

INTERNATIONAL BUSINESS MACHINES CORP  
Form S-8  
January 31, 2003

As filed with the Securities and Exchange Commission on January 31, 2003

Registration No. 333-

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SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549  
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Form S-8  
REGISTRATION STATEMENT  
Under  
THE SECURITIES ACT OF 1933  
-----

INTERNATIONAL BUSINESS MACHINES CORPORATION  
(Exact name of registrant as specified in its charter)

New York  
(State or other jurisdiction  
of incorporation or organization)

13-0871985  
(I.R.S. Employer Identification No.)

New Orchard Road  
Armonk, New York 10504  
(Address of Principal Executive Offices)

-----  
Second Amended and Restated Access360 1999 Stock Option Plan  
(Full Title of the Plan)  
-----

Andrew Bonzani, Esq.  
Assistant Secretary and Associate General Counsel  
International Business Machines Corporation  
Armonk, New York 10504  
(914) 499-1900  
(Name, address and telephone number, including area code, of agent for service)  
-----

Copies to:  
Scott A. Barshay, Esq.  
Cravath, Swaine & Moore  
Worldwide Plaza  
825 Eighth Avenue  
New York, NY 10019  
(212) 474-1000

CALCULATION OF REGISTRATION FEE

Proposed

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Title of securities to be registered	Amount to be registered	Proposed maximum offering price per share	maximum aggregate offering price
Common Stock, par value \$.20 per share	93,081 [1]	\$0.52 [2]	\$48,402.12 [2]

[1] Based on the number of shares subject to outstanding options under the Second Amended and Restated Access360 1999 Stock Option plan as of January 31, 2003, divided by a conversion factor to reflect the number of shares of IBM Common Stock for which such options are exercisable

pursuant to the Agreement and Plan of Merger dated as of September 2, 2002, among IBM, Tufts Acquisition Corp. and Access360 (the "Merger Agreement").

[2] Estimated solely for the purpose of determining the registration fee in accordance with Rule 457(h) under the Securities Act of 1933 on the basis of the weighted average exercise price of the outstanding options under the Second Amended and Restated Access360 Stock Option Plan as of January 31, 2003, multiplied by a conversion factor to reflect the price at which such options could be exercised to purchase IBM Common Stock pursuant to the Merger Agreement.

Pursuant to Rule 416 under the Securities Act of 1933, to the extent additional shares of IBM Common Stock may be issued or issuable as a result of a stock split or other distribution declared at any time by the Board of Directors while this registration statement is in effect, this registration statement is hereby deemed to cover all of such additional common stock.

Part II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The following documents previously filed with the Securities and Exchange Commission are incorporated by reference herein and shall be deemed a part hereof:

(a) The Annual Report of International Business Machines Corporation ("IBM") on Form 10-K for the fiscal year ended December 31, 2001, file number 102360, filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act").

(b) All other reports filed by IBM pursuant to Section 13(a) or 15(d) of the Exchange Act since December 31, 2001.

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(c) The description of IBM's common stock, contained in IBM's registration statements filed pursuant to Section 12 of the Exchange Act, and any amendment or report filed for the purpose of updating any such description.

All documents filed by IBM pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act, after the date hereof and prior to the filing of a post-effective amendment which indicates that all securities offered have been sold or which deregisters all securities then remaining unsold, shall be deemed to be incorporated by reference herein and to be a part hereof from the date of filing of such documents.

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

### ITEM 4. DESCRIPTION OF SECURITIES.

Not applicable.

### ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL.

The validity of the IBM common stock, par value \$.20 per share, offered hereby has been passed upon by Andrew Bonzani, Assistant Secretary and Associate General Counsel of IBM. As of January 31, 2003, Mr. Bonzani beneficially owns shares of IBM common stock, par value \$.20 per share, and options to purchase shares of IBM common stock, par value \$.20 per share.

### ITEM 6. INDEMNIFICATION OF DIRECTORS AND OFFICERS.

The By-Laws of IBM (Article VI, Section 6) provide the following:

"The Corporation shall, to the fullest extent permitted by applicable law as in effect at any time, indemnify any person made, or threatened to be made, a party to an action or proceeding whether civil or criminal (including an action or proceeding by or in the right of the Corporation or any other corporation of any type or kind, domestic or foreign, or any partnership, joint venture, trust, employee benefit plan or other enterprise, for which any director or officer of the Corporation served in any capacity at the request of the Corporation), by reason of the fact that such person or such person's testator or intestate was a director or officer of the Corporation, or served such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise in any capacity, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees actually and necessarily incurred as a result of such action or proceeding, or any appeal therein. Such indemnification shall be a contract right and shall include the right to be paid advances of any expenses incurred by such person in connection with such action, suit or proceeding, consistent with the provisions of applicable law in effect at any time. Indemnification shall be deemed to be 'permitted' within the meaning of the first sentence hereof if it is not expressly prohibited by applicable

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law as in effect at the time."

The Certificate of Incorporation of IBM (Article Eleven) provides the following:

"Pursuant to Section 402(b) of the Business Corporation Law of the State of New York, the liability of the Corporation's directors to the Corporation or its stockholders for damages for breach of duty as a director shall be eliminated to the fullest extent permitted by the Business Corporation Law of the State of New York, as it exists on the date hereof or as it may hereafter be amended. No amendment to or repeal of this Article shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal."

With certain limitations, Sections 721 through 726 of the New York Business Corporation Law permit a corporation to indemnify a director or officer made a party to an action (i) by a corporation or in its right in order to procure a judgment in its favor unless he shall have breached his duties, or (ii) other than an action by or in the right of the corporation in order to procure a judgment in its favor, if such director or officer acted in good faith and in a manner he

reasonably believed to be in or, in certain cases not opposed to such corporation's interest and additionally, in criminal actions, had no reasonable cause to believe his conduct was unlawful.

In addition, IBM maintains directors' and officers' liability insurance policies.

Item 7. Exemption from Registration Claimed.

Not applicable.

Item 8. Exhibits.

Exhibit Number	Description
5.1	Opinion of Andrew Bonzani, Esq., Assistant Secretary and Associate General Counsel, regarding the legality of the securities being issued
23.1	Consent of PricewaterhouseCoopers LLP
23.2	Consent of Andrew Bonzani, Esq., Assistant Secretary and Associate General Counsel (included in Exhibit 5.1)
24.1	Power of Attorney
24.2	Certified Resolutions of the IBM Board of Directors authorizing execution of this registration statement by Power of Attorney.

Item 9. Undertakings.

(a) The undersigned registrant hereby undertakes:

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(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement to include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

### SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the Town of North Castle, State of New York, on the 31st day of January, 2003.

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INTERNATIONAL BUSINESS MACHINES  
CORPORATION,

By: /s/ Andrew Bonzani

-----  
Name: Andrew Bonzani, Esq.  
Title: Assistant Secretary and  
Associate General Counsel

Pursuant to the requirements of the Securities Act of 1933, this  
Registration Statement has been signed by the following persons in the  
capacities indicated, on the 31st day of January, 2003.

Signature	Title
* ----- Samuel J. Palmisano	President and Chief Executive Officer (Principal Executive Officer)
* ----- John R. Joyce	Senior Vice President and Chief Financial Officer (Principal Financial Officer)
* ----- Robert F. Woods	Vice President and Controller
* ----- Cathleen Black	Director
* ----- Kenneth I. Chenault	Director
* ----- Nannerl O. Keohane	Director
* ----- Charles F. Knight	Director
* ----- Minoru Makihara	Director
* ----- Lucio A. Noto	Director
* -----	Director

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John B. Slaughter

\*

----- Director  
Sidney Taurel

\*

----- Director  
Alex Trotman

\*

----- Director  
Charles M. Vest

\* The undersigned, by signing his name hereto, does hereby execute this Registration Statement pursuant to powers of attorney filed as Exhibit 24.1 to this Registration Statement.

By: /s/ Andrew Bonzani

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Andrew Bonzani, Esq.  
Attorney-in-Fact

EXHIBIT INDEX

EXHIBIT NO.

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EXHIBIT 5.1

January 31, 2003

International Business Machines Corporation  
New Orchard Road

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Armonk, NY 10504

Ladies and Gentlemen:

I am Assistant Secretary and Associate General Counsel of International Business Machines Corporation (herein called the "Corporation") and an attorney duly admitted to practice in the State of New York. I am familiar with the Registration Statement on Form S-8 (the "Registration Statement") under the Securities Act of 1933 (the "Securities Act") regarding the shares of common stock, par value \$.20 per share, of the Corporation (the "Shares") to be issued pursuant to the Second Amended and Restated Access360 1999 Stock Option Plan (the "Plan").

I have reviewed such documents and records as I have deemed necessary or appropriate to enable me to express an informed opinion with respect to the matters covered hereby.

Based upon the foregoing, I am of the opinion that, when issued or sold in accordance with the terms of the Plan, the Shares will be duly authorized, legally issued, fully paid and nonassessable. The Plan does not require IBM shareholder approval because directors and officers (as defined in Section 16 of the Securities Exchange Act of 1934, as amended) will not be receiving awards under the Plan.

I hereby consent to the use of my name in the Registration Statement as counsel who has passed upon the legality of the Shares, and to the use of this opinion as an Exhibit to the Registration Statement.

Very truly yours,

/s/ Andrew Bonzani

-----  
Andrew Bonzani, Esq.  
Assistant Secretary and Associate  
General Counsel

EXHIBIT 23.1

CONSENT OF INDEPENDENT ACCOUNTANTS

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of our report dated January 17, 2002, except for Note w, as to which the date is June 3, 2002, relating to the financial statements, which appears in the Current Report on Form 8-K dated November 4, 2002. We also consent to the incorporation by reference of our report dated January 17, 2002 relating to the financial statement schedule, which appears in International Business Machines Corporation's Annual Report on Form 10-K for the year ended December 31, 2001.

We also consent to the incorporation by reference in this Registration Statement of our report dated June 28, 2002 relating to the financial statements, which appears in the Annual Report of the IBM Tax Deferred Savings 401(k) Plan on Form 11-K for the year ended December 31, 2001.

/s/ PricewaterhouseCoopers LLP

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PricewaterhouseCoopers LLP  
New York, New York  
January 31, 2003

EXHIBIT 24.1

POWER OF ATTORNEY OF SAMUEL J. PALMISANO

KNOW ALL PERSONS BY THESE PRESENTS, that I, the undersigned President and Chief Executive Officer of International Business Machines Corporation, a New York corporation (the "Corporation"), which is to file with the Securities and Exchange Commission (the "SEC") under the provisions of the Securities Act of 1933 one or more Registration Statements on Form S-3, S-4, S-8, and/or other appropriate Form, for shares of capital stock of the Corporation or other interests whether issuable in connection with the acquisition of Access360, or upon the exercise or surrender of any options assumed or exchanged by the Corporation that were issued by Access360, hereby constitute and appoint Louis V. Gerstner, Jr., John M. Thompson, Edward M. Lineen, John R. Joyce, Robert F. Woods, Jesse J. Greene, Jr., Daniel E. O'Donnell and Andrew Bonzani, and each of them, my true and lawful attorneys-in-fact and agents, with full power to act, together or each without the others, for me and in my name, place and stead, in any and all capacities, to sign, or cause to be signed electronically any and all of said Registration Statements (which Registration Statements may constitute post-effective amendments to registration statements previously filed with the SEC) and any and all amendments to the aforementioned Registration Statements and to file said Registration Statements and amendments thereto so signed with all exhibits thereto, and with any and all other documents in connection therewith, with the SEC, hereby granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform any and all acts and things requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, I, the undersigned, have executed this Power of Attorney as of this 30 day of July 2002.

/s/ Samuel J. Palmisano

-----  
Samuel J. Palmisano  
President and Chief Executive Officer

POWER OF ATTORNEY OF JOHN R. JOYCE

KNOW ALL PERSONS BY THESE PRESENTS, that I, the undersigned Senior Vice President and Chief Financial Officer of International Business Machines Corporation, a New York corporation (the "Corporation"), which is to file with the Securities and Exchange Commission (the "SEC") under the provisions of the

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Securities Act of 1933 one or more Registration Statements on Form S-3, S-4, S-8, and/or other appropriate Form, for shares of capital stock of the Corporation or other interests whether issuable in connection with the acquisition of Access360, or upon the exercise or surrender of any options assumed or exchanged by the Corporation that were issued by Access360, hereby constitute and appoint Louis V. Gerstner, Jr., John M. Thompson, Samuel J. Palmisano, Edward M. Lineen, Robert F. Woods, Jesse J. Greene, Jr., Daniel E. O'Donnell and Andrew Bonzani, and each of them, my true and lawful attorneys-in-fact and agents, with full power to act, together or each without the others, for me and in my name, place and stead, in any and all capacities, to sign, or cause to be signed electronically any and all of said Registration Statements (which Registration Statements may constitute post-effective amendments to registration statements previously filed with the SEC) and any and all amendments to the aforementioned Registration Statements and to file said Registration Statements and amendments thereto so signed with all exhibits thereto, and with any and all other documents in connection therewith, with the SEC, hereby granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform any and all acts and things requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, I, the undersigned, have executed this Power of Attorney as of this 30 day of July 2002.

/s/ John R. Joyce

-----  
John R. Joyce  
Senior Vice President and Chief  
Financial Officer

POWER OF ATTORNEY OF ROBERT F. WOODS

KNOW ALL PERSONS BY THESE PRESENTS, that I, the undersigned Vice President and Controller of International Business Machines Corporation, a New York corporation (the "Corporation"), which is to file with the Securities and Exchange Commission (the "SEC") under the provisions of the Securities Act of 1933 one or more Registration Statements on Form S-3, S-4, S-8, and/or other appropriate Form, for shares of capital stock of the Corporation or other interests whether issuable in connection with the acquisition of Access360, or upon the exercise or surrender of any options assumed or exchanged by the Corporation that were issued by Access360, hereby constitute and appoint Louis V. Gerstner, Jr., John M. Thompson, Samuel J. Palmisano, Edward M. Lineen, John R. Joyce, Jesse J. Greene, Jr., Daniel E. O'Donnell and Andrew Bonzani, and each of them, my true and lawful attorneys-in-fact and agents, with full power to act, together or each without the others, for me and in my name, place and stead, in any and all capacities, to sign, or cause to be signed electronically any and all of said Registration Statements (which Registration Statements may constitute post-effective amendments to registration statements previously filed with the SEC) and any and all amendments to the aforementioned Registration Statements and to file said Registration Statements and amendments thereto so signed with all exhibits thereto, and with any and all other documents in connection therewith, with the SEC, hereby granting unto said attorneys-in-fact and agents, and each of them, full power

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and authority to do and perform any and all acts and things requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, I, the undersigned, have executed this Power of Attorney as of this 30 day of July 2002.

/s/ Robert F. Woods

-----  
Robert F. Woods  
Vice President and Controller

POWER OF ATTORNEY OF IBM DIRECTOR

KNOW ALL PERSONS BY THESE PRESENTS, that I, the undersigned Director of International Business Machines Corporation, a New York corporation (the "Corporation"), which is to file with the Securities and Exchange Commission (the "SEC") under the provisions of the Securities Act of 1933 one or more Registration Statements on Form S-3, S-4, S-8, and/or other appropriate Form, for shares of capital stock of the Corporation or other interests whether issuable in connection with the acquisition of Access360, or upon the exercise or surrender of any options assumed or exchanged by the Corporation that were issued by Access360, hereby constitute and appoint Louis V. Gerstner, Jr., John M. Thompson, Samuel J. Palmisano, Edward M. Lineen, John R. Joyce, Robert F. Woods, Jesse J. Greene, Jr., Daniel E. O'Donnell and Andrew Bonzani, and each of them, my true and lawful attorneys-in-fact and agents, with full power to act, together or each without the others, for me and in my name, place and stead, in any and all capacities, to sign, or cause to be signed electronically any and all of said Registration Statements (which Registration Statements may constitute post-effective amendments to registration statements previously filed with the SEC) and any and all amendments to the aforementioned Registration Statements and to file said Registration Statements and amendments thereto so signed with all exhibits thereto, and with any and all other documents in connection therewith, with the SEC, hereby granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform any and all acts and things requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, I, the undersigned, have executed this Power of Attorney as of this 30 day of July 2002.

/s/ Cathleen Black

-----  
Cathleen Black  
Director

/s/ Kenneth I. Chenault

-----  
Kenneth I. Chenault  
Director

/s/ Nannerl O. Keohane

-----  
Nannerl O. Keohane  
Director

/s/ Charles F. Knight

-----  
Charles F. Knight  
Director

/s/ Minoru Makihara

-----  
Minoru Makihara  
Director

/s/ Lucio A. Noto

-----  
Lucio A. Noto  
Director

/s/ John B. Slaughter

-----  
John B. Slaughter  
Director

/s/ Sidney Taurel

-----  
Sidney Taurel  
Director

/s/ Alex Trotman

-----  
Alex Trotman  
Director

/s/ Charles M. Vest

-----  
Charles M. Vest  
Director

EXHIBIT 24.2

INTERNATIONAL BUSINESS MACHINES CORPORATION

CERTIFICATE OF THE ASSISTANT SECRETARY

I, Andrew Bonzani, the undersigned Assistant Secretary of International Business Machines Corporation, a New York Corporation, do hereby certify as

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follows:

Attached hereto as Exhibit A is a true copy of the resolutions adopted by the Board of Directors of International Business Machines Corporation, authorizing the officers of the Corporation to execute the Registration Statement, to which this certificate is attached as an exhibit, by power of attorney.

IN WITNESS WHEREOF, I have executed this certificate as of this 31st day of January, 2003.

By: /s/ Andrew Bonzani

-----  
Andrew Bonzani  
Assistant Secretary

Exhibit A to Exhibit 24.2

RESOLUTIONS REGARDING ACCESS360

RESOLVED that the acquisition of Access360, on substantially the terms and conditions presented to the Board, is hereby approved, and that the Chairman of the Board, the President and Chief Executive Officer, the Vice Chairman, any Senior Vice President, the Vice President, Corporate Development, and any other Vice President, be, and each of them individually hereby is, authorized and empowered to approve, execute and deliver in the name and on behalf of the Company any agreements, instruments, plans and other documents (and any amendments thereto) necessary or appropriate in connection with the acquisition, or any of the other matters or transactions related thereto, including without limitation the preparation, execution and filing of any merger or acquisition agreements, plans or certificates, the preparation of any company-specific incentive plans, the assumption of any stock, option, stock purchase or other plans or the delivery or issuance of shares of capital stock of the Company in substitution, exchange or payment therefor; and

RESOLVED that the Board of Directors of the Company hereby authorizes the issuance of authorized but unissued shares or the delivery of treasury shares of Capital Stock, \$.20 par value, of the Company (the "Shares"), in connection with the payment of the purchase price for the acquisition, the assumption of any stock, option or other plans or the delivery or issuance of shares of capital stock of the Company in substitution, exchange or payment therefor; and

RESOLVED that the proper officers of the Company be, and hereby are, authorized and empowered to prepare for filing with the Securities and Exchange Commission (the "SEC") under the provisions of the Securities Act of 1933, as amended, one or more registration statements relating to the Shares, and that each of Louis V. Gerstner, Jr., John M. Thompson, Samuel J. Palmisano, Edward M. Lineen, John R. Joyce, Robert F. Woods, Jesse J. Greene, Jr., Daniel E. O'Donnell and Andrew Bonzani, be, and each of them hereby is, vested with full power to act, together or each without the others, in any and all capacities, in the name and on behalf of the Company to sign or cause to be signed electronically, such registration statements and any and all amendments to the aforementioned registration statements, and to file said

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registration statements and amendments thereto so signed with all exhibits thereto, and any and all other documents in connection therewith, with the SEC, and all actions in connection with the preparation, execution and filing of said registration statements with the SEC on behalf of and as attorneys for the Company are hereby ratified, approved and adopted in all respects; and

RESOLVED that the proper officers of the Company be, and they hereby are, authorized in the name and on behalf of the Company, to take any and all action which they may deem necessary or advisable in order to effect the registration or qualification (or exemption therefrom) of the Shares for issue, offer, sale or trade under the Blue Sky or securities laws of any of the States of the United States of America as well as in any foreign jurisdiction and political subdivisions thereof, and in connection therewith to execute, acknowledge, verify, deliver, file or cause to be published any applications, reports, consents to service of process and other papers

and instruments which may be required under such laws, and to take any and all further action which they may deem necessary or advisable in order to maintain any such registration, qualification or exemption for as long as they deem necessary or as required by law, and that the execution by such officers of any such paper or document, or the doing by them of any act in connection with the foregoing matters shall conclusively establish their authority therefor from the Company and the ratification by the Company of the papers and documents so executed and the actions so taken; and

RESOLVED that the Company is hereby authorized to list the Shares on any public exchanges, and that the proper officers of the Company are hereby authorized on behalf of the Company to execute all listing applications, fee agreements and other documents in connection with the foregoing; and

RESOLVED that the proper officers of the Company be, and they hereby are, authorized to take all such further action and to execute all such further instruments and documents in the name and on behalf of the Company and under its corporate seal or otherwise, and to pay all fees, expenses and taxes as in their judgment shall be necessary, proper or advisable in order fully to carry out the intent and accomplish the purposes of the foregoing Resolutions; and

RESOLVED that the proper officers of the Company shall have the authority to further delegate, in whole or in part, the authority provided in these resolutions to any other officer or employee of the Company or its subsidiaries.