

INTERNATIONAL BUSINESS MACHINES CORP

Form S-8

January 17, 2002

As filed with the Securities and Exchange Commission on January 17, 2002

Registration No. 333-37034

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SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form S-8
REGISTRATION STATEMENT
Under
THE SECURITIES ACT OF 1933

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

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

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

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

CrossWorlds Software, Inc. 2000 Non-Executive Stock Plan
CrossWorlds Software, Inc. 2000 Directors' Stock Option Plan
CrossWorlds Software, Inc. 1999 Executive Stock Plan
CrossWorlds Software, Inc. 1997 Stock Plan, as amended
CrossWorlds Software, Inc. 1996 Stock Plan, as amended
(Full Title of the Plan)

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

Copies to:
Scott A. Barshay, Esq.
Cravath, Swaine & Moore
Worldwide Plaza
825 Eighth Avenue
New York, NY 10019

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(212) 474-1000

CALCULATION OF REGISTRATION FEE

Title of securities to be registered	Amount to be registered	Proposed maximum offering price per share	Proposed maximum aggregate offering price	Amount of registration fee
Common Stock, par value \$.20 per share	336.776[1]	\$166.31[2]	\$56,009,217[2]	\$5,152.85

[1] Based on 8,933,618 shares subject to outstanding options under the CrossWorlds Software, Inc. 2000 Non-Executive Stock Plan, CrossWorlds Software, Inc. 2000 Directors' Stock Option Plan, CrossWorlds Software, Inc. 1999 Executive Stock Plan, CrossWorlds Software, Inc. 1997 Stock Plan, as amended, and CrossWorlds Software, Inc. 1996 Stock Plan, as amended.

[2] Estimated solely for the purpose of determining the registration fee in accordance with Rule 457(h) under the Securities Act of 1933 on the basis of the weighted average exercise price of the outstanding options under the plans specified in comment[1] above, on January 11, 2002.

Part II

INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

ITEM 3. INCORPORATION OF DOCUMENTS BY REFERENCE.

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

(a) The Annual Report of International Business Machines Corporation ("IBM") on Form 10-K for the fiscal year ended December 31, 2000, file number 1567370, filed pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act").

(b) All other reports filed by IBM pursuant to Section 13(a) or 15(d) of the Exchange Act since December 31, 2000.

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

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

Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is or is deemed to be incorporated by reference herein modifies or supersedes such

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statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

ITEM 4. DESCRIPTION OF SECURITIES.

Not applicable.

ITEM 5. INTERESTS OF NAMED EXPERTS AND COUNSEL.

The validity of the IBM common stock, par value \$.20 per share, offered hereby has been passed upon by Andrew Bonzani, Assistant Secretary and Senior Counsel of IBM. As of January 17, 2002, Mr. Bonzani beneficially owns shares of IBM common stock, par value \$.20 per share, and options to purchase shares of IBM common stock, par value \$.20 per share.

Item 6. Indemnification of Directors and Officers.

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

"The Corporation shall, to the fullest extent permitted by applicable law as in effect at any time, indemnify any person made, or threatened to be made, a party to an action or proceeding whether civil or criminal (including an action or proceeding by or in the right of the Corporation or any other corporation of any type or kind, domestic or foreign, or

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

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

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

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director occurring prior to such amendment or repeal."

With certain limitations, Sections 721 through 726 of the New York Business Corporation Law permit a corporation to indemnify a director or officer made a party to an action (i) by a corporation or in its right in order to procure a judgment in its favor unless he shall have breached his duties, or (ii) other than an action by or in the right of the corporation in order to procure a judgment in its favor, if such director or officer acted in good faith and in a manner he reasonably believed to be in or, in certain cases not opposed to such corporation's interest and additionally, in criminal actions, had no reasonable cause to believe his conduct was unlawful.

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

ITEM 7. EXEMPTION FROM REGISTRATION CLAIMED.

Not applicable.

ITEM 8. EXHIBITS.

Exhibit Number -----	Description -----
5.1	Opinion of Andrew Bonzani, Esq., Assistant Secretary and Senior Counsel, regarding the legality of the securities being issued
23.1	Consent of PricewaterhouseCoopers LLP
23.2	Consent of Andrew Bonzani, Esq., Assistant Secretary and Senior Counsel (included in Exhibit 5.1)
24.1	Power of Attorney

Item 9. Undertakings.

(a) The undersigned registrant hereby undertakes:

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

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

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

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at the termination of the offering.

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

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

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Armonk, State of New York, on the 17th day of January, 2002.

INTERNATIONAL BUSINESS MACHINES CORPORATION,

By: /s/ Andrew Bonzani

Name: Andrew Bonzani, Esq.
Title: Assistant Secretary and Senior Counsel

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities indicated, on the 17th day of January, 2002.

Signature Title

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*

Louis V. Gerstner, Jr. Chairman of the Board of Directors and Chief
Executive Officer (Principal Executive
Officer)

*

John R. Joyce Senior Vice President and Chief Financial
Officer (Principal Financial Officer)

*

Mark Loughridge Vice President and Controller

*

Cathleen Black Director

*

Nannerl O. Keohane Director

*

Charles F. Knight Director

*

Minoru Makihara Director

*

Lucio A. Noto Director

*

Samuel J. Palmisano President and Chief Operating Officer

*

John B. Slaughter Director
Director

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24.1

Power of Attorney

EXHIBIT 5.1

January 17, 2002

International Business Machines Corporation

New Orchard Road

Armonk, NY 10504

Ladies and Gentlemen:

I am Assistant Secretary and Senior Counsel of International Business Machines Corporation (herein called the "Corporation") and an attorney duly admitted to practice in the State of New York. I am familiar with the Registration Statement on Form S-8 (the "Registration Statement") under the Securities Act of 1933 (the "Securities Act") regarding the shares of common stock, par value \$.20 per share, of the Corporation (the "Shares") to be issued pursuant to the CrossWorlds Software, Inc. 2000 Non-Executive Stock Plan, CrossWorlds Software, Inc. 2000 Directors' Stock Option Plan, CrossWorlds Software, Inc. 1999 Executive Stock Plan, CrossWorlds Software, Inc. 1997 Stock Plan, as amended, and CrossWorlds Software, Inc. 1996 Stock Plan, as amended (collectively, the "Plans").

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

Based upon the foregoing, I am of the opinion that, when issued or sold in accordance with the terms of the Plans, the Shares will be duly authorized, legally issued, fully paid and nonassessable.

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

Very truly yours,

/s/ Andrew Bonzani

Andrew Bonzani, Esq.
Assistant Secretary and Senior Counsel

EXHIBIT 23.1

CONSENT OF PRICEWATERHOUSECOOPERS LLP

We hereby consent to the incorporation by reference in this Registration Statement on Form S-8 of the following documents:

- o our report dated January 17, 2001, relating to the consolidated financial statements, which appears in the International Business Machines Corporation 2000 Annual Report to Stockholders, which is incorporated by reference in International Business Machines Corporation's Annual Report on Form 10-K for the fiscal year ended December 31, 2000,
- o our report dated January 17, 2001, relating to the financial statement schedule, which appears in such Annual Report on Form 10-K and
- o our report dated June 28, 2001, relating to the financial statements of the IBM Tax Deferred Savings Plan 401(k) which appears in IBM's Annual Report on Form 11-K for the fiscal year ended December 31, 2000.

/s/ PricewaterhouseCoopers LLP

PricewaterhouseCoopers LLP

New York, New York

January 11, 2002

EXHIBIT 24.1

POWER OF ATTORNEY OF LOUIS V. GERSTNER, JR.

KNOW ALL PERSONS BY THESE PRESENTS, that I, the undersigned Chairman of the Board of Directors and Chief Executive Officer of International Business Machines Corporation, a New York corporation (the "Corporation"), which is to file with the Securities and Exchange Commission (the "SEC"), Washington, D.C., under the provisions of the Securities Act of 1933 one or more Registration Statements on Form S-4, S-8, or other appropriate Form, for shares of capital stock of the Corporation or other interests whether issuable in connection with the acquisition of CrossWorlds Software, Inc., or upon the exercise or surrender of options assumed or exchanged by the Corporation that were issued by CrossWorlds Software, Inc., hereby constitute and appoint John M. Thompson, Samuel J. Palmisano, Lawrence R. Ricciardi, John R. Joyce, Mark Loughridge, Robert F. Woods, Daniel E. O'Donnell and Andrew Bonzani, and each

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of them, my true and lawful attorneys-in-fact and agents, with full power to act, together or each without the others, for me and in my name, place and stead, in any and all capacities, to sign, or cause to be signed electronically, any and all of said Registration Statements (which Registration Statements may constitute post-effective amendments to registration statements previously filed with the SEC) and any and all amendments to the aforementioned Registration Statements, and to file said Registration Statements and amendments thereto so signed with all exhibits thereto, and any and all other documents in connection therewith, with the SEC, hereby granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform any and all acts and things requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, I, the undersigned, have executed this Power of Attorney as of this 24th day of September, 2001.

/s/ Louis V. Gerstner, Jr

Louis V. Gerstner, Jr.
Chairman of the Board of Directors and
Chief Executive Officer

POWER OF ATTORNEY OF JOHN R. JOYCE

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

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lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, I, the undersigned, have executed this Power of Attorney as of this 24th day of September, 2001.

/s/ John R. Joyce

John R. Joyce
Senior Vice President and
Chief Financial Officer

POWER OF ATTORNEY OF MARK LOUGHRIDGE

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

IN WITNESS WHEREOF, I, the undersigned, have executed this Power of Attorney as of this 24th day of September, 2001.

/s/ Mark Loughridge

Mark Loughridge
Vice President and
Controller

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POWER OF ATTORNEY OF SAMUEL J. PALMISANO

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

IN WITNESS WHEREOF, I, the undersigned, have executed this Power of Attorney as of this 24th day of September 2001.

/s/ Samuel J. Palmisano

Samuel J. Palmisano
President and Chief Operating
Officer

POWER OF ATTORNEY OF JOHN M. THOMPSON

KNOW ALL PERSONS BY THESE PRESENTS, that I, the undersigned Vice Chairman of International Business Machines Corporation, a New York corporation (the " Corporation"), which is to file with the Securities and Exchange Commission (the "SEC") under the provisions of the Securities Act of 1933 one or more Registration Statements on Form S-4, S-8, or other appropriate Form, for shares of capital stock of the Corporation or other interests whether issuable in connection with the acquisition of CrossWorlds Software, Inc., or upon the exercise or surrender of options assumed or exchanged by the Corporation that were issued by CrossWorlds Software, Inc., hereby constitute and appoint Louis V. Gerstner, Jr., Samuel J. Palmisano, Lawrence R. Ricciardi, John R. Joyce, Mark Loughridge, Robert F. Woods, Daniel E. O'Donnell and Andrew Bonzani, and each of them, my true and lawful attorneys-in-fact and agents, with full power to act, together or each without

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the others, for me and in my name, place and stead, in any and all capacities, to sign, or cause to be signed electronically any and all of said Registration Statements (which Registration Statements may constitute post-effective amendments to registration statements previously filed with the SEC) and any and all amendments to the aforementioned Registration Statements and to file said Registration Statements and amendments thereto so signed with all exhibits thereto, and with any and all other documents in connection therewith, with the SEC, hereby granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform any and all acts and things requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them may lawfully do or cause to be done by virtue hereof.

IN WITNESS WHEREOF, I, the undersigned, have executed this Power of Attorney as of this 24th day of September 2001.

/s/ John M. Thompson

John M. Thompson
Vice Chairman of the Board of
Directors

POWER OF ATTORNEY OF IBM DIRECTOR

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

IN WITNESS WHEREOF, I, the undersigned, have executed this Power of Attorney as of this 24th day of September, 2001.

/s/ Cathleen Black

Cathleen Black
Director

/s/ Nannerl O. Keohane

Nannerl O. Keohane
Director

/s/ Charles F. Knight

Charles F. Knight
Director

/s/ Minoru Makihara

Minoru Makihara
Director

/s/ Lucio A. Noto

Lucio A. Noto
Director

/s/ John B. Slaughter

John B. Slaughter
Director

/s/ Sidney Taurel

Sidney Taurel
Director

/s/ Alex Trotman

Alex Trotman
Director

/s/ Lodewijk C. van Wachem

Lodewijk C. van Wachem
Director

/s/ Charles M. Vest

Charles M. Vest
Director