

RED HAT INC
Form 8-K
May 10, 2018

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 6, 2018

Red Hat, Inc.

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or Other Jurisdiction
of Incorporation)

001-33162
(Commission

06-1364380
(IRS Employer

File Number)

Identification No.)

100 East Davie Street, Raleigh, North Carolina
(Address of Principal Executive Offices)

27601
(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))
Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 or Rule 12b-2 of the Securities Exchange Act of 1934.

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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

(e) On May 6, 2018, the Compensation Committee of the Board of Directors (the Committee) of Red Hat, Inc. (the Company):

established the annual base salaries of the Company's principal executive officer, principal financial officer and other named executive officers (collectively, the Executive Officers);

established the target award amounts for the Company's fiscal year ending February 28, 2019 (FY2019) for the Executive Officers under the Company's Executive Variable Compensation Plan (EVC Plan);

established the financial performance objectives that will be used to determine the cash award amounts for the Executive Officers for FY2019 under the EVC Plan;

approved the performance objectives for use with grants of performance share units (PSUs) in FY2019 with payouts based on the Company's revenue and operating income (the Operating PSUs);

approved the performance objective for use with grants of PSUs in FY2019 with payouts based on the total shareholder return (TSR) provided by the Company's common stock (the TSR PSUs);

approved the use of the peer group (the Peer Group) to be used for measuring performance for PSUs to be awarded in FY2019;

approved new forms of award agreements to be used in connection with grants of equity awards; and

established the performance objective to be included in the form of award agreement to be used for grants of restricted stock awards (RSAs) in FY2019.

Executive Base Salaries

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

FY2019 Target Award Amounts under the EVC Plan

The target award amounts under the EVC Plan for FY2019 for the Executive Officers are set forth on Exhibit 99.1 to this Form 8-K. For a discussion of the EVC Plan, 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).

FY2019 Performance Objectives under the EVC Plan

The financial performance objectives for FY2019 under the EVC Plan are (a) a specified dollar amount of total revenues, (b) a specified dollar amount of cash flow from operations 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 operating margin performance objective is considered a non-GAAP financial measure.

The revenue and operating margin performance objectives are based on a Euro/U.S. dollar exchange rate of 1.22 Euro: U.S. \$1.00 and a yen/ U.S. dollar exchange rate of 107 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 2% or more. Additionally, the following items shall be excluded in determining whether any financial performance objective has been satisfied for

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FY2019: 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 these exclusions and may adjust any financial performance objective for FY2019 in its discretion as permitted by Section VIII of the EVC Plan. For a discussion of the EVC Plan, 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, 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 PSUs

The Committee approved the performance objectives to be used with, and authorized the grant to each Executive Officer of, an Operating PSU award. Each Operating 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 Operating PSU agreement (the "Operating PSU Agreement"). In May 2018, the Committee approved a new form of Operating PSU Agreement that provides that members of the Peer Group who report an operating loss will be excluded from calculating Percentage Operating Income Growth and removes references to Section 162(m) of the Internal Revenue Code of 1986, as amended ("Section 162(m)"). The material terms of the Operating PSU Agreement are substantially similar to the terms of the Company's form of Performance Share Unit Agreement filed as Exhibit 99.2 to the Company's Current Report on Form 8-K filed with the SEC on May 23, 2017 (the "May 2017 Form 8-K"). The summary of such terms in the May 2017 Form 8-K is incorporated by reference herein.

Under the Operating PSU Agreement, an executive will be granted an 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 period with two separate performance segments. The first segment measures performance at the end of the second fiscal year within the Performance Period against performance in the Base Year. The second segment measures performance at the end of the third fiscal year of the Performance Period against performance in the Base Year. Up to 50% of the Maximum PSUs may be earned in respect of the first performance segment and up to 100% of the Maximum PSUs may be earned in respect of the second performance segment, less the amount earned in respect of the first performance segment.

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

If the executive's continuous service with the Company or any of its affiliates as an employee, consultant or director (a "Business Relationship") ceases for any reason prior to the end of the Performance Period, any then unearned PSUs will be forfeited; provided, however, if the executive's Business Relationship ceases by reason of death or Disability or by reason of the Company's termination of the executive without Good Cause, he or she will be entitled to payment of a pro rata portion of the earned PSUs for the performance segment in which the Business Relationship ceased.

If a Change in Control occurs, and provided the executive's Business Relationship has not ceased, the Committee may determine that either (i) all of the shares underlying the 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 two fiscal years of the Performance Period 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 fiscal year in the Performance Period, and will be paid out in a single lump sum within 45 days following the Change in Control, or (ii) the Operating Performance PSUs 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 PSU awards and the Operating PSU Agreement does not purport to be complete and is qualified in its entirety by the provisions of the form of Operating PSU Agreement filed as Exhibit 99.2 to the May 2017 Form 8-K.

TSR PSUs

The Committee approved the performance objective to be used with, and authorized the grant to each Executive Officer of, a TSR PSU award. Each TSR 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 form of TSR PSU agreement (the "TSR PSU Agreement"). In May 2018, the Committee approved a new form of TSR PSU Agreement that removes references to Section 162(m). The material terms of the TSR PSU Agreement are substantially similar to the terms of the Company's form of TSR PSU Agreement filed as Exhibit 99.3 to the May 2017 Form 8-K. The summary of such terms in the May 2017 Form 8-K is incorporated by reference herein.

Under the TSR PSU Agreement, an executive will be granted an award for a target number of PSUs, and depending on the Company's TSR performance over a thirty-six month period (the "TSR 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 TSR PSU Agreement, will be determined based on Red Hat's TSR growth measured against the TSR growth of specified peer companies during the TSR Performance Period. Stock price performance is measured by the change in the average price of common stock calculated over the ninety trading day periods ending at both the beginning and the end of the TSR Performance Period. TSR is determined by measuring stock price performance plus any cash dividends payable with respect to a record date set, and not rescinded, within the TSR Performance Period.

If the executive's Business Relationship ceases for any reason prior to the end of the Performance Period, any then unearned PSUs will be forfeited; provided, however, if the executive's Business Relationship ceases by reason of death or Disability or by reason of the Company's termination of the executive without Good Cause, he or she will be entitled to payment of a pro rata portion of the earned PSUs for the Performance Period.

If a Change in Control occurs, and provided the executive's Business Relationship has not ceased, the Committee may determine that either (i) all of the shares underlying the award that have not previously been paid or earned will be treated as earned based on the Relative TSR Performance as of the date that the Change in Control occurs using the per share equivalent of the cash consideration and securities paid or payable to the Company or its stockholders in connection with the Change in Control as the Average Closing Price, and will be paid out in a single lump sum within 30 days following the Change in Control, or (ii) the TSR PSUs 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 TSR PSU awards and the TSR PSU Agreement does not purport to be complete and is qualified in its entirety by the provisions of the form of TSR PSU Agreement filed as Exhibit 99.3 to the May 2017 Form 8-K and incorporated by reference herein.

Peer Group

The Peer Group approved by the Committee to be used to measure performance for each of the Operating PSU and the TSR PSU awards in FY2019 is set forth on Exhibit 99.2 to this Form 8-K.

RSAs

The Committee authorized the grant to each Executive Officer of a RSA award, subject to the terms and conditions of the form of RSA Agreement (the "RSA Agreement"). In May 2018, the Committee approved a new form of RSA Agreement that removed references to Section 162(m). An executive's right to receive the shares subject to a RSA award is subject to achievement of a specified dollar amount of revenues established by the Committee as the performance objective for FY2019 (the "RSA Performance Goal"). If the Company fails to achieve the RSA Performance Goal for FY2019, then all shares of restricted stock subject to the award are forfeited. If the Company achieves the Performance Goal for FY2019, 25% of the restricted stock vests on July 16, 2019, 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.

If a Change in Control occurs, and provided the executive's Business Relationship has not ceased, the RSAs either (i) may be continued, assumed, converted or substituted for immediately following the Change in Control, and if within one year of the Change in Control, the executive's Business Relationship is terminated by the Company or its successor without Good Cause or by the executive for Good Reason, all of the restricted stock vests, or (ii) all of the restricted stock shall be treated as vested immediately prior to the Change in Control. In the event that the Change in Control occurs prior to the Vesting Start Date, then the RSA Performance Goal shall be deemed to have been achieved.

The material terms of the RSA Agreement are substantially similar to the terms of the Company's RSA Agreement filed as Exhibit 99.5 to the May 2017 Form 8-K. The foregoing description of the terms of the RSA Agreement does not purport to be complete and is qualified in its entirety by the provisions of the form of RSA Agreement filed as Exhibit 99.5 to the May 2017 Form 8-K and incorporated by reference herein.

Capitalized terms not defined in this 8-K are defined in the form of the applicable equity award agreement.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

See Exhibit Index attached hereto.

EXHIBIT INDEX

Exhibit

| No. | Description |
|------------|---|
| 99.1 | <u>Executive Base Salaries and Target Award Amounts under Red Hat, Inc.'s Executive Variable Compensation Plan for the Fiscal Year Ending February 28, 2019</u> |
| 99.2 | <u>Peer Group for PSUs Granted in FY2019</u> |

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 10, 2018

RED HAT, INC.

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