneth A. Harvey		(Date)
<u>/s/ ROBERT C. WILSON</u>	Director	<u>6/3/2004</u>
Robert C. Wilson		(Date)
<u>/s/ WILLIAM E. WILSON</u>	Director	<u>6/3/2004</u>
William E. Wilson		(Date)

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GIGA-TRONICS INCORPORATED

INDEX TO EXHIBITS

- 3.1 Articles of Incorporation of the Registrant, as amended, previously filed as Exhibit 3.1 to Form 10-K for the fiscal year ended March 27, 1999 and incorporated herein by reference.
 - 3.2 By-laws of Registrant, as amended, previously filed as Exhibit 3.2 to Form 10-K for the fiscal year ended March 28, 1998, and incorporated herein by reference.
 - 10.1 1990 Restated Stock Option Plan and form of Incentive Stock Option Agreement, previously filed on November 3, 1997 as Exhibit 99.1 to Form S-8 (33-39403) and incorporated herein by reference.**
 - 10.2 Standard form Indemnification Agreement for Directors and Officers, previously filed on June 21, 1999, as Exhibit 10.2 to Form 10-K for the fiscal year ended March 27, 1999 and incorporated herein by reference.**
 - 10.3 Lease between Giga-tronics Incorporated and Calfront Associates for 4650 Norris Canyon Road, San Ramon, CA, dated December 6, 1993, previously filed as Exhibit 10.12 to Form 10-K for the fiscal year ended March 26, 1994 and incorporated herein by reference.
 - 10.4 Employee Stock Purchase Plan, previously filed on August 29, 1997, as Exhibit 99.1 to Form S-8 (33-34719), and incorporated herein by reference.**
 - 10.8 2000 Stock Option Plan and form of Incentive Stock Option Agreement, previously filed on September 8, 2000 as Exhibit 99.1 to Form S-8 (33-45476) and incorporated herein by reference.**
 - 21* Significant Subsidiaries.
 - 23 Consent of Independent Registered Public Accounting Firm. (See page 42 of this Annual Report on Form 10-K.) Exhibits
 - 31.1 Certification of Chief Executive Officer pursuant to Section 302 of Sarbanes-Oxley Act.
 - 31.2 Certification of Chief Financial Officer pursuant to Section 302 of Sarbanes-Oxley Act.
 - 32.1 Certification of Chief Executive Officer pursuant to Section 906 of Sarbanes-Oxley Act.
 - 32.2 Certification of Chief Financial Officer pursuant to Section 906 of Sarbanes-Oxley Act.
- * Attached as exhibits to this Form 10-K.
** Management contract or compensatory plan or arrangement.