

RED HAT INC  
Form S-8  
September 26, 2008

As filed with the Securities and Exchange Commission on September 26, 2008

Registration No. 333-\_\_\_\_\_

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
**WASHINGTON, D.C. 20549**

**FORM S-8**  
**REGISTRATION STATEMENT**

*Under*

*The Securities Act of 1933*

**RED HAT, INC.**

(Exact Name of Registrant as Specified in its Charter)

**Delaware**  
(State or Other Jurisdiction of  
Incorporation or Organization)

**06-1364380**  
(I.R.S. Employer  
Identification Number)

**1801 Varsity Drive**  
**Raleigh, North Carolina 27606**

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(Address of Principal Executive Offices, Including Zip Code)

2004 Long-Term Incentive Plan, as amended and restated

(Full Title of the Plan)

Michael R. Cunningham, Esq.

General Counsel

Red Hat, Inc.

1801 Varsity Drive

Raleigh, North Carolina 27606

(Name and Address of Agent for Service)

(919) 754-3700

(Telephone Number, Including Area Code, of Agent For Service)

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 12b2 of the Exchange Act. (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered(1)	Proposed Maximum Offering Price Per Share	Proposed Maximum Aggregate Offering Price	Amount of Registration Fee
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Common Stock, \$0.0001 par value per share	9,500,000 shares	\$16.86(2)	\$160,170,000(2)	\$6,295
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- (1) In accordance with Rule 416 under the Securities Act of 1933, as amended, this registration statement shall be deemed to cover any additional securities that may from time to time be offered or issued to prevent dilution resulting from stock splits, stock dividends or similar transactions.
- (2) Estimated solely for the purpose of calculating the registration fee pursuant to Rules 457(c) and 457(h) of the Securities Act of 1933, as amended, and based upon the average of the high and low prices of the Registrant's Common Stock as reported on the New York Stock Exchange on September 25, 2008.

**STATEMENT OF INCORPORATION BY REFERENCE**

This registration statement on Form S-8 is filed to register the offer and sale of an additional 9,500,000 shares of the registrant's common stock, \$0.0001 par value per share, to be issued under the registrant's 2004 Long-Term Incentive Plan, as amended and restated. In accordance with General Instruction E to Form S-8, this registration statement incorporates by reference the contents of (i) PART I and (ii) Items 3, 4, 6, 7 and 9 of PART II of the Registration Statement on Form S-8, File No. 333-121507, filed with the Securities and Exchange Commission (the Commission) by the registrant on December 21, 2004, relating to the registrant's 2004 Long-Term Incentive Plan.

**PART II**

**INFORMATION REQUIRED IN THE REGISTRATION STATEMENT**

**Item 5. Interests of Named Experts and Counsel.**

Wilmer Cutler Pickering Hale and Dorr LLP has opined as to the legality of the securities being offered by this registration statement.

**Item 8. Exhibits.**

The Exhibit Index immediately preceding the exhibits is incorporated herein by reference.

**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 Raleigh, state of North Carolina, on this 26th day of September, 2008.

RED HAT, INC.

By: /s/ James M. Whitehurst  
 James M. Whitehurst  
 President and Chief Executive Officer

**POWER OF ATTORNEY AND SIGNATURES**

We, the undersigned officers and directors of Red Hat, Inc., hereby severally constitute and appoint Charles E. Peters, Jr. and Michael R. Cunningham, and each of them singly, our true and lawful attorneys with full power to them, and each of them singly, to sign for us and in our names in the capacities indicated below, the registration statement on Form S-8 filed herewith and any and all subsequent amendments to said registration statement, and generally to do all such things in our names and on our behalf in our capacities as officers and directors to enable Red Hat, Inc. to comply with the provisions of the Securities Act of 1933, as amended, and all requirements of the Securities and Exchange Commission, hereby ratifying and confirming our signatures as they may be signed by our said attorneys, or any of them, to said registration statement and any and all amendments thereto.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ James M. Whitehurst James M. Whitehurst	President, Chief Executive Officer and Director  (principal executive officer)	September 26, 2008
/s/ Charles E. Peters, Jr. Charles E. Peters, Jr.	Executive Vice President and Chief Financial Officer  (principal financial officer)	September 26, 2008
/s/ Mark E. Cook Mark E. Cook	Vice President Finance and Controller (principal accounting officer)	September 26, 2008

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/s/ W. Steve Albrecht W. Steve Albrecht	Director	September 26, 2008
/s/ Marye Anne Fox Marye Anne Fox	Director	September 18, 2008
/s/ Narendra Gupta Narendra Gupta	Director	September 26, 2008
/s/ William S. Kaiser William S. Kaiser	Director	September 26, 2008
/s/ Henry Hugh Shelton Henry Hugh Shelton	Director	September 17, 2008
/s/ Matthew J. Szulik Matthew J. Szulik	Chairman of the Board of Directors	September 26, 2008

**INDEX TO EXHIBITS**

<b>Number</b>	<b>Description</b>
4.1	Third Amended and Restated Certificate of Incorporation, as amended, of the Registrant (incorporated by reference to Exhibit 3.1 to the Registrant's Quarterly Report on Form 10-Q filed with the SEC on July 10, 2007 (File no. 001-33162)).
4.2	Amended and Restated By-laws, as amended, of the Registrant (incorporated by reference to Exhibit 3.2 to the Registrant's Registration Statement on Form S-1 filed with the SEC on January 14, 2000 (File no. 333-94775)).
5.1	Opinion of Wilmer Cutler Pickering Hale and Dorr LLP, counsel to the Registrant
23.1	Consent of Wilmer Cutler Pickering Hale and Dorr LLP  (included in Exhibit 5.1)
23.2	Consent of Independent Registered Public Accounting Firm
24.1	Power of attorney (included on the signature pages of this registration statement)