

INTERNATIONAL BUSINESS MACHINES CORP

Form 10-Q

October 25, 2016

[Table of Contents](#)

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM 10 - Q

QUARTERLY REPORT PURSUANT TO SECTION 13 or 15(d)

OF THE SECURITIES EXCHANGE ACT OF 1934

FOR THE QUARTER ENDED SEPTEMBER 30, 2016

1-2360

(Commission file number)

INTERNATIONAL BUSINESS MACHINES CORPORATION

(Exact name of registrant as specified in its charter)

New York
(State of incorporation)

13-0871985
(IRS employer identification number)

Armonk, New York

10504

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(Address of principal executive offices)

(Zip Code)

914-499-1900

(Registrant's telephone number)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act.

Large accelerated filer

Accelerated filer

Non-accelerated filer
(Do not check if a smaller reporting company)

Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

The registrant had 950,854,551 shares of common stock outstanding at September 30, 2016.

Table of Contents

Index

	Page
<u>Part I - Financial Information:</u>	
<u>Item 1. Consolidated Financial Statements (Unaudited):</u>	
<u>Consolidated Statement of Earnings for the three and nine months ended September 30, 2016 and 2015</u>	3
<u>Consolidated Statement of Comprehensive Income for the three and nine months ended September 30, 2016 and 2015</u>	4
<u>Consolidated Statement of Financial Position at September 30, 2016 and December 31, 2015</u>	5
<u>Consolidated Statement of Cash Flows for the nine months ended September 30, 2016 and 2015</u>	7
<u>Consolidated Statement of Changes in Equity for the nine months ended September 30, 2016 and 2015</u>	8
<u>Notes to Consolidated Financial Statements</u>	9
<u>Item 2. Management's Discussion and Analysis of Results of Operations and Financial Condition</u>	47
<u>Item 4. Controls and Procedures</u>	89
<u>Part II - Other Information:</u>	
<u>Item 1. Legal Proceedings</u>	89
<u>Item 2. Unregistered Sales of Equity Securities and Use of Proceeds and Issuer Repurchases of Equity Securities</u>	89
<u>Item 6. Exhibits</u>	90

Table of Contents**Part I - Financial Information****Item 1. Consolidated Financial Statements:****INTERNATIONAL BUSINESS MACHINES CORPORATION
AND SUBSIDIARY COMPANIES****CONSOLIDATED STATEMENT OF EARNINGS****(UNAUDITED)**

(Dollars in millions except per share amounts)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2016	2015	2016	2015
Revenue:				
Services	\$ 12,938	\$ 12,327	\$ 38,347	\$ 37,290
Sales	5,872	6,501	18,542	20,990
Financing	417	452	1,260	1,403
Total revenue	19,226	19,280	58,149	59,682
Cost:				
Services	8,418	8,067	25,492	24,776
Sales	1,536	1,544	4,496	4,895
Financing	259	233	760	733
Total cost	10,213	9,844	30,748	30,405
Gross profit	9,013	9,436	27,401	29,278
Expense and other (income):				
Selling, general and administrative	4,732	4,731	16,093	15,273
Research, development and engineering	1,397	1,287	4,320	3,885
Intellectual property and custom development income	(528)	(188)	(1,110)	(489)
Other (income) and expense	(8)	(133)	281	(578)
Interest expense	158	117	473	340
Total expense and other (income)	5,751	5,815	20,056	18,431
Income from continuing operations before income taxes				
	3,263	3,621	7,345	10,846
Provision for/(benefit from) income taxes	409	659	(31)	1,943
Income from continuing operations	\$ 2,854	\$ 2,962	\$ 7,375	\$ 8,904
Loss from discontinued operations, net of tax	(1)	(12)	(4)	(176)
Net income	\$ 2,853	\$ 2,950	\$ 7,371	\$ 8,727
Earnings/(loss) per share of common stock:				
Assuming dilution:				
Continuing operations	\$ 2.98	\$ 3.02	\$ 7.67	\$ 9.03
Discontinued operations	0.00	(0.01)	0.00	(0.18)
Total	\$ 2.98	\$ 3.01	\$ 7.67	\$ 8.85
Basic:				
Continuing operations	\$ 2.99	\$ 3.04	\$ 7.70	\$ 9.07
Discontinued operations	0.00	(0.01)	0.00	(0.18)
Total	\$ 2.99	\$ 3.03	\$ 7.70	\$ 8.89

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				263,114	\$ 589,375
Chief Executive Officer and Director					
Mark Smith	109,289	\$	11.06	184,179	\$ 412,561
Chief Financial Officer					
Christopher Ryan, Ph.D.	59,500	\$	5.65	218,121	\$ 488,591
President, Chief Operating Officer and Chief Technology Officer					
Brett Lund, J.D., M.B.A.	67,492	\$	6.10	240,089	\$ 537,799
Executive Vice President, General Counsel and Secretary					
David Glassner, Ph.D. ⁽¹⁾	17,250	\$	9.41	75,383	\$ 168,858
Former Executive Vice President, Technology					
Brant DeMuth,	132,500	\$	12.56	100,602	\$ 225,348
Executive Vice President, Corporate Communications and Development					
All current executive officers as a group	442,616	\$	10.31	905,503	\$ 2,028,327
All current directors, who are not executive officers, as a group ⁽²⁾	106,748	\$	8.29	253,557	\$ 568,029
All current employees as a group (excluding executive officers)	1,003,130	\$	8.50	264,775	\$ 593,096

- (1) Dr. Glassner's employment terminated on September 28, 2012, and as of such date, all of his then outstanding unvested stock options and other equity awards immediately vested. Dr. Glassner exercised 108,296 options during the year ended December 31, 2012 which were all granted from the 2006 Plan. The remaining 108,250 options lapsed unexercised, of which 17,250 options had been originally granted from the 2010 Plan and 91,000 options had been originally granted from the 2006 Plan and were returned to the 2010 Plan. In December 2011, Dr. Glassner was awarded 37,370 restricted shares from the 2010 Plan subject to performance vesting by June 2012. The performance vesting requirement was not met and these restricted shares lapsed unvested and were returned to the 2010 Plan.
- (2) The number of awards granted to all current directors, who are not executive officers, as a group, includes those awards granted to Samir Kaul on March 14, 2013. Upon his appointment to the Board, Mr. Kaul received an initial equity grant valued at \$125,000, half of which will be paid by the issuance of an option to purchase shares of the Company's common stock and half of which will be paid in restricted shares of the Company's common stock. Such awards were granted subject to approval by the Company's stockholders of Proposal 3, to increase the number of shares of common stock available for issuance under the 2010 Plan. The option will not be exercisable and no restricted shares will be delivered to Mr. Kaul unless the Company's stockholders approve Proposal 3.

New Plan Benefits

If Proposal 3 is approved, the Compensation Committee will be able to grant awards to eligible participants at its discretion. Consequently, except for the exceptions noted below, it is not possible to determine at this time the amount or dollar value of awards to be provided under the 2010 Plan should Proposal 3 be approved.

Name and Position	Dollar Value (\$)	Number of Options	Number of Shares of Restricted Stock
Patrick R. Gruber, Ph.D. Chief Executive Officer and Director	\$		
Mark Smith Chief Financial Officer	\$		
Christopher Ryan, Ph.D. President and Chief Operating Officer	\$		
Brett Lund, J.D., M.B.A. Executive Vice President, General Counsel and Secretary	\$		
David Glassner, Ph.D. Former Executive Vice President, Technology	\$		
All current executive officers as a group	\$		
All current directors, who are not executive officers, as a group ⁽¹⁾	\$	6,250	32,051
All current employees as a group (excluding executive officers)	\$		

- (1) The number of awards granted to all current directors, who are not executive officers, as a group, includes those awards granted to Samir Kaul on March 14, 2013. Upon his appointment to the Board, Mr. Kaul received an initial equity grant valued at \$125,000, half of which will be paid by the issuance of an option to purchase shares of the Company's common stock and half of which will be paid in restricted shares of the Company's common stock. Such awards were granted subject to approval by the Company's stockholders of Proposal 3, to increase the number of shares of common stock available for issuance under the 2010 Plan. The option will not be exercisable and no restricted shares will be delivered to Mr. Kaul unless the Company's stockholders approve Proposal 3.

Summary of the 2010 Stock Incentive Plan**Background**

Since the closing of our initial public offering on February 14, 2011, equity awards are only granted pursuant to our 2010 Plan, which received stockholder approval on February 4, 2011, and became effective on the closing of our initial public offering. Our stockholders approved the 2010 Plan primarily in order to enable us to satisfy NASDAQ listing requirements, and to make awards that qualify as performance-based compensation that is exempt from the deduction limitation set forth under Section 162(m) of the Code. Section 162(m) generally limits the corporate income tax deduction to \$1,000,000 annually for the nonperformance-based compensation paid to each of the Chief Executive Officer and the three other highest paid executive officers of the Company (other than the Chief Financial Officer).

No awards under the 2010 Plan occurred before the closing of our initial public offering. The 2010 Plan authorizes discretionary awards in the form of stock options, stock appreciation rights (SARs), restricted shares or units, unrestricted shares, deferred share units, performance awards and dividend equivalent rights. Our Board believes that the 2010 Plan is an important factor in attracting, retaining and motivating employees, consultants and directors of the Company and its affiliates, collectively referred to herein as eligible persons. Our Board believes that we need the flexibility, acting primarily through the compensation committee of our Board (the

Compensation Committee), both to have an ongoing reserve of common stock available for future equity-based awards, and to make future awards in a variety of forms.

On March 15, 2013, our Board approved, subject to stockholder approval, the amendment and restatement of the 2010 Plan to, among other things, increase the number of shares reserved for issuance under the 2010 Plan from 2,571,286 to 5,571,286 shares, modify the 2010 Plan's vesting limitations provision, and broaden permissible performance measures for performance-based awards.

Share Reserve

In February 2011, our stockholders approved the 2010 Plan. We had reserved 2,571,286 shares of common stock for issuance under the 2010 Plan, plus shares of common stock from awards that had been made under the 2006 Plan that were forfeited, cancelled, settled, or had become unexercisable without the issuance of shares. (If approved by the stockholders, the number of shares reserved for issuance under the 2010 Plan will increase to 5,571,286 shares, plus shares of common stock from awards that had been made under the 2006 Plan that were forfeited, cancelled, settled, or had become unexercisable without the issuance of shares.) As of March 31, 2013, there were 10,596 shares available for issuance under the 2010 Plan. We do not expect to receive cash consideration for the granting of awards under the 2010 Plan. However, if a stock option were to be exercised, we would receive the exercise price for the shares being purchased, unless the exercise occurs pursuant to a cashless alternative that we approve.

Outstanding Award Type	Number of Shares subject to outstanding awards under the 2010 Plan as of March 31, 2013
Stock Options	1,416,211
Restricted Shares (unvested)	1,115,164
Performance Stock Units	
Stock Appreciation Rights	
Deferred Stock Units	

Administration

Administration of the 2010 Plan will be carried out by our Compensation Committee; provided that our Board may act in lieu of the Compensation Committee at any time. If and to the extent permitted by applicable law, our Compensation Committee or our Board may authorize one or more executive officers to make awards under the 2010 Plan to eligible persons other than themselves. As used in this summary, the term administrator means the Compensation Committee, or the Board or its delegate if acting in lieu of the committee. With respect to decisions involving an award intended to satisfy the requirements of Section 162(m) of the Code, the administrator is to consist solely of two or more directors who are outside directors for purposes of that Code section, and with respect to awards to individuals subject to Section 16 of the Exchange Act, the administrator is to consist solely of two or more directors who are non-employee directors within the meaning of Rule 16b-3 of the Exchange Act. The 2010 Plan provides that we and our affiliates will indemnify members of the administrative committee and their delegates against any claims, liabilities or costs arising from the good faith performance of their duties under the 2010 Plan. The 2010 Plan will release these individuals from liability for good faith actions associated with the 2010 Plan's administration.

Subject to the terms of the 2010 Plan, the administrator has express authority to determine the eligible persons who will receive awards, the number of shares of our common stock to be covered by each award, and the terms and conditions of awards. The administrator has broad discretion to prescribe, amend and rescind rules relating to the 2010 Plan and its administration, to interpret and construe the 2010 Plan and the terms of all award agreements, and to take all actions necessary or advisable to administer the 2010 Plan. Within the limits of the 2010 Plan, the administrator may accelerate the vesting of any awards, allow the exercise of unvested awards, and may modify, replace, cancel or renew any awards. In addition, the administrator may buy-out, or replace, any

award, including a stock option or SAR having an exercise price that is above the current fair market value of the underlying shares, with stockholder approval being generally required if options or SARs are granted or modified as part of a re-pricing.

Awards under the 2010 Plan vest on a pro rata basis over a period of not less than three years, or, for performance awards, a period of not less than one year from the commencement of the performance evaluation period. Awards that result in the total issuance of up to 10% of the shares available (as adjusted under certain other plan provisions) may be granted without vesting limitations. (If approved by the stockholders, the Amended and Restated 2010 Plan will provide that awards that result in the total issuance of up to 15% of the shares available (as adjusted under certain other plan provisions) may be granted without respect to the plan's minimum vesting limitations.)

Types of Awards

The administrator may grant options that are intended to qualify as incentive stock options, which we refer to as ISOs, only to employees, and may grant all other awards to any eligible persons. Stock options granted under the 2010 Plan will provide award recipients, or participants, with the right to purchase shares of our common stock at a predetermined exercise price. The administrator may grant stock options that are intended to qualify as ISOs or that are not intended to so qualify, which we refer to as Non-ISOs. The 2010 Plan also provides that ISO treatment may not be available for stock options that become first exercisable in any calendar year to the extent the value of the shares that are the subject of the stock option exceeds \$100,000, based upon the fair market value of the shares of our common stock on the option grant date. As of April 10, 2013, the closing price of our common stock as reported on the NASDAQ Global Market was \$2.19 per share.

A SAR generally permits a participant who receives it to receive, upon exercise, cash and/or shares of our common stock equal in value to the excess of the fair market value, on the date of exercise, of the shares of our common stock with respect to which the SAR is being exercised, over the exercise price of the SAR for such shares. The administrator may grant SARs in tandem with options, or independently of them. SARs that are independent of options may limit the value payable on its exercise to a percentage.

The exercise price of ISOs, Non-ISOs and SARs may not be less than 100% of the fair market value, on the grant date, of the shares of our common stock subject to the award, although the exercise price of ISOs may not be less than 110% of such fair market value for participants who own more than 10% of our shares of common stock on the grant date. To the extent vested and exercisable in accordance with the agreement granting them, a stock option or SAR may be exercised in whole or in part, and from time to time during its term, subject to earlier termination relating to a holder's termination of employment or service. With respect to stock options, unless otherwise provided in an award agreement, payment of the exercise price may be made in any of the following forms, or a combination of them: cash or check in U.S. dollars, certain shares of our common stock or a cashless exercise under a program the administrator approves.

The term over which participants may exercise stock options and SARs may not exceed 10 years from the date of grant; five years in the case of ISOs granted to employees who, at the time of grant, own more than 10% of our outstanding shares of common stock. During the term of the 2010 Plan, no participant may receive stock options and SARs that relate to more than 20% of the maximum number of shares of our common stock that are authorized for awards under the 2010 Plan.

Under the 2010 Plan, the administrator may grant restricted stock that is forfeitable until certain vesting requirements are met, may grant restricted stock units (RSUs) which represent the right to receive shares of our common stock after certain vesting requirements are met (or cash under certain circumstances), and may grant unrestricted shares as to which the participant's interest is immediately vested. For restricted awards, the 2010 Plan provides the administrator with discretion to determine the terms and conditions under which a participant's interests in such awards become vested. The 2010 Plan also authorizes awards of deferred share units in order to permit certain directors, officers, consultants or select members of management to defer their receipt of

compensation that would otherwise be payable in cash or shares of our common stock, including shares that would otherwise be issued upon the vesting of restricted stock and RSUs. Deferred share units represent a future right to receive shares of our common stock.

Under the 2010 Plan, the administrator may grant performance-based awards in the form of performance units that the administrator may, or may not, designate as performance compensation awards that are intended to be exempt from Section 162(m) limitations. In either case, performance units will vest and/or become payable based upon the achievement, within the specified period of time, of performance objectives applicable to the individual, us, or any affiliate. Performance units will be payable in shares of common stock, cash or some combination of the two, subject to an individual participant limit, per performance period, of \$2,000,000 (determined at the time of award) and 20% of the maximum number of shares of our common stock that are authorized for awards under the 2010 Plan. The administrator will decide the length of performance periods, pursuant to the terms of the 2010 Plan.

With respect to performance compensation awards, the 2010 Plan requires that the administrator specify in writing the performance period to which the award relates, and an objective formula by which to measure whether and the extent to which the award is earned on the basis of the level of performance achieved with respect to one or more performance measures. Once established for a performance period, the performance measures and performance formula applicable to the award may not be amended or modified in a manner that would cause the compensation payable under the award to fail to constitute performance-based compensation under Section 162(m) of the Code. Under the 2010 Plan, the possible performance measures for performance compensation awards will be limited for one or more of the following, applied in total or on a per share basis: basic, diluted or adjusted earnings per share; sales or revenue; EBITDA; basic or adjusted net income; returns on equity, assets, capital, revenue or similar measure; economic value added; working capital; total stockholder return; product development; product market share; research; licensing; litigation; human resources; information services; and mergers, acquisitions and sales of assets or business units. (If approved by the stockholders, the Amended and Restated 2010 Plan will (i) permit any form of income or profit to be utilized, not just basic, diluted, or adjusted earnings per share; expand basic or adjusted net income to include gross margin or similar income or profit measures; and broaden economic value added to include economic profit or other similar measures of residual income, (ii) add the following new categories: cash usage; costs; technology development; and securement of intellectual property rights, and (iii) incorporate the following clarifying revisions: making clear that the measure for EBITDA may or may not include other adjustments, and that measures concerning returns on equity, assets, capital, or revenue includes only similar return measures, not similar measures generally.)

Each performance measure will be, to the extent applicable, determined in accordance with generally accepted accounting principles as consistently applied by us, or such other standard applied by the administrator and, if so determined by the administrator, and in the case of a performance compensation award, to the extent permitted under Section 162(m) of the Code, adjusted to omit the effects of extraordinary items, gain or loss on the disposal of a business segment, unusual or infrequently occurring events and transactions and cumulative effects of changes in accounting principles. Performance measures may vary from performance period to performance period, and from participant to participant, and may be established on a stand-alone basis, in tandem or in the alternative. As a condition to the issuance of shares of our common stock pursuant to awards, the 2010 Plan requires satisfaction of any applicable federal, state, local or foreign withholding tax obligations that may arise in connection with the award or the issuance of shares of our common stock.

Finally, the 2010 Plan authorizes the awarding of dividend equivalent rights to any eligible person. These rights may be independent of other awards, or attached to awards (other than stock options and SARs), and in all cases represent the participant's right to receive cash payments or additional awards related to any dividends that we declare and pay to our stockholders during the term of the dividend equivalent right. Unless an award agreement provides otherwise, the distributions attributable to dividend equivalent rights that are attached to other awards shall occur when shares of our common stock are issued to settle the underlying award.

Awards may not be sold, pledged, assigned, hypothecated, transferred or disposed of other than by will or the laws of descent and distribution, except to the extent the administrator permits lifetime transfers to charitable institutions, certain family members, or related trusts, or as otherwise approved by the administrator.

Adjustments of Awards

The administrator will equitably adjust the number of shares covered by each outstanding award, and the number of shares that have been authorized for issuance under the 2010 Plan but as to which no awards have yet been granted, or that have been returned to the 2010 Plan upon cancellation, forfeiture, or expiration of an award, as well as the price per share covered by each such outstanding award, to reflect any increase or decrease in the number of issued shares resulting from a stock split, reverse stock split, stock dividend, combination, recapitalization or reclassification of the shares of our common stock, or any other increase or decrease in the number of issued shares effected without receipt of consideration by us. In the event of any such transaction or event, the administrator may provide in substitution for any or all outstanding options under the 2010 Plan such alternative consideration, including securities of any surviving entity, as it may in good faith determine to be equitable under the circumstances and may require in connection therewith the surrender of all options so replaced. In any case, such substitution of securities will not require the consent of any person who is granted options pursuant to the 2010 Plan.

Change in Control

In addition, in the event or in anticipation of a change in control, as defined in the 2010 Plan, the administrator may at any time in its sole and absolute discretion and authority, without obtaining the approval or consent of our stockholders or any participant with respect to his or her outstanding awards, except to the extent an award provides otherwise, take one or more of the following actions: (i) arrange for or otherwise provide that each outstanding award will be assumed or substituted with a substantially equivalent award by a successor corporation or a parent or subsidiary of such successor corporation; (ii) accelerate the vesting of awards for any period, and may provide for termination of unexercised options and SARs at the end of that period, so that awards shall vest (and, to the extent applicable, become exercisable) as to the shares of our common stock that otherwise would have been unvested and provide that our repurchase rights with respect to shares of our common stock issued upon exercise of an award shall lapse as to the shares of our common stock subject to such repurchase right; or (iii) arrange or otherwise provide for payment of cash or other consideration to participants in exchange for the satisfaction and cancellation of outstanding awards.

Unless an award agreement provides otherwise, in the event a participant holding an award assumed or substituted by the successor corporation in a change in control is involuntarily terminated, as defined in the 2010 Plan, by the successor corporation in connection with, or within 12 months following consummation of, the change in control, then any assumed or substituted award held by the terminated participant at the time of termination shall accelerate and become fully vested and exercisable in full in the case of options and SARs, and any repurchase right applicable to any shares of our common stock shall lapse in full. The acceleration of vesting and lapse of repurchase rights provided for in the previous sentence shall occur immediately prior to the effective date of the participant's termination. Finally, if we dissolve or liquidate, all awards will immediately terminate, subject to the ability of our Board to exercise any discretion that the Board may exercise in the case of a change in control.

Term

The term of the 2010 Plan is 10 years from February 14, 2011. Our Board may, from time to time, amend, alter, suspend, discontinue, or terminate the 2010 Plan; provided that no amendment, suspension or termination of the 2010 Plan shall materially and adversely affect awards already granted unless it relates to an adjustment pursuant to certain transactions that change our capitalization or it is otherwise mutually agreed between the participant and the administrator. An amendment will not become effective without the approval of our stockholders if it either allows for a re-pricing within the meaning of federal securities laws, or increases the

number of shares of common stock that may be issued under the 2010 Plan (other than changes to reflect certain corporate transactions and changes in capitalization as described above). Notwithstanding the foregoing, the administrator may amend the 2010 Plan to eliminate provisions which are no longer necessary as a result of changes in tax or securities laws or regulations, or in the interpretation thereof.

Summary of U.S. Federal Income Tax Consequences

The following discussion is intended to be a general summary of the federal income tax aspects of awards granted under the 2010 Plan and does not purport to address state, local or other taxes that may apply to awards under the 2010 Plan. Tax consequences may vary depending on particular circumstances, and administrative and judicial interpretations of the application of the federal income tax laws are subject to change. Participants in the 2010 Plan who are residents of or are employed in a country other than the United States may be subject to taxation in accordance with the tax laws of that particular country in addition to or in lieu of United States federal income taxes. This discussion is based on the provisions of the Code in effect at the time this summary was drafted for inclusion in this Proxy Statement.

Incentive Stock Options. An optionee recognizes no taxable income for regular income tax purposes (although it may be included as an item for alternative minimum tax purposes) as the result of the grant or exercise of an incentive stock option. Optionees who do not dispose of their shares for at least two years following the date the incentive stock option was granted or within one year following the exercise of the option will recognize a long-term capital gain or loss equal to the difference, if any, between the sale price and the purchase price of the shares. If an optionee satisfies both such holding periods upon a sale of the shares, the Company will not be entitled to any deduction for federal income tax purposes. If an optionee disposes of shares either within two years after the date of grant or within one year from the date of exercise (referred to as a disqualifying disposition), the difference between the fair market value of the shares on the exercise date and the option exercise price (not to exceed the gain realized on the sale if the disposition is a transaction with respect to which a loss, if sustained, would be recognized) will be taxed as ordinary income at the time of disposition. Any gain in excess of that amount will be treated as a capital gain. If a loss is recognized, it will be a capital loss. A capital gain or loss will be long-term if the optionee's holding period is more than 12 months. Any ordinary income recognized by the optionee upon the disqualifying disposition of the shares generally should be deductible by the Company for federal income tax purposes, except to the extent such deduction is limited by applicable provisions of the Code or the regulations thereunder.

Non-ISO and Stock Appreciation Rights. A holder of these awards generally does not recognize taxable income as the result of the grant of such award. Upon exercise of a nonstatutory stock option or stock appreciation right, the holder normally recognizes ordinary income in an amount equal to the difference between the exercise price and the fair market value of the shares on the exercise date. If the holder is an employee, such ordinary income generally is subject to withholding of income and employment taxes. Upon the sale of stock acquired by the exercise of a nonstatutory stock option or stock appreciation right, any gain or loss, based on the difference between the sale price and the fair market value on the exercise date, will be taxed as capital gain or loss. A capital gain or loss will be long-term if the holding period of the shares is more than 12 months. The Company generally is entitled to a deduction equal to the amount of ordinary income recognized by the optionee as a result of the exercise of a nonstatutory stock option or stock appreciation right, except to the extent such deduction is limited by applicable provisions of the Code or the regulations thereunder.

Restricted Shares, Restricted Share Units. A participant acquiring restricted stock generally will recognize ordinary income equal to the fair market value of the shares on the determination date. The determination date is the date on which the participant acquires the shares unless the shares are subject to a substantial risk of forfeiture and are not transferable, in which case the determination date is the earlier of (i) the date on which the shares become transferable or (ii) the date on which the shares are no longer subject to a substantial risk of forfeiture. If the determination date is after the date on which the participant acquires the shares, the participant may elect, pursuant to Section 83(b) of the Code, to have the date of acquisition be the determination date by

filing an election with the Internal Revenue Service no later than 30 days after the date on which the shares are acquired. If the participant is an employee, such ordinary income generally is subject to withholding of income and employment taxes. Upon the sale of shares acquired pursuant to a restricted stock award, any gain or loss, based on the difference between the sale price and the fair market value on the determination date, will be taxed as capital gain or loss. The Company generally should be entitled to a deduction equal to the amount of ordinary income recognized by the participant on the determination date, except to the extent such deduction is limited by applicable provisions of the Code.

Performance and Restricted Stock Unit Awards. A participant generally will recognize no income upon the receipt of a performance share, performance unit or restricted stock unit award. Upon the settlement of such an award, participants normally will recognize ordinary income in the year of receipt in an amount equal to the cash received and the fair market value of any substantially vested shares received. If the participant is an employee, such ordinary income generally is subject to withholding of income and employment taxes. If the participant receives shares of restricted stock, the participant generally will be taxed in the same manner as described under **Restricted Shares**. Upon the sale of any shares received, any gain or loss, based on the difference between the sale price and the fair market value on the determination date (as defined under **Restricted Shares**), will be taxed as capital gain or loss. The Company generally is entitled to a deduction equal to the amount of ordinary income recognized by the participant on the determination date, except to the extent such deduction is limited by applicable provisions of the Code.

Deferred Share Units. A participant generally will recognize no income upon the receipt of a deferred compensation award. Upon the settlement of the award, the participant normally will recognize ordinary income in the year of settlement in an amount equal to the fair market value of the shares received. Upon the sale of any shares received, any gain or loss, based on the difference between the sale price and the fair market value of the shares on the date they were transferred to the participant, will be taxed as capital gain or loss. The Company generally is entitled to a deduction equal to the amount of ordinary income recognized by the participant, except to the extent such deduction is limited by applicable provisions of the Code. Deferred compensation awards, when granted, would generally be subject to the requirements of Section 409A of the Code, which would impose certain restrictions on the timing and form of payment of deferred compensation.

Potential Limitation on Company Deductions. In accordance with applicable regulations issued under Section 162(m), compensation attributable to stock options and stock appreciation rights will qualify as performance-based compensation, provided that: (i) the 2010 Plan contains a per-employee limitation on the number of shares for which options or stock appreciation rights may be granted during a specified period; (ii) the per-employee limitation is approved by the stockholders; (3) the option is granted by a compensation committee comprised solely of outside directors (as defined in Section 162(m) of the Code); and (4) the exercise price of the option or right is not less than the fair market value of the stock on the date of grant. For the above reasons, our 2010 Plan provides for an annual per employee limitation as required under Section 162(m), and our Compensation Committee is comprised solely of outside directors. Accordingly, options or stock appreciation rights granted by the Compensation Committee qualify as performance-based compensation, and the other awards subject to performance goals may also qualify.

This description of the 2010 Plan is qualified in its entirety by reference to the 2010 Plan, as proposed to be amended, a copy of which is attached as Appendix A to this proxy statement.

PROPOSAL 4**RATIFICATION OF APPOINTMENT OF****INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

The audit committee of the Board (the *Audit Committee*) has appointed Deloitte & Touche LLP as our independent registered public accounting firm for the fiscal year ending on December 31, 2013, and urges you to vote for ratification of Deloitte & Touche LLP's appointment. Deloitte & Touche LLP has audited our financial statements since fiscal year 2008. Stockholder ratification of the appointment of Deloitte & Touche LLP as our independent registered public accounting firm is not required by our amended and restated bylaws (*Bylaws*) or otherwise. However, the Board is submitting the appointment of Deloitte & Touche LLP to the stockholders for ratification as a matter of good corporate practice. If the stockholders do not ratify the selection, the Board and the Audit Committee will reconsider whether or not to retain Deloitte & Touche LLP. Even if the selection is ratified, the Board and the Audit Committee may, in their discretion, direct the appointment of a different independent registered public accounting firm at any time during the year if they determine that such a change would be in the best interests of our Company and our stockholders.

We expect representatives of Deloitte & Touche LLP to be present at the Annual Meeting and available to respond to appropriate questions by stockholders. Additionally, the representatives of Deloitte & Touche LLP will have the opportunity to make a statement if they so desire.

Principal Accountant Fees and Services

The following table presents the aggregate fees billed or accrued for professional services rendered by Deloitte & Touche LLP during the last two fiscal years:

Type	2011	2012
Audit Fees	\$ 407,141	\$ 425,000
Audit Related Fees		
Tax Fees	30,095	27,790
All Other Fees		
Total Fees	\$ 437,236	\$ 452,790

Audit Fees This category includes the aggregate fees billed or accrued for each of the last two fiscal years for professional services rendered by the independent auditors for the audit of the Company's annual financial statements, review of financial statements included in the Company's Registration Statement on Form S-3 and quarterly reports filed with the SEC and services that are normally provided by the independent auditors in connection with other statutory and regulatory filings made by the Company during those fiscal years.

Audit Related Fees This category includes the aggregate fees billed in each of the last two fiscal years for services by the independent auditors that are reasonably related to the performance of the audits of the financial statements and are not reported above under *Audit Fees*.

Tax Fees This category includes the aggregate fees billed in each of the last two years for professional services rendered by the independent auditors for tax compliance, tax planning and tax advice.

All Other Fees This category includes the aggregate fees billed in each of the last two fiscal years for products and services by the independent auditors that are not reported under *Audit Fees*, *Audit Related Fees*, or *Tax Fees*.

Audit Committee s Pre-Approval Policies and Procedures

Before our independent registered public accounting firm is engaged by us to render audit or non-audit services, the engagement is approved by our Audit Committee. From time to time, our Audit Committee may pre-approve specified types of services that are expected to be provided to us by our registered public accounting firm during the next 12 months. Any such pre-approval is detailed as to the particular service or type of services to be provided and is also generally subject to a maximum dollar amount.

Our Audit Committee may delegate the authority to approve any audit or non-audit services to be provided to us by our registered public accounting firm to one or more subcommittees (including a subcommittee consisting of a single member). Any approval of services by a subcommittee of our Audit Committee pursuant to this delegated authority is reported at the next meeting of our Audit Committee.

Vote Required and Board Recommendation

Stockholder ratification of Deloitte & Touche LLP as our independent registered public accounting firm requires the affirmative vote of a majority of the shares of common stock present in person or represented by proxy and entitled to vote at the Annual Meeting. Abstentions will be treated as shares present and entitled to vote and will therefore have the same effect as a vote against this proposal.

THE BOARD UNANIMOUSLY RECOMMENDS A VOTE FOR THE RATIFICATION OF THE APPOINTMENT OF DELOITTE & TOUCHE LLP AS OUR INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM FOR THE FISCAL YEAR ENDING DECEMBER 31, 2013.

PROPOSAL 5

ADVISORY VOTE ON EXECUTIVE COMPENSATION

In accordance with Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act), we are providing our stockholders the opportunity to vote on a non-binding, advisory resolution, commonly known as a say-on-pay resolution, to approve the compensation of our named executive officers as described in this proxy statement in the section titled Compensation Discussion and Analysis, beginning on page 39, the compensation tables beginning on page 42 and any related narrative discussion contained in this proxy statement. This proposal gives our stockholders the opportunity to express their views on the design and effectiveness of our executive compensation program.

Our executive compensation program is designed to retain, attract and motivate talented, qualified senior executives to effectively manage and promote the success of our Company at a reasonable total compensation cost. To achieve this balance of objectives, the Compensation Committee has adopted a compensation approach that includes a mix of short-term and long-term components, cash and equity elements and fixed and contingent payments in proportions that we believe will provide appropriate incentives to reward our senior executives and management team. Under these programs, our executive officers are rewarded for the achievement of both specific financial and strategic goals, which are expected to result in increased stockholder value.

At the 2011 Annual Meeting, approximately 95% of the votes cast by our stockholders were in favor of the say-on-pay vote. The Compensation Committee generally believes that such results affirmed stockholder support of our approach to executive compensation.

Please read the Compensation Discussion and Analysis and the tables and related narrative discussion for additional details about our executive compensation programs, including information about the fiscal year 2012 compensation of our named executive officers.

Fiscal Year 2012 Business Highlights

For the fiscal year ending December 31, 2012:

We completed the initial retrofit construction of our 22 MGPY ethanol production facility in Luverne, Minnesota (the Agri-Energy Facility);

In May 2012, we commenced initial startup operations for the production of isobutanol at our Agri-Energy Facility and produced approximately 100,000 gallons of bio-based isobutanol for initial sale and future customer testing;

We were issued nine patents in 2012; U.S. Patent No. 8101808, U.S. Patent No. 8097440, U.S. Patent No. 8133715, U.S. Patent No. 8153415, U.S. Patent No. 8158404, U.S. Patent No. 8193402, U.S. Patent No. 8232089, U.S. Patent No. 8273565 and U.S. Patent No. 8283505. As of December 31, 2012, we have submitted 375 patent applications in the U.S. and in various foreign jurisdictions directed to our technologies and specific methods and products that support our business in the biofuels and bio-industrial market; and

In July 2012 we completed concurrent, underwritten public offerings of common stock and convertible debt generating aggregate proceeds of \$106,875,000.

We believe that the compensation of our named executive officers for fiscal 2012 was appropriate and reasonable and that our compensation policies and procedures are sound and support the best interests of our Company and our stockholders. Additionally, we believe that our compensation policies and procedures are effective in aligning the executives' long-term interests with those of our stockholders.

Accordingly, the following resolution will be submitted for a stockholder vote at the Annual Meeting:

RESOLVED, that the stockholders of Gevo, Inc. (the Company) approve, on an advisory and non-binding basis, the compensation of the Company s named executive officers, as disclosed in the Company s proxy statement for the 2013 Annual Meeting of Stockholders pursuant to the compensation disclosure rules of the SEC, including the Compensation Discussion and Analysis, compensation tables and narrative discussion in this proxy statement.

Vote Required and Board Recommendation

This vote is not intended to address any specific element of compensation, but rather the overall compensation of our named executive officers and the compensation philosophy, policies and practices described in this proxy statement. Approval of the above resolution requires the affirmative vote of a majority of the shares of common stock present in person or represented by proxy and entitled to vote at the Annual Meeting. Abstentions will be treated as shares present and entitled to vote and will therefore have the same effect as a vote against this proposal. Broker non-votes will have no effect on the outcome of this proposal.

As an advisory vote, the outcome of the vote on this proposal is not binding upon us. However, our Compensation Committee, which is responsible for designing and administering our executive compensation programs, values the opinions expressed by our stockholders in their vote on this proposal and will consider the outcome of this vote when making future compensation decisions for our named executive officers.

**THE BOARD UNANIMOUSLY RECOMMENDS A VOTE FOR THE RESOLUTION
APPROVING THE COMPENSATION OF OUR NAMED EXECUTIVE OFFICERS
AS DISCLOSED IN THIS PROXY STATEMENT.**

INFORMATION REGARDING THE BOARD OF DIRECTORS

AND CORPORATE GOVERNANCE

General

This section describes key corporate governance guidelines and practices that we have adopted. Complete copies of our Corporate Governance Guidelines, the charters of the committees of our Board and our Code of Business Conduct and Ethics described below may be viewed on our website at <http://ir.gevo.com> under the heading Corporate Governance. Alternately, you can request a copy of any of these documents free of charge by writing to our Secretary, c/o Gevo, Inc., 345 Inverness Drive South, Building C, Suite 310, Englewood, Colorado 80112.

Our Board has adopted corporate governance guidelines to assist the Board in the exercise of its duties and responsibilities and to serve the best interests of our Company and our stockholders. The corporate governance guidelines are available for review on our website at <http://ir.gevo.com> under the heading Corporate Governance. These guidelines, which provide a framework for the conduct of our Board's business, provide:

that the Board's principal responsibility is to oversee the management of the Company;

criteria for Board membership;

that a majority of the members of the Board shall be independent directors;

limits on a Board member's service on boards of directors of other public companies;

for the appointment of a lead independent director;

that the independent directors meet regularly in executive session;

that at least annually, the Board and its committees will conduct a self-evaluation; and

that directors have complete access to all officers and employees.

Independence of Directors

As required by the listing standards of NASDAQ, a majority of the members of our Board must qualify as independent, as affirmatively determined by our Board. Our Board consults with our legal counsel to ensure that its determinations are consistent with all relevant securities and other laws and regulations regarding the definition of independent, including those set forth in the applicable NASDAQ listing standards.

Our Board has unanimously determined that eight of our current directors, constituting a majority of the Board, are independent directors as that term is defined by NASDAQ Marketplace Rule 5605(a)(2). In making this determination, the Board has affirmatively determined, considering broadly all relevant facts and circumstances regarding each independent director, that none of the independent directors has a material relationship with us (either directly or as a partner, stockholder, officer or affiliate of an organization that has a relationship with us). In addition, based upon such standards, the Board determined that Dr. Gruber, who currently serves as a Class I director, is not independent because he is our Chief Executive Officer.

Board Leadership Structure

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The Board believes that its current independent Board structure is best for our Company and provides good corporate governance and accountability. The Board does not have a fixed policy regarding the separation of the roles of the Chairman of the Board and the Chief Executive Officer because it believes the Board should be able to freely select the Chairman of the Board based on criteria that it deems to be in the best interests of the Company and its stockholders. The functions of the Board are carried out by the full Board, and when delegated, by the Board committees. Each director is a full and equal participant in the major strategic and policy decisions of our Company.

Mr. Shai Weiss is the Chairman of our Board and Dr. Patrick Gruber is our Chief Executive Officer. Mr. Weiss was originally elected to the Board in 2007 by Virgin Green Fund pursuant to the terms of our Certificate of Incorporation, as in effect at that time. The Board believes that the current structure of a separate Chairman of the Board and Chief Executive Officer is the optimum structure for the Company at this time.

Board's Role in Risk Oversight

The risk oversight function of the Board is carried out by both the Board and the Audit Committee. The Board regularly reviews information regarding our credit, liquidity and operations, as well as the risks associated with each. Our Audit Committee meets periodically with management to discuss our major financial and operating risk exposures and the steps, guidelines and policies taken or implemented relating to risk assessment and risk management. Our Compensation Committee is responsible for overseeing the management of risks relating to our executive compensation plans and arrangements. Our Nominating and Corporate Governance Committee manages risks associated with the independence of the Board and potential conflicts of interest and oversees management of risks associated with environmental, health and safety concerns. While each committee is responsible for evaluating certain risks and overseeing the management of such risks, the entire Board is informed about such risks by the committees.

Meetings

Our Board is responsible for overseeing the management of our business. We keep our directors informed of our business at meetings and through reports and analyses presented to the Board and the committees of the Board. Regular communications between our directors and management also occur apart from meetings of the Board and committees of the Board. During fiscal year 2012, there were 12 meetings of the Board. The Board also encourages its directors to attend annual meetings of our stockholders and four directors attended the annual meeting of our stockholders held on June 12, 2012.

Information Regarding Board Committees

Our Board has established a standing Audit Committee, a standing Compensation Committee and a standing Nominating and Corporate Governance Committee to devote attention to specific subjects and to assist it in the discharge of its responsibilities. All three committees operate under written charters adopted by our Board, each of which is available on our website at <http://ir.gevo.com> under the heading Corporate Governance. The following table provides membership and meeting information for fiscal year 2012 for each of the Board committees. Each director attended at least 75% of the aggregate number of meetings of the Board and of the committees of the Board on which he or she served, which were held during the period for which he or she was a director and/or committee member, except for Mr. Bruce Smith who attended 8 meetings of the Board.

Name	Audit	Compensation	Nominating and Corporate Governance
Employee Director:			
Patrick Gruber, Ph.D.			
Non-Employee Directors:			
Carlos Cabrera	X		X
Ruth Dreessen	X ⁽¹⁾⁽²⁾		
Ganesh Kishore, Ph.D.		X	
Gary Mize	X	X	
Bruce Smith	X ⁽²⁾		X
Stacy Smith		X	
Shai Weiss		X ⁽¹⁾	X ⁽¹⁾

Neal J. Andrews
Chief Financial Officer (principal financial officer)
of

 nbsp;nbsp;

BlackRock
California
Municipal
Income
Trust

Date: December
22, 2010
