

RED HAT INC
Form 8-K
May 27, 2011

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the

Securities Exchange Act of 1934

Date of report (Date of earliest event reported): May 25, 2011

Red Hat, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or Other Jurisdiction of Incorporation)

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001-33162
(Commission File Number)

06-1364380
(IRS Employer Identification No.)

1801 Varsity Drive, Raleigh, North Carolina
(Address of Principal Executive Offices)

27606
(Zip Code)

(919) 754-3700

(Registrant's Telephone Number, Including Area Code)

Not Applicable

(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- .. Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- .. Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- .. Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- .. Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers

(e) On May 25, 2011, the Compensation Committee of the Board of Directors (the Committee) of Red Hat, Inc. (the Company):

approved the annual base salaries of the Company's principal executive officer, principal financial officer and other named executive officers (collectively, the Executive Officers), to be effective as of August 1, 2011;

established the target award amounts for the Company's fiscal year ending February 29, 2012 (FY2012) for the Executive Officers under the Company's Executive Variable Compensation Plan (EVCP);

established the financial performance objectives that will be used to determine the cash award amounts for the Executive Officers for FY2012 under the EVCP;

approved the performance objectives and a form of award agreement for use with grants of performance share units (PSUs) in FY2012 with payouts based on the Company's financial performance (the Operating Performance PSU Agreement);

approved the performance objective and a form of award agreement for use with grants of PSUs in FY2012 with payouts based on the performance of the Company's common stock (the Share Price PSU Agreement);

approved the inclusion of the peer group to be used to measure performance in PSU award agreements to be used for grants of PSUs in FY2012 (the Peer Group); and

approved the performance objective to be included in the form of award agreement to be used for grants of performance-based restricted stock awards (Performance RSAs) in FY2012.

Executive Base Salaries

The annual base salaries for the Executive Officers approved by the Committee are set forth on Exhibit 99.1 to this Current Report on Form 8-K (this Form 8-K).

FY2012 Target Award Amounts under the EVCP

The target award amounts under the EVCP for FY2012 for the Executive Officers, approved by the Committee, are set forth on Exhibit 99.1 to this Form 8-K. For a discussion of the EVCP, see the Company's Current Report on Form 8-K filed with the Securities and Exchange Commission (the SEC) on May 16, 2007 (the May 2007 Form 8-K).

FY2012 Performance Objectives under the EVCP

As approved by the Committee, the financial performance objectives for FY2012 under the EVCP are (a) a specified dollar amount of total revenues, (b) a specified dollar amount of cash flow from operations plus excess tax benefits from share-based payment arrangements and (c) a specified percentage of operating margin, excluding the impact of expense related to share-based payment arrangements and the amortization of intangible assets. The cash flow from operations and operating margin performance objectives are considered non-GAAP financial measures.

The total revenue and operating margin performance objectives are based on a Euro/U.S. dollar exchange rate of 1.00 Euros: U.S.\$1.42 and a yen/ U.S. dollar exchange rate of 82 yen: U.S.\$1.00, and these objectives are subject to adjustment if actual exchange rates for these currencies differ from these assumed rates by 5% or more. Additionally, the following items shall be excluded in determining whether any financial performance objective has been satisfied for FY2012: the impact of acquisitions and divestitures approved by the Board of Directors, goodwill write-offs, restructuring charges, litigation and insurance settlement charges, the impact of discontinued operations and the cumulative effect of changes in tax laws or accounting procedures. The Committee has reserved the right to exercise negative discretion to limit or forego any of

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these exclusions and may adjust any financial performance objective for FY2012 in its discretion as permitted by Section VIII of the EVCP. For a discussion of the EVCP, see the May 2007 Form 8-K.

The Committee determined that 75% of a participant's target award amount will be based upon the financial performance objectives discussed above, and 25% of a participant's target award amount will be based on individual performance objectives or the achievement of individual goals, which may be objectively or subjectively determined (the Individual Objectives). Individual Objectives relate to strategy development, planning and/or implementation, corporate initiatives, succession planning, retention of key employees, executive development and operational improvements. The Committee determined that each of the financial performance

objectives discussed above will be weighted equally in calculating the financial component of the award, and, with respect to each financial metric and the Individual Objectives metric, payments range from 0 – 50% per metric. The target award amounts approved by the Committee for the Executive Officers are set forth on Exhibit 99.1 of this Form 8-K.

Operating Performance PSU Agreement

The Operating Performance PSU Agreement, the form of which is filed as Exhibit 99.2 hereto, is intended for use with certain grants of PSUs to Executive Officers in FY2012. Each Operating Performance PSU represents the right to receive in the future one share of the Company's common stock, or at the Company's election, the value of such share, according to a formula specified in the Operating Performance PSU Agreement and subject to the terms and conditions of the Operating Performance PSU Agreement. Capitalized terms not defined in this summary are defined in the Operating Performance PSU Agreement.

Except as set forth below, the terms of the Operating Performance PSU Agreement are substantially similar to the terms of the Company's form of Performance Share Unit Agreement filed as Exhibit 99.1 to the Company's Current Report on Form 8-K filed with the SEC on October 15, 2007 (the October 2007 Form 8-K). The summary of such terms in the October 2007 Form 8-K is incorporated by reference herein.

Under the Operating Performance PSU Agreement, an executive will be granted a performance share unit award for a target number of PSUs, and depending on the Company's financial performance, the executive may earn up to 200% of the target number of PSUs (the Maximum PSUs) over a performance period with three separate performance segments corresponding to three fiscal years of the Company (the Operating Performance Period). Up to 25% of the Maximum PSUs may be earned in respect of the first performance segment; up to 50% of the Maximum PSUs may be earned in respect of the second performance segment, less the amount earned in the first performance segment; and up to 100% of the Maximum PSUs may be earned in respect of the third performance segment, less the amount earned in the first and second performance segments.

The number of PSUs earned, according to the specified formula in the Operating Performance PSU Agreement, will be determined based on a comparison of the Company's performance during each of its fiscal years ending during the Operating Performance Period with respect to Percentage Revenue Growth and Percentage Operating Income Growth (the Performance Goals) as compared to the performance of the Peer Group companies during each such year of the Operating Performance Period with respect to the same Performance Goals.

If a Change in Control occurs, and provided the executive's continuous service with the Company or any of its affiliates as an employee, consultant or director (a Business Relationship) has not ceased, the Committee may determine that either (i) all of the shares underlying the performance share unit award that have not previously been paid or earned will be treated as earned (x) to the Target Performance Share Unit level if the Change in Control occurs during the first or second Measuring Year or (y) based on the Company's performance as of the last day of the most recently completed fiscal quarter before the date that the Change in Control occurs if the Change in Control occurs during the third Measuring Year, and will be paid out in a single lump sum within 30 days following the Change in Control or (ii) the Operating Performance PSU Agreement will be continued, assumed, converted or substituted for immediately following a Change in Control, using restricted stock of the Company, Parent Corporation or Surviving Corporation.

The foregoing description of the terms of the Operating Performance PSU Agreement does not purport to be complete and is qualified in its entirety by the provisions of the form of Operating Performance Performance Share Unit Agreement filed as Exhibit 99.2 hereto and incorporated by reference herein.

Share Price Performance PSU Agreement

The Share Price Performance PSU Agreement, the form of which is filed as Exhibit 99.3 hereto, is intended for use with certain grants of PSUs to Executive Officers in FY2012. Each Share Price Performance PSU represents the right to receive in the future one share of the Company's common stock, or at the Company's election, the value of such share, according to a formula specified in, and subject to the terms and conditions of, the Share Price Performance PSU Agreement. Capitalized terms not defined in this summary are defined in the Share Price Performance PSU Agreement.

Except as set forth below, the terms of the Share Price Performance PSU Agreement are substantially similar to the terms of the Company's form of Performance Share Unit Agreement (Fiscal Year 2010 – SPP Form) filed as Exhibit 99.1 to the Company's Current Report on Form 8-K filed with the SEC on June 29, 2009 (the June 2009 Form 8-K). The summary of such terms in the June 2009 Form 8-K is incorporated by reference herein.

Under the Share Price Performance PSU Agreement, an executive will be granted an award for a target number of PSUs, and depending on the performance of the Company's common stock over a thirty-six month period beginning on March 1, 2011 (the Share Price Performance Period), the executive may earn up to 200% of the target number of PSUs. The number of PSUs earned, according to the formula specified in the Share

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Price Performance PSU Agreement, will be determined based on a comparison of the performance of the Company's stock price relative to the performance of the stock price of the Peer Group companies during the Share Price Performance Period. This performance is measured by the change in the average price of common stock calculated over the ninety-day periods ending at both the beginning and the end of the Share Price Performance Period.

The foregoing description of the terms of the Share Price Performance PSU Agreement does not purport to be complete and is qualified in its entirety by the provisions of the form of Share Price Performance Performance Share Unit Agreement filed as Exhibit 99.3 hereto and incorporated by reference herein.

Peer Group

The Peer Group approved by the Committee to be used to measure performance for Operating Performance PSUs and Share Price Performance PSUs to be granted to Executive Officers in FY2012 is set forth on Exhibit 99.4 to this Form 8-K.

Performance Objective for FY2012 Performance RSAs

The Committee approved a specified dollar amount of total revenues as the performance objective for awards of Performance RSAs to Executive Officers in FY2012 (the RSA Performance Goal). If the Company fails to achieve the RSA Performance Goal for FY2012, then all shares of restricted stock subject to the award are forfeited. If the Company achieves the Performance Goal for FY2012, 25% of the restricted stock vests on July 16, 2012, and the remainder vests ratably on a quarterly basis over the course of the subsequent three year period, provided that the executive's Business Relationship with Red Hat has not ceased. Capitalized terms not defined in this summary are defined in the Performance RSA Agreement filed as Exhibit 99.4 to the Company's Current Report on Form 8-K filed with the SEC on May 25, 2010 (the May 2010 Form 8-K). The summary of the terms in the May 2010 Form 8-K is incorporated by reference herein.

The foregoing description of the terms of the Performance RSA Agreement does not purport to be complete and is qualified in its entirety by the provisions of the form of Performance RSA Agreement filed as Exhibit 99.4 to the May 2010 Form 8-K and incorporated by reference herein.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

See Exhibit Index attached hereto.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: May 27, 2011

RED HAT, INC.

By: /s/ R. Brandon Asbill
Name: R. Brandon Asbill
Title: Assistant Secretary

EXHIBIT INDEX

| Exhibit No. | Description |
|------------------------|--|
| 99.1 | Executive Base Salaries and Target Award Amounts under Red Hat, Inc. s Executive Variable Compensation Plan for the Fiscal Year Ending February 29, 2012 |
| 99.2 | Form of Operating Performance Performance Share Unit Agreement adopted May 25, 2011 |
| 99.3 | Form of Share Price Performance Performance Share Unit Agreement adopted May 25, 2011 |
| 99.4 | Peer Group for PSUs to be Granted in FY2012 |