

Judge Hellerstein

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DONALD R. LOMAX, On Behalf of Itself and  
All Others Similarly Situated,

Plaintiff,

vs.

INTERNATIONAL BUSINESS MACHINES  
CORPORATION, and MARK LOUGHRIDGE,

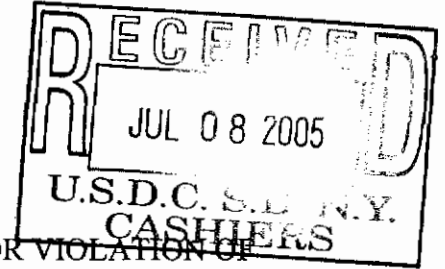
Defendants.

Civ. No.

CLASS ACTION

COMPLAINT FOR VIOLATION OF  
THE FEDERAL SECURITIES LAWS

DEMAND FOR JURY TRIAL



Plaintiff, Donald R. Lomax, individually and on behalf of all other persons and entities similarly situated, by his undersigned attorneys, for his complaint against the above-captioned defendants, alleges upon personal knowledge as to himself and his own acts, and upon information and belief as to all other matters, based upon, *inter alia*, the investigation made by and through his attorneys, which investigation included, among other things, a review of the public documents, Securities and Exchange Commission ("SEC") filings, analyst reports, news releases and media reports concerning International Business Machines Corporation ("IBM" or the "Company"), as follows:

**NATURE OF THE ACTION**

1. This is a federal securities class action on behalf of all persons and entities, other than defendants, who purchased or otherwise acquired the securities of IBM between April 5, 2005 and April 15, 2005, inclusive, seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

### **JURISDICTION AND VENUE**

2. The claims alleged herein arise under Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C. §§ 78j(b) and 78t, and Rule 10b-5, 17 C.F.R. § 240.10b-5 promulgated thereunder.

3. The jurisdiction of this Court is based on Section 27 of the Exchange Act, 15 U.S.C. § 78aa and 28 U.S.C. § 1331 (federal question jurisdiction).

4. Venue is proper in this judicial district pursuant to Section 27 of the Exchange Act. Many of the acts and transactions giving rise to the violations of law complained of herein, including the preparation and dissemination to the investing public of materially false and misleading information, occurred in this judicial district. The Company is incorporated in New York and maintains its principal place of business in Armonk, New York.

5. In connection with the acts, conduct and other wrongs alleged in this complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mails, interstate telephone communications and the facilities of the national securities exchange.

### **PARTIES**

6. Plaintiff, Donald R. Lomax, purchased IBM common stock during the Class Period, as set forth in the certification attached hereto and incorporated herein by reference, and was damaged thereby. Plaintiff is a citizen of New York, New York.

7. Defendant IBM is a New York corporation and maintains its principal executive offices in Armonk, New York. IBM is a major information technology company.

8. Defendant Mark Loughridge (“Loughridge”) was Senior Vice President and Chief Financial Officer of the Company at all relevant times. Loughridge participated in making the false and misleading statements referred to herein.

9. During the Class Period, Defendant Loughridge was privy to non-public information concerning the Company’s finances, markets and present and future business prospects via access to internal corporate documents, conversations and connections with other corporate officers and employees, and information provided to him in connection therewith. Because of his possession of such information, Defendant Loughridge knew or recklessly disregarded the fact that adverse facts specified herein had not been disclosed to, and were being concealed from, the investing public. Defendant Loughridge, by virtue of his high-level position with the Company, directly participated in the management of the Company, was directly involved in the day-to-day operations of the Company at the highest levels, and was privy to confidential proprietary information concerning the Company and its business, operations, growth, financial statements, and financial condition, as alleged herein. Defendant Loughridge was involved in drafting, producing, reviewing and disseminating the false and misleading statements and information alleged herein. Defendant Loughridge was aware, or recklessly disregarded, that the statements made concerning the Company during the Class Period were false and misleading, in violation of the federal securities laws.

10. As an officer and controlling person of a publicly held Company whose securities were and are registered with the SEC pursuant to the Exchange Act, and are traded on the New York Stock Exchange (“NYSE”) and governed by the provisions of the federal securities laws, Defendant Loughridge had a duty to disseminate accurate and truthful information promptly with respect to the Company’s financial condition and performance, growth, operations, financial

statements, business, markets, management, earnings and present and future business prospects, and to correct any previously issued statements that had become materially misleading or untrue, so that the market price of the Company's publicly traded securities would be based upon truthful and accurate information. Defendant Loughridge's misrepresentations and omissions during the Class Period violated these specific requirements and obligations.

11. Both of the defendants are liable as participants in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of IBM securities by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme (i) deceived the investing public regarding IBM's business, operations, management and the intrinsic value of IBM securities; and (ii) caused Plaintiff and other members of the Class to purchase IBM securities at artificially inflated prices.

#### **SUBSTANTIVE ALLEGATIONS**

12. On April 5, 2005, the first day of the Class Period, IBM held an unusual conference call with market analysts. Ahead of its first-quarter 2005 earnings release, which was to take place approximately two weeks later, it announced that it would implement, for the first quarter, ended March 31, 2005, the Statement of Financial Accounting Standards (SFAS) 123(R), Share-based Payment ("SFAS 123R"). The Company stated it would restate prior period financial results to include the impact of share-based compensation expenses.

13. SFAS 123R was adopted by the Financial Accounting Standards Board ("FASB") on December 16, 2004, and requires companies to expense costs related to share-based payments to employees. SFAS 123R addresses, *inter alia*, accounting for share options, restricted share plans, performance-based awards, share appreciation rights, and employee share purchase plans. Prior to SFAS 123R, companies were able to grant stock options to their executives without

disclosing on the face of their financial statements the immediate cost or dilutive effect of those grants. According to the SEC, SFAS 123R is based on the underlying accounting principle that compensation cost resulting from share-based payment transactions should be recognized in companies' financial statements at fair value, in order to provide investors with more complete and comparable financial information.

14. IBM had previously treated stock options under Accounting Principles Board 25 ("APB 25"), by recording the intrinsic value of the options as an expense on the Company's income statement. Under APB 25, if stock options are granted at or above market price, no expense was recorded. IBM provided footnote disclosures of the Company's earnings per share and net income as if the options had been expensed, and presented basic and fully diluted earnings per share.

15. IBM's decision to implement SFAS 123R with its announcement of first-quarter 2005 results took place two quarters before its SEC-regulated, mandatory implementation, which for IBM, would have been in the third-quarter 2005.

16. During the April 5, 2005 conference call, Defendant Loughridge prepared investors for lower-than-expected results for the first-quarter 2005, attributing the shortcomings solely to the implementation of SFAS 123R. Defendant Loughridge stated:

"The results we announce on April 18 [2005] will reflect the expensing of equity compensation. In order to align expectations with our reported results, it will be necessary for investors and analysts to update their models to reflect the new reporting basis.

The purpose of today's call is to describe how we are planning to implement the changes, and provide information that will allow you to update your models.

We intend to leave you with the following points:

- First, we are going to expense equity compensation starting in the first quarter of 2005, and we will restate prior periods to provide the proper basis for comparison.



- Second, our incremental equity compensation expense was 55 cents per share for 2004. Investors and analysts should reset the 2004 base to include that 55 cent expense. For purposes of resetting analysts' models, 2005 expectations should be adjusted to reflect the same year-to-year profit improvement as current estimates -- off the lower base.
- Third, any year-to-year reduction in equity compensation expense that we ultimately realize will mitigate the impact of the \$1 billion increase in pension cost we discussed with you last quarter.

\* \* \* \*

This approach treats equity compensation as a form of compensation expense in the income statement. We have been working on this for over a year. With the issuance of SAB #107, we are ready to implement. SAB #107 provides the support and clarification we were looking for. And, by adopting in the first quarter, we will have consistent reporting throughout the four quarters of 2005.

\* \* \* \*

As I stated in the January earnings call, the redesign of our equity programs is one of several actions we are taking to mitigate this increase in pension cost. The expensing of equity compensation has been in our year-to-year plan for a long time. The SEC guidance issued last week provides the basis to move forward.

\* \* \* \*

***Our first quarter earnings release on April 18 will include the cost of equity compensation in our reported results. You should therefore update your models now to reflect this change. To facilitate this update, we have provided the 2004 detail by quarter in a supplemental chart of this presentation.***

In 2004 our incremental equity compensation was almost \$1.4 billion of pre-tax expense, or 55 cents per share. The 2004 base should be reset to include this expense, reducing the earnings per share by 14 cents in the first quarter, and 55 cents for the full year. These amounts are consistent with the pro forma disclosure in IBM's SEC filings, based on the Black-Scholes option-pricing model.

***This is an accounting change and does not impact underlying business dynamics. Therefore, for purposes of your models, updated 2005 expectations should reflect the same level of year-to-year profit improvement as current estimates. Because this***

*profit dollar improvement is delivered off a lower base, the resulting earnings growth rate in your models improves.*

I mentioned earlier that we have taken actions that will result in lower equity compensation expense in 2005. The savings from these actions will mitigate the \$1 billion, or 39 cent per share, year-to-year increase in pre-tax pension expense.”

17. The Company went on to provide a chart showing that the first-quarter 2005 earnings per share estimates would be negatively impacted *by \$0.14 for the quarter, solely as a result of the “incremental equity compensation expense,” bringing estimates from \$1.04 to \$0.90 per share.*

18. Unbeknownst to shareholders at the time of the April 5, 2005 conference call, defendants had failed to disclose the following facts which they knew at the time, or should have known:

a. The Company had been unable to close significant transactions during the first quarter 2005, was experiencing elongated sales cycles, and was having product-transition problems in its hardware segment;

b. As a result, the Company would report revenues significantly lower than analysts’ expectations and would miss the earnings-per-share guidance announced on April 5, 2005;

c. The Company intentionally misrepresented the impact of the adoption of SFAS 123R to its first-quarter 2005 financials, in order to disguise a significant operations-related earnings miss; and

d. The Company had intentionally accelerated the adoption of SFAS 123R, in order to sufficiently lower analyst expectations, such that when it later disclosed that its operational earnings were only \$0.85 per share, it had “cushioned the blow” of the earnings miss.

#### **THE TRUTH REVEALED**

19. On April 14, 2005, the Company announced a significant and rare earnings miss for first-quarter 2005. IBM's profit from continuing operations was \$0.85 per share, \$0.05 lower than the guidance provided by the Company only nine days before. *The Company further announced that the impact from expensing options in the quarter was only \$0.10 per share, and therefore did not account for the entire miss as defendants had indicated on April 5, 2005.*

The Company's press release stated, in part:

First-quarter revenue growth of 3 percent (1 percent, adjusting for currency) was driven by growth in the Americas and Europe/Middle East/Africa. In the Americas, first-quarter revenues from continuing operations were \$9.3 billion, up 2 percent (1 percent, adjusting for currency) from the 2004 period. Revenues from Europe/Middle East Africa were \$7.7 billion, an increase of 7 percent (2 percent, adjusting for currency). Asia-Pacific revenues grew 1 percent (down 2 percent, adjusting for currency) to \$5.2 billion. OEM revenues increased 3 percent to \$691 million compared with the first quarter of 2004.

Revenues grew in four of IBM's five industry sectors in the first quarter led by the Distribution sector, as well as growth in sales to Small and Medium Businesses.

Revenues from Global Services, including maintenance, increased 6 percent (3 percent, adjusting for currency) to \$11.7 billion in the first quarter. Global Services revenues, excluding maintenance, increased 7 percent (4 percent, adjusting for currency). IBM signed services contracts totaling \$10.0 billion and ended the quarter with an estimated services backlog, including Strategic Outsourcing Business Consulting Services, Integrated Technology Services and Maintenance, of \$110 billion.

In addition to these signings and backlog figures there were about \$200 million of Engineering and Technology Services signings to provide Business Performance Transformation Services customers with design skill and technical capabilities.

*Hardware revenues from continuing operations were essentially flat (down 2 percent, adjusting for currency) to \$6.7 billion in the first quarter versus the first quarter of 2004.* Revenues from the Systems and Technology Group totaled \$3.9 billion for the quarter, up 2 percent on eServer revenue increases. This includes a 12 percent increase in pSeries UNIX servers, which is expected to gain market share in the first quarter, and an 8 percent increase in xSeries servers. Revenues from the zSeries mainframe product



decreased 16 percent compared with the prior-year quarter. The total delivery of zSeries computing power as measured in MIPS (millions of instructions per second) decreased 11 percent. Revenues for the iSeries midrange servers increased 1 percent. Storage Systems and Technology OEM increased 5 percent and 2 percent, respectively. Revenues from Personal Systems Group decreased 3 percent to \$2.7 billion. In the fourth-quarter 2004, IBM announced an agreement to sell the Personal Computing Division, a unit of the Personal Systems Group, which is expected to close in the second-quarter 2005.

Revenues from Software were \$3.6 billion, an increase of 2 percent (flat, adjusting for currency) compared with the first quarter of 2004. Revenues from IBM's middleware brands, which include WebSphere DB2, Rational, Tivoli and Lotus products, were \$2.8 billion, up 3 percent versus the first quarter of 2004. Operating systems revenues decreased 2 percent to \$590 million compared with the first quarter of 2004.

20. This news shocked the market. IBM's share price suffered a one-day drop of \$6.94, or 8.3%, from \$83.64 to \$76.70, to hit a 52-week low, on exceptionally heavy trading volume.

21. On April 18, 2005, the full extent of the fraud was disclosed when, before the markets opened, the *Wall Street Journal* published an article characterizing IBM's April 5, 2005 announcement as "clouding" IBM's true financial position, and "cushioning the blow" of its earnings miss. The article stated:

Two weeks ago, International Business Machines Corp. said it would begin expensing stock options in the first quarter, months before the deadline to do so.

Recent "implementation guidance" dished out by the Securities and Exchange Commission had removed uncertainty about how the calculations should be done, the company said, and expensing would provide investors more clarity.

But the move appeared to have an ancillary benefit to IBM itself: It cushioned the blow from a substantial earnings shortfall announced Thursday, making the earnings miss appear less drastic than it actually was.

As companies near an SEC deadline to account for the expense of issuing stock options and other equity-based compensation to

employees, the IBM case illustrates how vigilant investors need to be in assessing company results when the changeover rolls around. Changes meant to provide a truer picture of a company's profit and loss -- such as stock-options expensing -- may actually make it more difficult to divine just how well the company is performing.

In a hastily arranged conference call on April 5, IBM finance chief Mark Loughridge told analysts that expensing of options and shares granted under the company's employee stock-purchase plan would begin early. Mr. Loughridge told analysts to "update" their models to reflect the new expense for the just-elapsd first quarter. IBM also lowered its 2004 first-quarter results to include the expensing of equity compensation so that investors could compare year-to-year on a like basis. The 93 cents a share IBM reported in the first quarter of 2004 went down to 79 cents, reflecting 14 cents of equity-compensation expense.

"For the purposes of your models, updated 2005 expectations should reflect the same level of year-to-year profit improvement as current estimates," Mr. Loughridge said, according to prepared remarks provided by IBM. "Because this profit dollar improvement is delivered off a lower base, the resulting earnings growth rate in your models improves."

Mr. Loughridge sketched it out in an accompanying chart: "Current" estimates for per-share earnings of \$1.04 replaced by "adjusted" estimates of 90 cents -- 14 cents lower, factoring in the same effect for options expensing as in the first quarter of 2004. Analysts followed his instructions, and the mean earnings-per-share estimate, as recorded by the Thomson First Call survey, fell to 90 cents.

When IBM reported its first-quarter earnings nine days later, the equity-compensation expense turned out to be 10 cents, not 14. Had Mr. Loughridge given analysts the actual figure for stock-compensation expenses on April 5, the mean estimate might well have been 94 cents, and the shortfall in earnings four cents greater.

IBM reported earnings for the first quarter of 84 cents a share, or 85 cents after excluding losses from discontinued operations, well short of even the lowered estimate of 90 cents. The stock cratered, dragging down the tech industry and the broader market.

"IBM's options 'hocus-pocus' obfuscates an even larger [earnings] miss -- and weaker guidance -- than investors might realize," Sanford C. Bernstein analyst Toni Sacconaghi wrote in a research note to clients Friday.

John Bukovinsky, an IBM spokesman, said the downward adjustment of per-share earnings suggested by Mr. Loughridge in

the April 5 presentation wasn't intended to be solely the result of option expensing. In fact, he said, a portion of the 14-cent difference between \$1.04 and 90 cents was attributable to higher pension costs eating up some of the expected savings from lower option expenses. The chart doesn't indicate that adjustment to analysts' estimates include pension costs.

Mr. Bukovinsky said Mr. Loughridge repeatedly stated on the call that IBM's stock-compensation expenses in 2005 would be lower than they were in 2004. Mr. Bukovinsky also said Mr. Loughridge wouldn't have been able to say then exactly how much lower those option expenses were.

Mr. Sacconaghi said the April 5 presentation -- which carried the title "IBM Equity Compensation Expensing" -- was about option expensing, not pension impact. "The sole purpose of the conference call was an update because IBM was expensing options," he said. Mr. Loughridge didn't take any questions on the call.

Ben Reitzes, an analyst with UBS, said in a report Friday about first-quarter earnings he believes the April 5 presentation gave IBM "wiggle room" to miss earnings, a position he espoused after the presentation.

22. As a result of defendants' false and misleading statements on April 5, 2005, the financial results of IBM were artificially and materially inflated during the Class Period. Defendants' false and misleading statements had the intended effect of fraudulently "cushioning the blow" of IBM's poor first-quarter 2005 earnings release, and maintaining IBM stock at artificially inflated levels during the Class Period. As the market became aware of IBM's true financial condition, the artificial inflation came out of IBM's stock price and the stock price plummeted precipitously. As a result of their purchases of IBM securities during the Class Period, plaintiff and other members of the Class suffered damages.

#### **Post Class Period Events**

23. On May 4, 2004, IBM announced it would be reducing its workforce by 10,000 to 13,000 employees.

24. On May 24, 2005, Defendant Palmisano sold 123,617 shares of his IBM stock, for proceeds of approximately \$9,378,822.

25. On June 27, 2005, the Company announced that the SEC had begun an informal investigation into the Company. The investigation appears to be related to the Company's April 5, 2005 conference call.

### **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

26. Plaintiff brings this action as a class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(3) on behalf of itself and all persons and entities other than defendants who purchased or otherwise acquired the securities of IBM between April 5, 2005 and April 15, 2005, inclusive (the "Class"). Excluded from the Class are defendants herein, members of the immediate family of each of the defendants, any person, firm, trust, corporation, officer, director or other individual or entity in which any defendant has a controlling interest or which is related to or affiliated with any of the defendants, and the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded party.

27. The members of the Class are so numerous that joinder of all members is impracticable. As of March 31, 2005, IBM had more than 1.6 billion shares outstanding. The precise number of Class members is unknown to plaintiff at this time but is believed to be in the thousands. In addition, the names and addresses of the Class members can be ascertained from the books and records of IBM. Notice can be provided to such record owners by a combination of published notice and first-class mail, using techniques and a form of notice similar to those customarily used in class actions arising under the federal securities laws.

28. The members of the Class are located in geographically diverse areas and are so numerous that joinder of all members is impractical. While the exact number of Class members



is unknown to the plaintiff at this time, and can only be ascertained through appropriate discovery, plaintiff believes there are, at a minimum, thousands of members of the Class.

29. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) Whether defendants engaged in acts or conduct in violation of the securities laws as alleged herein;
- (b) Whether defendants had a duty to disclose certain information;
- (c) Whether defendants knowingly or recklessly in making materially false and misleading statements or in failing to correct such statements upon learning that they were materially false and misleading during the Class Period;
- (d) Whether the market price of the Company's securities during the Class Period was artificially inflated because of defendants' conduct complained of herein; and
- (e) Whether members of the Class have sustained damages and, if so, the proper measure of damages.

30. Plaintiff's claims are typical of the claims of the members of the Class because plaintiff and members of the Class sustained damages arising out of defendants' wrongful conduct in violation of federal law as complained of herein.

31. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

32. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members of the Class is impractical.

Furthermore, because the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for the Class members individually to redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

**Fraud on the Market Presumption**

33. Plaintiff will rely, in part, upon the presumption of reliance established by the fraud-on-the-market doctrine in that:

- (a) Defendants made public misrepresentations or failed to disclose material facts regarding IBM's financial situation during the Class Period;
- (b) the omissions and misrepresentations were material;
- (c) the securities of the Company were actively traded at all relevant times on the NYSE, an efficient and open market;
- (d) the misrepresentations and omissions alleged would tend to induce a reasonable investor to misjudge the value of the Company's securities; and
- (e) Plaintiff and the members of the Class, without knowledge of the misrepresented facts, purchased their IBM securities between the time defendants failed to disclose and/or misrepresented material facts and the time the truth was disclosed.

34. IBM trades on the NYSE. The price of IBM's stock reflects the effect of news disseminated in the market.

35. Based upon the foregoing, plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market

**The Safe Harbor Provision is Inapplicable**

36. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint.

The statements alleged to be false and misleading herein all relate to then-existing facts and conditions. In addition, to the extent certain of the statements alleged to be false may be characterized as forward-looking, they were not adequately identified as “forward-looking statements” when made, and there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor is intended to apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the defendants had actual knowledge that the particular forward-looking statement was materially false or misleading.

#### **FIRST CLAIM FOR RELIEF**

##### **For Violations of Sections 10(b) and Rule 10b-5 Thereunder**

37. Plaintiff incorporates by reference and realleges each of the foregoing paragraphs.

38. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

39. During the Class Period, defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and other members of the Class to purchase IBM securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein.

40. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business which

operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for IBM securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. Defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

41. Defendants directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a course of conduct to conceal adverse material information about the business, operations and future prospects of IBM as specified herein.

42. Defendants employed devices, schemes, and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of IBM value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about IBM and its business operations and future prospects in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of IBM securities during the Class Period.

43. Defendant Loughridge's primary liability, and controlling person liability, arises from the following facts: (i) Defendant Loughridge was a high-level executive at the Company during the Class Period and a member of the Company's management team; (ii) by virtue of his responsibilities and activities as a senior officer of the Company, he was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections



and/or reports; (iii) he enjoyed significant personal contact and familiarity with other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and sales at all relevant times; and (iv) he was aware of the Company's dissemination of information to the investing public which he knew or recklessly disregarded was materially false and misleading.

44. The defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing IBM's operating condition and future business prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by defendants' misstatements of the Company's business, operations and earnings throughout the Class Period, defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

45. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of IBM securities was artificially inflated during the Class Period. In ignorance of the fact that market prices of IBM's publicly traded securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by defendants, or upon the integrity of the market in which the securities trades, and/or on the absence of material adverse information that was known to or recklessly disregarded by defendants but not disclosed in public statements by defendants during

the Class Period, Plaintiff and the other members of the Class acquired IBM securities during the Class Period at artificially high prices and were damaged thereby.

46. At the time of said misrepresentations and omissions, Plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and the other members of the Class and the marketplace known the truth regarding the problems that IBM was experiencing, which were not disclosed by defendants, Plaintiff and other members of the Class would not have purchased or otherwise acquired their IBM securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

47. By virtue of the foregoing, defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

48. As a direct and proximate result of defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's securities during the Class Period.

## **SECOND CLAIM FOR RELIEF**

### **Violation Of Section 20(a) Of The Exchange Act Against Defendant Loughridge**

49. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

50. Defendant Loughridge acted as a controlling person of IBM within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of his high-level position, and his participation in and/or awareness of the Company's operations and/or intimate knowledge of the financial condition of the Company, Defendant Loughridge had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the

Company, including the content and dissemination of the various statements which Plaintiff contend are false and misleading.

51. As set forth above, IBM violated Section 10(b) and Rule 10b-5 by its acts and omissions as alleged in this Complaint. By virtue of his positions as controlling person, Defendant Loughridge is similarly liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of defendants' wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

**WHEREFORE**, Plaintiff prays for relief and judgment, as follows:

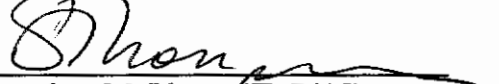
- A. Determining that this action is a proper class action, designating Plaintiff as Lead Plaintiff and certifying Plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and Plaintiffs counsel as Lead Counsel;
- B. Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- C. Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and
- D. Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: July 8, 2005

**GOODKIND LABATON RUDOFF  
& SUCHAROW LLP**



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*Attorneys for Plaintiff*



CERTIFICATION

I, Donald R. Lomax, do hereby certify that:

1. I have reviewed the complaint and have authorized its filing.

2. I purchased securities of International Business Machines Corp., which are the subject of the complaint, *but not* at the direction of my counsel or in order to participate in any private action arising under the Securities Act of 1933 or Securities Exchange Act of 1934, as amended by the Private Securities Litigation Reform Act of 1995.

3. I am willing to serve as a representative party on behalf of a class, including providing testimony at deposition and trial, if necessary.

4. In the three years prior to this certification, I have applied to serve or served as a representative party on behalf of a class in an action brought under the federal securities laws in the following actions:

5. During the Class Period, I engaged in the following transactions:

TRANSACTION INFORMATION

<u>BUY OR SELL</u>	<u>TRADE DATE</u>	<u>NO. OF SHARES</u>	<u>PRICE PER SHARE</u>
Buy	4/15/05	100	\$79

6. I will not accept any payment for serving as a representative party on behalf of the Class beyond my *pro rata* share of any recovery, except such reasonable costs and expenses (including lost wages) directly relating to the representation of the Class and my activities in the lawsuit, as ordered or approved by the Court.

7. Nothing herein shall be construed to be or constitute a waiver of my attorney-client privilege.

8. I certify under penalty of perjury that the foregoing is true and correct.

Executed on 7/6/2005.

Signature

Donald R. Lomax