WIND RIVER SYSTEMS INC
Form SC 14D9
June 11, 2009
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UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE 14D-9

(RULE 14d-101)

SOLICITATION/RECOMMENDATION STATEMENT UNDER SECTION 14(d)(4)

OF THE SECURITIES EXCHANGE ACT OF 1934

WIND RIVER SYSTEMS, INC.

(Name of Subject Company)

WIND RIVER SYSTEMS, INC.

(Name of Person Filing Statement)

COMMON STOCK, PAR VALUE $0.001 PER SHARE

(Title of Class of Securities)

973149107

(CUSIP Number of Class of Securities)

Kenneth R. Klein

President and Chief Executive Officer

500 Wind River Way

Alameda, California 94501

(510) 748-4100

(Name, address and telephone number of person authorized to receive

notice and communications on behalf of the person filing statement)

Copies to:

Aaron J. Alter, Esq.

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Wilson Sonsini Goodrich & Rosati,

Professional Corporation

650 Page Mill Road

Palo Alto, California 94304

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¨ **Check the box if the filing relates to preliminary communications made before the commencement date of a tender offer.**

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Item 1. Subject Company Information

(a) ***Name and Address*****.**

The name of the subject company is Wind River Systems, Inc., a Delaware corporation (Wind River or the Company). The address of the Company s principal executive offices is 500 Wind River Way, Alameda, California 94501, and the telephone number of the Company s principal executive offices is (510) 748-4100.

(b) ***Securities*****.**

The title of the class of equity securities to which this Schedule 14D-9 (this Statement) relates is the common stock, $0.001 par value per share, of the Company (the Common Stock, and also referred to as, the Shares). As of May 31, 2009, there were 76,892,405 shares of Common Stock issued and outstanding.

Item 2. Identity and Background of Filing Person

(a) ***Name and Address*****.**

The filing person is the Company. The name, business address and business telephone number of the Company are set forth in Item 1 above.

(b) ***Tender Offer*****.**

This Statement relates to the tender offer by APC II Acquisition Corporation, a Delaware corporation (Purchaser) and a wholly-owned subsidiary of Intel Corporation, a Delaware corporation (Intel or Parent), to purchase all outstanding Shares, including the associated rights to purchase shares of the Company s Series A Junior Participating Preferred Stock (the Rights) issued pursuant to the Amended and Restated Rights Agreement (as defined below), at a price of $11.50 per Share in cash (the Offer Price), upon the terms and subject to the conditions set forth in the Offer to Purchase, dated June 11, 2009 (the Offer to Purchase), and the related Letter of Transmittal (which, together with the Offer to Purchase, as each may be amended or supplemented from time to time, constitute the Offer). The Offer to Purchase and Letter of Transmittal are filed as Exhibits (a)(1)(i) and (a)(1)(ii) hereto, respectively, and are incorporated herein by reference.

The Offer is described in the Tender Offer Statement on Schedule TO (together with the exhibits thereto, as amended, the Schedule TO), filed by Parent and Purchaser with the Securities and Exchange Commission (the SEC) on June 11, 2009. The Offer was commenced on June 11, 2009 and expires at 12:00 Midnight, New York City time on July 9, 2009, unless it is extended in accordance with its terms. The Offer is conditioned on, among other things, (i) there being validly tendered and not withdrawn before the expiration of the Offer (as it may be extended and re-extended pursuant to the Merger Agreement) that number of Shares equal to 50% of the then outstanding Shares on a fully diluted basis (including all Shares potentially issuable upon the conversion of any convertible securities or upon the exercise of any options, warrants or rights (excluding the Rights), including the Company RSUs (as defined below), in each case, which are convertible or exercisable prior to October 31, 2009 (the Outside Date, provided, however, that the Outside Date is subject to extension until January 29, 2010 under certain circumstances described in the Merger Agreement), but excluding the sum of all Shares subject to the Tender and Support Agreement (as described below) (the Subject Shares) plus the Subject Shares, and (ii) termination or expiration of the waiting period (and any extension thereof) applicable to the Offer under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the HSR Act) and expiration, termination or obtainment of the foreign antitrust and similar regulatory waiting periods, clearances, consents or approvals under the German Act against Restraints on Competition, the Restrictive Trade Practices Laws 5748-1998 of Israel or any other applicable material consents or approvals of any governmental authority. Pursuant to the Merger Agreement, the Company has granted Parent and Purchaser an irrevocable Top-Up Option (as defined below) as described in Item 8(d). If the Parent or Purchaser acquires or controls at least 90% of the Shares, Parent would be obligated to effect a short-form merger as described in Item 8(e).

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The Offer is being made pursuant to an Agreement and Plan of Merger, dated June 4, 2009 (the Merger Agreement), by and among the Company, Purchaser and Parent. The Merger Agreement provides, among other things, that following the consummation of the Offer and subject to the satisfaction or waiver of the conditions set forth in the Merger Agreement and in accordance with the relevant portions of the Delaware General Corporation Law (the DGCL), Purchaser will merge with and into the Company (the Merger) and each Share that is not tendered pursuant to the Offer will be converted into the right to receive cash in an amount per share equal to the Offer Price (or any other per Share price paid in the Offer) without interest and less any required withholding taxes (other than Shares that are held by (i) Purchaser, Parent, the Company or any of their respective subsidiaries, which will be cancelled and cease to exist or (ii) stockholders, if any, who properly exercise their dissenters rights under the DGCL). Following the effective time of the Merger (the Effective Time), the Company will continue as a wholly owned subsidiary of Parent (the Surviving Corporation). A copy of the Merger Agreement is filed as Exhibit (e)(1) hereto and incorporated herein by reference.

The Schedule TO states that the address of the principal executive offices of each of Parent and Purchaser is 2200 Mission College Boulevard, Santa Clara, California 95052-8119.

Item 3. Past Contacts, Transactions, Negotiations and Agreements

Except as described in this Statement, in the Information Statement (as defined below) or otherwise incorporated herein by reference, to the knowledge of the Company, as of the date of this Statement, there are no material agreements, arrangements or understandings, nor any actual or potential conflicts of interest, between the Company or its affiliates and (i) the Company s executive officers, directors or affiliates or (ii) Purchaser, Parent or their respective executive officers, directors or affiliates.

(a) ***Arrangements with Current Executive Officers and Directors of the Company.***

Certain executive officers and directors of the Company have interests in the Offer and the Merger, which are described below and in the Information Statement pursuant to Section 14(f) of the Securities Exchange Act of 1934, as amended (the Exchange Act), and Rule 14f-1 thereunder (the Information Statement) that is attached as Annex A to this Statement and incorporated herein by reference, and which may present them with certain potential conflicts of interest.

The Company s directors and executive officers have entered into, or participate in, as applicable, the various agreements and arrangements discussed below and in the Information Statement. The Board was aware of such agreements and arrangements and any actual or potential conflicts of interest and considered them along with other matters described below in Item 4 in making its recommendation.

In the case of each plan or agreement discussed below or in the Information Statement to which the term change in control applies, the consummation of the Offer would constitute a change in control.

Employment Agreements

Kenneth R. Klein, President and Chief Executive Officer

The Company entered into an employment agreement with Kenneth R. Klein, the Company s Chairman, President and Chief Executive Officer, on November 5, 2003 (as amended on October 16, 2008 and January 30, 2009, the CEO Agreement). The CEO Agreement will be superseded by a new employment agreement for Mr. Klein, as described below, upon the Acceptance Date (as defined in the Merger Agreement). Under the terms of the CEO Agreement, Mr. Klein was initially entitled to receive an annualized base salary of $450,000 and an annualized bonus for on-plan performance, as determined by the compensation committee of the Board (the Compensation Committee). The Compensation Committee reviews his base salary and determines the criteria for his cash bonus on an annual basis. For fiscal 2009 and 2010, the Compensation Committee set Mr. Klein s base salary at $682,500 and his cash bonus target percentage at 81% of his annual base salary. Further, under the

terms of the CEO Agreement, in the event Mr. Klein s employment is terminated other than for Cause (as defined in the CEO Agreement) or if he resigns his employment with Good Reason (as defined in the CEO Agreement) within 12 months of a Change of Control (as defined in the CEO Agreement), Mr. Klein would be entitled to (i) an amount equal to 12 months of his base salary as of his termination date plus an amount equal to 100% of his actual bonus for the fiscal year prior to the fiscal year in which the termination occurs, (ii) reimbursement of the cost of continued health insurance coverage, if elected, for a period of 24 months after termination, and (iii) 100% accelerated vesting and exercisability of all equity awards with respect to the Common Stock. Mr. Klein is also eligible to participate in the Company s Executive Officer Change of Control Incentive Plan, which is described below. Mr. Klein must enter into a release of claims with the Company before he is entitled to receive such benefits and such benefits may be rescinded under certain circumstances if Mr. Klein engages in certain activities that are competitive with the Company within a period of 24 months following his termination of employment.

The new employment agreement for Mr. Klein, which will become effective upon the Acceptance Date, provides for him to serve as President of the Company for a two year period of employment following the Acceptance Date. The Company will pay Mr. Klein a base salary of $500,000 and he will be eligible to receive an incentive bonus, based on performance objectives for each relevant installment period, subject to a certain stipulated minimum amount payable in four equal installments.

Mr. Klein will no longer be eligible to participate in certain change of control and severance plans sponsored by the Company. Equity awards outstanding as of the Acceptance Date, except certain performance share awards, will be accelerated by a period of two years and will otherwise continue vesting at the prior rate of vesting. Outstanding performance share awards will have revised vesting terms and will vest going forward based on Mr. Klein s projected period of employment.

Mr. Klein will be eligible to receive a lump sum retention bonus if he continues his employment with the Company through the one-year anniversary of the Acceptance Date and meets certain performance goals (the First Klein Retention Date). The first retention bonus can be up to $2,000,000. Mr. Klein will also be eligible to receive a lump sum retention bonus if he continues his employment with the Company through the two-year anniversary of the Acceptance Date and meets certain performance goals (the Second Klein Retention Date). The second retention bonus can be up to $3,000,000.

If Mr. Klein is terminated during the two-year period following the Acceptance Date as a result of an Involuntary Termination (as defined in Mr. Klein s employment agreement) or if he resigns his employment for Good Reason (as defined in Mr. Klein s employment agreement), Mr. Klein, subject to signing and not revoking a full release of claims in favor of the Company, will receive: (i) an amount equal to the base salary actually paid to Mr. Klein for the 18-month period prior to his severance date (which amount will not be less than a certain prescribed amount), (ii) the difference between (*x*) 150% of the target bonus for the fiscal year in which the termination occurs and (*y*) any amount of the bonus already received by Mr. Klein during the fiscal year in which the termination occurs on account of such fiscal year (e.g., quarterly bonus amounts already paid), (iii) an amount equal to the actual bonus paid for the fiscal year prior to the fiscal year in which the termination occurs, pro-rated according to the number of months Mr. Klein is employed by the Company during the year in which the termination occurs, (iv) reimbursement for up to 18 months for premiums related to continued group health coverage under COBRA, (v) full vesting as to any awards outstanding as of the Acceptance Date that remain outstanding on his severance date, and (vi) either the first retention bonus if Mr. Klein s termination occurs prior to the First Klein Retention Date, determined based on the actual achievement of the applicable performance goals and pro-rated on based on how long Mr. Klein has worked prior to the First Klein Retention Date, or the second retention bonus if Mr. Klein s termination occurs after the First Klein Retention Date, but prior to the Second Klein Retention Date, determined based on the actual achievement of the applicable performance goals and pro-rated based on how long Mr. Klein has worked after the First Klein Retention Date. Mr. Klein is subject to certain confidentiality, privacy, invention assignment, and non-solicitation provisions following any termination of employment.

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The foregoing summary of Mr. Klein s new employment agreement does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the employment agreement attached as Exhibit (e)(6) hereto and incorporated herein by reference.

The Company, Parent and Kenneth R. Klein entered into a Non-Competition Agreement on June 4, 2009 (the Non-Compete), which will become effective upon the Acceptance Date. The Non-Compete provides that for a period of three years from Mr. Klein s termination of employment with the Company for any reason (the Restricted Period), Mr. Klein shall not directly or indirectly engage or participate in the development of any technologies, products or services relating to the operating systems, middleware and software development tools for use in or with non-enterprise products (whether as an employee, agent, consultant, advisor, independent contractor, proprietor, principal, partner, stockholder, trustee, officer or director) or have an ownership or financial interest (except for ownership of a de minimus amount of any publicly held entity or privately-held entity) in any person engaged in the Company s Business (as defined in the Non-Compete), anywhere in the world in which the Company is currently engaged in business or otherwise proposing to or targeting to distribute, license or sell its products, services or technologies. Furthermore, Mr. Klein shall not, directly or indirectly, solicit or take any action designed to induce an employee to terminate such employee s relationship with the Company or engage in any competitive behavior described above for the Restricted Period.

Ian R. Halifax, Senior Vice President of Finance and Administration, Chief Financial Officer and Secretary

The Company entered into an offer letter with Ian Halifax, the Company s Senior Vice President of Finance and Administration, Chief Financial Officer and Secretary, on January 30, 2007 (as amended on October 16, 2008, the CFO Offer). The CFO Offer will be superseded by the new employment agreement for Mr. Halifax, as described below, upon the Acceptance Date. For fiscal 2009 and fiscal 2010, the Compensation Committee set Mr. Halifax s base salary at $400,000 and his cash bonus target percentage at 50% of his annual base salary. Under the terms of the CFO Offer, if on or after a change of control of the Company, Mr. Halifax remains employed by the Company or an acquiror of the Company for a period of time of up to six months as designated by the acquiror, or his employment is terminated without Cause (as defined in the CFO Offer) during such period of time, or he voluntarily terminates his employment for Good Reason (as defined in the CFO Offer), then he would be entitled to 12 months base salary plus 100% of his actual bonus for the prior fiscal year, reimbursement of health insurance costs for 24 months and accelerated vesting of all of his equity awards. Mr. Halifax is also eligible to participate in the Company s Executive Officers Change of Control Incentive Plan and the Company s Vice-Presidents Severance Benefit Plan, as amended, which are described below. Mr. Halifax must enter into a release of claims with the Company before he is entitled to receive such benefits and such benefits may be rescinded under certain circumstances if Mr. Halifax engages in certain activities that are competitive with the Company within a period of 24 months following his termination of employment.

The new employment agreement for Mr. Halifax, which will become effective upon the Acceptance Date, provides for a one year period of employment following the Acceptance Date during which time he will render transition services to the Company. The Company will pay Mr. Halifax a base salary of $400,000 and he will be eligible to receive an annual incentive bonus payable in two installments based on performance objectives for each relevant installment period.

Mr. Halifax will no longer be eligible to participate in certain change of control and severance plans sponsored by the Company. Equity awards outstanding as of the Acceptance Date, including certain nonplan stock option grants, will be accelerated by a period of one year and will otherwise continue vesting at the prior rate of vesting.

Mr. Halifax will be eligible to receive a lump sum retention bonus if he continues his employment with the Company through the six-month anniversary of the Acceptance Date (the First Halifax Retention Date). The first retention bonus is equal to 12 months base salary as in effect on such date, plus an amount equal to the actual bonus Mr. Halifax received in the prior fiscal year, and his equity awards that were outstanding as of the Acceptance Date that remain outstanding will fully vest.

Mr. Halifax will also be eligible to receive a second retention bonus if he is employed by the Company through the one-year anniversary of the Acceptance Date or on the earlier successful completion of a transition period as determined by the Company or Parent (the Second Halifax Retention Date). The second retention bonus is payable in a lump sum and is equal to a cash payment in the amount of the base salary earned by Mr. Halifax from the Acceptance Date through the Second Halifax Retention Date plus an amount equal to $200,000, which will be pro-rated to the extent Mr. Halifax has not been employed for a full year on the Second Halifax Retention Date.

If Mr. Halifax is terminated before the First Halifax Retention Date as a result of an Involuntary Termination (as defined in Mr. Halifax s employment agreement) or if he resigns his employment for Good Reason (as defined in Mr. Halifax s employment agreement), Mr. Halifax, subject to signing and not revoking a full release of claims in favor of the Company, will receive (i) the first retention bonus, (ii) the total annual incentive bonus for the year in which termination occurs, which will be pro-rated based on how long Mr. Halifax has worked in the year of termination, and (iii) reimbursement for up to 18 months for premiums related to continued group health coverage under COBRA.

If Mr. Halifax is terminated after the First Halifax Retention Date, but before the Second Halifax Retention Date, as a result of an Involuntary Termination (as defined in Mr. Halifax s employment agreement) or if he resigns his employment for Good Reason (as defined in Mr. Halifax s employment agreement), Mr. Halifax, subject to signing and not revoking a full release of claims in favor of the Company, will receive (i) a cash payment equal to the amount of the base salary earned by Mr. Halifax since the Acceptance Date through the date of severance, (ii) the total annual incentive bonus for the year in which termination occurs minus any bonus actually paid, which will be pro-rated based on how long Mr. Halifax has worked in the year of termination, and (iii) the second retention bonus, pro-rated based on how long Mr. Halifax has worked following the First Halifax Retention Date. Mr. Halifax is subject to certain confidentiality, privacy, invention assignment, and non-solicitation provisions following any termination of employment.

The foregoing summary of Mr. Halifax s employment agreement does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the employment agreement attached as Exhibit (e)(10) hereto and incorporated herein by reference.

Executive Officers Change of Control Incentive and Severance Benefit Plan

In November 1995, the Compensation Committee adopted the Executive Officers Change of Control Incentive and Severance Benefit Plan (as amended and restated on January 30, 2009, the Change of Control Plan) to provide an incentive to the Company s officers with the title of Vice President or above in the event of certain change of control transactions, and severance benefits in the event of certain terminations of employment within 12 months of the change of control. In October 2008, the Change of Control Plan was amended primarily (i) to bring the plan into compliance with Section 409A and (ii) to address the treatment of outstanding restricted stock units under the plan in a manner consistent with the treatment of outstanding stock options under the plan. In January 2009, the Change of Control Plan was further amended to replace certain golden parachute excise tax gross-up provisions with best results golden parachute excise tax provisions.

Under the terms of the Merger Agreement, the Company to the extent permitted by applicable law shall amend the Change of Control Plan effective immediately prior to the Acceptance Date to provide that (a) from and after the first date on which any particular Share is accepted for payment and paid for pursuant to the Offer, no compensation will be payable, and no benefits will be triggered under such plan, in connection with the termination of employment of any participant for good reason, constructive termination or any term of similar import, (b) no provision of such plan shall result in the acceleration of vesting, exercisability or settlement of any stock option, restricted stock unit or other equity based award that is not outstanding at the Effective Time, (c) commissions and management bonus payments be in the definition of compensation used to calculate benefits payable under such plan**,** and (d) until the first anniversary of the Effective Time, Parent may

not, and may not cause the Surviving Company to, terminate the Change of Control Plan or to amend such plan to reduce the benefits payable or potentially payable to eligible employees employed at the Effective Time under the terms of such plan in effect as of immediately prior to the Effective Time.

However, until the Change of Control Plan is amended pursuant to the Merger Agreement or if the transactions contemplated by the Merger Agreement are not completed, the current Change of Control Plan controls in the event of a change of control. Upon the occurrence of a change of control, all eligible officers will receive acceleration of vesting for all equity awards that otherwise would have vested within one year of the date of the change of control. In addition, as mentioned above, Messrs. Klein and Halifax are no longer eligible to participate in the Change of Control Plan, effective as of the Acceptance Date.

If an eligible officer is terminated without Cause or voluntarily terminates with Good Reason (as each term is defined in the Change of Control Plan) within 12 months after a change of control, the officer will receive continuing compensation and targeted bonus amounts for a benefit period of 12 months after termination (18 months in the case of the Chief Executive Officer), a bonus in respect of the year of termination equal to a pro-rated amount of the officer s prior year bonus, reimbursement of health insurance costs for a benefit period of 12 months (18 months in the case of the Chief Executive Officer), and accelerated vesting of equity awards that otherwise would vest within one year of the date of termination.

In the event that any benefits payable to an officer pursuant to the plan constitute parachute payments within the meaning of Section 280G of the Internal Revenue Code or would be subject to the excise tax imposed by Section 4999 of the Internal Revenue Code, then the officer s benefits shall be either delivered in full or delivered as to such lesser extent which would result in no portion of such benefits being subject to such tax provisions, whichever of the foregoing amounts results in the receipt by the officer of the greatest amount of benefits on an after-tax basis.

Any benefits payable to an eligible officer under the Change of Control Plan are offset, to the maximum extent permitted by law, by any severance benefits payable by the Company to such officer under any other arrangement covering the individual.

Vice Presidents Severance Benefit Plan

In May 2001, the Compensation Committee adopted the Vice Presidents Severance Benefit Plan (as amended, the Severance Plan) to provide for the payment of severance benefits to certain eligible employees whose employment with the Company is involuntarily terminated. In October 2008, the Compensation Committee approved certain amendments to the Severance Plan primarily to bring the plan into compliance with Section 409A.

Under the terms of the Merger Agreement, the Company to the extent permitted by applicable law shall amend the Severance Plan effective immediately prior to the Acceptance Date to provide that (a) from and after the first date on which any particular Share is accepted for payment and paid for pursuant to the Offer, no compensation will be payable, and no benefits will be triggered under such plan, in connection with the termination of employment of any participant for good reason, constructive termination or any term of similar import, and (b) no provision of such plan shall result in the acceleration of vesting, exercisability or settlement of any stock option, restricted stock unit or other equity based award that is not outstanding at the Effective Time.

However, until the Severance Plan is amended pursuant to the Merger Agreement or if the transactions contemplated by the Merger Agreement are not completed, the current Severance Plan controls in the event of a change of control. Eligible employees under the Severance Plan are vice president level or above. However, the Chairman of the Board and the Chief Executive Officer are not eligible to participate in the Severance Plan, and as mentioned above, Mr. Halifax is no longer eligible to participate in the Severance Plan effective as of the

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Acceptance Date. Employees who are eligible for benefits under the Change of Control Plan are not eligible under the Severance Plan, with the result that the Severance Plan shall have no eligible employees for a period of 12 months following a Change of Control as such term is defined in the Change of Control Plan. The Severance Plan provides that the Company will (i) make a cash lump sum payment equal to 26 weeks of base salary and (ii) pay the first six months COBRA continuation coverage premium on behalf of the employee, if the employee elects COBRA continuation coverage. All other non-health benefits will terminate as of the employee s termination date.

In order to receive benefits, an employee must execute a general waiver and release, as well as a non-competition agreement where applicable. Additionally, no employee is eligible for benefits under the Severance Plan if the employee is involuntarily terminated for reasons related to job performance or if the employee voluntarily terminates his or her employment, including by resignation, retirement or failure to return from a leave of absence as scheduled. An employee who has executed an individually negotiated employment contract or agreement with the Company relating to severance benefits that is in effect on his or her termination date is not eligible for benefits under the Severance Plan, except to the extent additional benefits are available under the Severance Plan that are not provided in his or her individually negotiated agreement.

Potential Payments upon Involuntary Termination without Cause after Change of Control

The following table sets forth the approximate payments and/or benefits that would be owed to each of the Company s named executive officers upon involuntary termination of employment without Cause after a change of control, assuming that the Change of Control Plan and Severance Plan are amended as required by the Merger Agreement and the triggering event took place on May 31, 2009, at the Offer Price of $11.50 per share of Common Stock. Because of the arrangements set forth in their new employment agreements as described above, information with respect to Messrs. Klein and Halifax is not presented. The figures below include, among other payments and benefits, the dollar value of projected pre-tax proceeds upon exercise of the accelerated portion of vested, in-the-money stock options and the accelerated portion of restricted stock units, on May 31, 2009 and assuming 24 months acceleration of all outstanding equity awards granted to Messrs. Artt, Bruggeman and Mainz in connection with their involuntary termination without Cause following a Change of Control (as such terms are defined in the Executive Officers Change of Control Incentive and Severance Benefit Plan).

Damian G. Artt	$ 1,914,564
John J. Bruggeman	$ 1,494,722
Barry R. Mainz	$ 1,558,563
Total	$ 4,967,849

Cash Consideration Payable Pursuant to the Offer

Cash Consideration for Shares: If the Company s directors and executive officers were to tender any Shares they own for purchase pursuant to the Offer, they would receive the same cash consideration on the same terms and conditions as the other stockholders of the Company. As of May 31, 2009, the Company s directors and executive officers owned 8,636,560 Shares in the aggregate (excluding options to purchase Shares, Company RSUs and performance shares). If the directors and executive officers were to tender all of their Shares for purchase pursuant to the Offer and those Shares were accepted for purchase and purchased by Purchaser, the directors and executive officers would receive an aggregate of $99,320,440 in cash.

Cash Consideration for Options: As of May 31, 2009, the Company s directors and executive officers held options to purchase 7,378,865 Shares in the aggregate, 6,353,489 of which were vested and exercisable as of that date, with exercise prices ranging from $2.98 to $43.25 and an aggregate weighted average exercise price of $10.73 per Share. Pursuant to, and as described further in, the Merger Agreement, each outstanding option to purchase Common Stock held by an employee (who remains an employee of the Company or is retained as an employee by Parent or any of its subsidiaries) (a Continuing Option) will be assumed by Parent and subject to

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the same terms and conditions of such option immediately prior to Parent s assumption, except that the option will be exercisable for a proportionate number of shares of common stock of Parent (Parent Common Stock) and the options exercise price shall be adjusted accordingly. An option shall not be considered a Continuing Option if the option is subject to the laws of a non-U.S. jurisdiction and Parent determines the option may not be converted into a Continuing Option under certain circumstances set forth in the Merger Agreement.

Each outstanding option to purchase Common Stock that is not a Continuing Option shall in each case be cancelled at the Effective Time and shall be converted automatically into the right to receive, as soon as practicable after the Effective Time, an amount in cash as described in the Merger Agreement. As a result, based on the number of options to purchase shares held on May 31, 2009, if all options are cashed out, the executive officers and directors would be entitled to receive a payment of $11,187,950 in the aggregate for all options held by such executive officers and directors (net of the applicable exercise price and not considering any acceleration of vesting in connection with the change of control).

Cash Consideration for RSUs and Performance Shares: As of May 31, 2009, the Company s directors and executive officers held outstanding restricted stock units and/or performance shares covering 1,513,925 Shares in the aggregate. Under the terms of, and as further described in, the Merger Agreement, each outstanding restricted stock unit or performance share (such restricted stock units and performance shares, the Company RSUs) that is then outstanding, unvested and held by an employee (who remains an employee of the Company or is retained as an employee by Parent or any of its subsidiary) (a Continuing RSU) will be assumed by Parent and subject to the same terms and conditions of such Company RSU prior to Parent s assumption, except that such Company RSU will cover a proportionate number of shares of Parent s Common Stock. A Company RSU shall not be considered a Continuing RSU if the Company RSU is subject to the laws of a non-U.S. jurisdiction and Parent determines the Company RSU may not be converted into a Continuing RSU under certain circumstances set forth in the Merger Agreement.

Each Company RSU (or any portion thereof) that vests and becomes settlable by its terms at the Effective Time will not be assumed but will instead be converted into the right to receive, in exchange for the cancellation of such Company RSU (or portion thereof), an amount in cash, without interest, equal to the Offer Price multiplied by the number of shares of Common Stock subject to such Company RSU (or settlable portion thereof) immediately prior to the Effective Time. Additionally, by virtue of the Merger and without any action on the part of the Company, Parent, Purchaser or the holders of Company RSUs, each Company RSU that is outstanding prior to the Effective Time and not assumed by Parent shall be cancelled at the Effective Time and converted into cash as described in the Merger Agreement. In addition, upon a change of control, the grants to non-employee directors pursuant to the automatic grant provisions of the 2005 Equity Incentive Plan will immediately vest in full. Therefore, the 108,000 Company RSUs granted on April 1, 2009 to the non-employee directors will accelerate on the Acceptance Date.

Indemnification; Insurance

Section 145 of the DGCL permits a corporation to include in its charter documents, and in agreements between the corporation and its directors and officers, provisions expanding the scope of indemnification beyond that specifically provided by current law. The Company s Amended and Restated Certificate of Incorporation (the Certificate of Incorporation) provides that directors shall, to the full extent not prohibited by the DGCL, as the same exists or may hereafter be amended, not be liable to the Company or its stockholders for monetary damages for breach of his or her fiduciary duty as a director. The Company s Bylaws provides for the indemnification of officers and directors to the fullest extent not prohibited by the DGCL or any other applicable law; provided, however, that the Company may modify the extent of such indemnification by individual contracts with its directors and officers; and, provided, further, that the Company shall not be required to indemnify any director or executive officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the Company, (iii) such indemnification is provided by the Company, in its sole discretion,

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pursuant to the powers vested in the Company under the DGCL or any other applicable law or (iv) such indemnification is otherwise required to be made under the Bylaws. The Company has entered into indemnification agreements with each of its current directors and executive officers in the form attached hereto as Exhibit (e)(13).

The Company s directors and officers are entitled under the Merger Agreement to continued indemnification and insurance coverage as provided in the Merger Agreement. For additional information regarding these arrangements, see the summary of the Merger Agreement contained in the Offer to Purchase, a copy of which is filed as Exhibit (a)(1) hereto and is incorporated herein by reference.

(b) ***Arrangements with Purchaser and Parent***

The Merger Agreement and Tender and Support Agreement

The summaries of the Merger Agreement and the Tender and Support Agreements with Parent, Purchaser and certain of the Company s stockholders (the Stockholders), dated June 4, 2009 (the Tender and Support Agreement) contained in Section 11 of the Offer to Purchase and the description of the conditions of the Offer contained in Section 15 of the Offer to Purchase are incorporated herein by reference. Such summaries and descriptions are qualified in their entirety by reference to the Merger Agreement and the Tender and Support Agreement.

Item 4. The Solicitation or Recommendation

(a) ***The Board s Recommendation***

At a meeting held on June 3, 2009, the Board of Directors of the Company (the Board), by unanimous vote of all of its directors, (i) determined that the Merger Agreement and the transactions contemplated thereby (including the Offer and the Merger) are advisable and are fair to and in the best interests of the Company s stockholders, (ii) approved and adopted the Merger Agreement, the Tender and Support Agreement, and the transactions contemplated thereby (including the Offer and the Merger), which approvals constituted approval under Section 203 of the DGCL and the First Amendment (as defined below), and (iii) recommended that the Company s stockholders accept the Offer and tender their Shares pursuant to the Offer.

Accordingly, the Board unanimously recommends that the Company s stockholders accept the Offer and tender their Shares pursuant to the Offer.

A letter to stockholders communicating the recommendation of the Board and the press release issued by the Company announcing the execution of the Merger Agreement are filed as Exhibits (a)(2)(i) and (a)(2)(iii) hereto, respectively, and are incorporated herein by reference.

(b) ***Background and Reasons for the Board s Recommendation***

Background of the Offer

As part of the ongoing management and oversight of Wind River s business, the Board and management regularly discuss and evaluate the strategic direction, long-term goals, performance and prospects of the Company. In the course of these discussions, the Board and senior management have reviewed various strategic alternatives involving possible business combinations or other commercial transactions that could complement and enhance Wind River s competitive strengths and market position, and regularly reviewed Wind River s prospects as an independent company. In this regard, the senior management of Wind River from time to time communicated informally with, and was approached by, representatives of other companies whose businesses relate to, or who are otherwise interested in, the software industry regarding industry and market trends, strategic direction and the potential benefits of possible business combinations or other commercial transactions.

Wind River and Intel sell complementary products and services and have worked together in various capacities over the years. The companies have had a long-standing relationship focused primarily on the Intel Embedded Computing Group, in which Wind River has made its products operable with Intel Architecture and XScale family of processors. This collaboration has been on-going for more than a decade and across various functions within the organizations, including engineering, marketing and sales. Since 2007, Wind River has been engaged in a number of other initiatives with Intel, including developing a new In-Vehicle Infotainment platform with joint customers, developing support for Mobile Internet Devices in collaboration with Intel s Ultra Mobility Group, and, more recently, pursuing a multi-party initiative around Moblin, an open source project to develop operating system software for mobile devices. Both Intel and Wind River view the relationship between the two companies as strategic.

In late 2007 and early 2008, in connection with discussions relating to a commercial transaction, representatives of Wind River and Intel communicated several times by telephone and in person to discuss a potential equity investment by Intel in Wind River, with such discussions being placed on hold in April 2008. The possibility of an acquisition of Wind River by Intel was not discussed during the course of these discussions.

On November 12, 2008 and on December 9, 2008, Kenneth Klein, Wind River s Chief Executive Officer, President and Chairman of the Board, met with Renee James, Vice President and General Manager of Intel s Software and Services Group, to discuss potential strategic commercial opportunities between Wind River and Intel.

In November 2008, Ian Halifax, Wind River s Senior Vice President of Finance and Administration, Chief Financial Officer and Secretary, engaged in strategic discussions and attended a meeting with senior executives of Company A. The discussions focused on strategic interests and the potential for a strategic transaction with Company A, including specific rationale and structuring alternatives for a strategic transaction. These contacts continued through March 2009, during which period Wind River s senior management engaged in several telephonic conversations with representatives of Company A to discuss a possible strategic transaction, although no formal offer ever materialized.

On January 28, 2009, Mr. Klein met with Ms. James in San Francisco and they were joined by Paul Otellini, President and Chief Executive Officer of Intel, at which time they discussed a potential acquisition of Wind River by Intel.

On February 3, 2009, Arvind Sodhani, Executive Vice President of Intel and President of Intel Capital, telephoned Mr. Klein, expressing an interest in potentially pursuing an acquisition of Wind River. Following this conversation, representatives of Intel negotiated a mutual confidentiality agreement with Wind River s in-house counsel and outside legal counsel, Wilson Sonsini Goodrich & Rosati (Wilson Sonsini).

In February 2009, Mr. Klein contacted Goldman, Sachs & Co. (Goldman Sachs), with which Wind River had an investment banking relationship, to discuss hiring Goldman Sachs as Wind River s financial advisor for a potential strategic transaction.

On February 10, 2009, the Board convened telephonically with representatives from Goldman Sachs and Wilson Sonsini to discuss a potential transaction with Intel. Mr. Klein reviewed the discussions with representatives of Intel to date. The Board, Wind River s senior management and representatives of Goldman Sachs and Wilson Sonsini discussed Intel s potential interest in Wind River in light of the then-current mergers and acquisitions market backdrop; Wind River s products and services; public trading comparables; and reviews of potential strategic partners. After the representatives of Goldman Sachs departed the call, the Board reviewed the draft engagement letter of Goldman Sachs, approved the terms of the letter, and discussed potential strategic alternatives to an acquisition of Wind River by Intel. The Board ultimately agreed to authorize management to continue discussions with Intel.

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On February 11, 2009, Wind River entered into the mutual confidentiality agreement with Intel.

On February 12, 2009, Wind River entered into the previously approved engagement letter with Goldman Sachs to act as its exclusive financial advisor in connection with the possible sale of all or a portion of Wind River s assets or outstanding stock.

On February 17, 2009, an initial telephonic meeting was held between senior management of Wind River and representatives of Intel, during which Intel commenced its preliminary due diligence investigation of Wind River. Then, on February 19, 2009, a due diligence session was held at the offices of Wilson Sonsini in San Francisco, California, with members of Wind River s management, along with representatives of Wilson Sonsini and Goldman Sachs, and a number of representatives of Intel, to provide Intel with a business and financial overview of Wind River. During the remainder of February 2009, Intel s representatives requested and were provided with additional information from Wind River responsive to Intel s business, financial and legal due diligence requests.

On February 24, 2009, Mr. Klein and other members of the Company s senior management, along with representatives of Goldman Sachs, met with Mr. Sodhani, Ms. James and other representatives of Intel to discuss the visions of both companies and strategic aspects of a possible acquisition of Wind River by Intel.

On February 26, 2009, Mr. Klein and a representative of Goldman Sachs engaged in separate telephone conferences with each of Mr. Sodhani and another representative of Intel, respectively, to discuss Intel s preliminary valuation of Wind River which was based on the results of its due diligence review and evaluation to date, and subject to further diligence. Wind River and Intel had differing views on the value of Wind River. Mr. Klein acknowledged Intel s interest in acquiring Wind River, but informed Intel that the preliminary valuation by Intel could prevent Wind River from moving forward with a potential acquisition by Intel.

Also throughout February 2009, Mr. Klein, other representatives of senior management of Wind River, and representatives of Goldman Sachs, were instructed by the Board to contact several potential strategic partners. These representatives made contact with several such companies. While these contacts continued into March 2009, no meaningful acquisition proposals resulted.

On March 3, 2009, Mr. Klein and Ms. James of Intel had a telephone conversation to follow up on the conversations of the week before and in which Ms. James conveyed the continued interest of Intel in an acquisition. They then discussed the need to work on determining the potential synergies in a combination of Wind River and Intel.

On March 11, 2009, Mr. Klein and Ms. James discussed telephonically a revised offer that Intel planned to send to Wind River the following day but did not discuss price.

On the evening of March 12, 2009, Mr. Sodhani of Intel sent a letter addressed to Messrs. Klein and Harvey Jones, the lead independent director on the Board, in which Intel stated that it was prepared to acquire the Company at a price per share of $8.50 in cash (a premium of approximately 31% over the closing price of Wind River s shares on Nasdaq of $6.51 on that day). The letter stated that the offer would remain open until the close of business on March 19, 2009. Management and members of the Board discussed the proposal in a number of telephonic conversations and other communications throughout the course of the next few days. The consensus of management and the Board was that Wind River was worth more to Intel and to its stockholders than the $8.50 per share price proposed by Intel.

On March 14, 2009, a representative of each of Goldman Sachs and Intel spoke on the telephone to further discuss a possible acquisition of Wind River, including discussions on price, and the fact that Wind River was not interested in continuing discussions with Intel based on the price offered in the Intel letter of March 12, 2009.

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During March and April 2009, members of Wind River s senior management, along with representatives from Goldman Sachs, met with members of management of Company B to discuss potential opportunities for strategic transactions. Throughout the month, representatives of Goldman Sachs engaged in several additional calls with representatives of Company B regarding potential strategic transactions, culminating in a representative of Company B indicating to representatives of Goldman Sachs that Company B was not interested in acquiring all of Wind River, but would consider acquiring a portion of Wind River s business.

During March and April 2009, members of Wind River s senior management, along with representatives of Goldman Sachs, also met with senior management of a handful of other industry participants to discuss market trends and potential strategic transactions between Wind River and these other companies. However, Wind River did not receive any indication of interest for a strategic acquisition as a result of these contacts.

On March 26, 2009, at a regularly scheduled meeting of the Board, attended by representatives of Wilson Sonsini and Goldman Sachs, the members of the Board and Wind River s senior management received an update from Goldman Sachs with respect to the sale process and market perspectives. The Board discussed the financial and strategic aspects of a possible transaction with certain of the companies with which Wind River had discussions to that point, and the fiduciary duties of the Board in evaluating these alternatives and related matters.

On April 14, 2009, representatives of Credit Suisse, a financial advisor acting on behalf of Intel, contacted Mr. Jones, the lead independent director of Wind River, to discuss the re-engagement of Wind River with respect to a potential acquisition by Intel. Mr. Jones relayed this information to Mr. Klein and representatives from Goldman Sachs.

Shortly thereafter, Mr. Klein communicated to the other members of the Board the content of the discussion between Credit Suisse and Mr. Jones. The Board determined that representatives from Goldman Sachs should engage Credit Suisse in a discussion about the financial and strategic aspects of a potential acquisition of Wind River by Intel.

On April 21, 2009, representatives of Goldman Sachs met with representatives of Credit Suisse to discuss a potential acquisition of Wind River by Intel, including a discussion regarding valuation, as well as the rationale for entering into such a transaction. In this meeting, Credit Suisse expressed Intel s desire to consummate a transaction.

On April 22, 2009, a representative of Goldman Sachs engaged in a telephonic conversation with a representative of Credit Suisse to follow up on certain points and issues raised during the prior day s meeting.

On April 29, 2009, Mr. Klein met with Ms. James of Intel to re-commence discussions regarding a potential acquisition of Wind River. The parties also spoke on May 4, 2009, to discuss Intel s interest in pursuing an acquisition.

In the early evening of May 7, 2009, Intel sent a letter to Mr. Klein whereby Intel offered to acquire all the shares of Wind River at a price of $11.00 per share, which represented a 54% premium to the closing price of $7.12 per share on May 7, 2009. The letter stated that Intel s offer was subject to certain conditions, including Wind River entering into an exclusivity agreement with Intel prior to any further negotiations. Intel indicated that the offer would be open only until the close of business on May 14, 2009. Later in the evening, Mr. Klein engaged in a telephonic conversation with Ms. James regarding the May 7, 2009 letter, including the details of the offer and proposals for moving forward.

The Board then convened a special telephonic meeting during the morning of Friday, May 8, 2009, with Mr. Klein leading a discussion of the status of the Company s core business and the Company s current, historical and projected financial condition. Messrs. Klein and Halifax reviewed several strategic alternatives for

the Board s consideration, including: a stand-alone strategy by Wind River; an accretive acquisition strategy; a possible combination with Intel; and possible combinations with other prospective acquirors. Mr. Klein then presented several possible scenarios regarding Wind River s financial position and stock performance in connection with the various strategic alternatives discussed, including a stand-alone strategy. Mr. Klein then led the Board in a discussion of the specific terms of Intel s offer. Representatives of Goldman Sachs and Wilson Sonsini provided advice on and analyses of the offer and the Board s fiduciary duties in responding to it, respectively. After deliberation and discussion, the Board unanimously determined that it would be prepared to discuss the sale of Wind River at a price of $12.50 per share in cash.

After the Board meeting, on May 8, 2009, Mr. Halifax sent a letter to Mr. Sodhani at Intel declining Intel s offer of $11.00 per share, but indicating that Wind River would be willing to engage with Intel in an all cash transaction at a purchase price of $12.50 per share. Also in the letter, Mr. Halifax requested a response from Intel by the end of the day in anticipation of a Board call later that evening.

On May 8, 2009, Mr. Klein spoke with Ms. James, and Mr. Halifax spoke with Mr. Sodhani, respectively, concerning the possible acquisition, including a discussion of price, other operational aspects of a transaction between Intel and Wind River and potential communications to customers and strategic partners were a transaction to be announced.

By the early evening of May 8, 2009, Intel responded to Wind River s counter offer with a letter to Mr. Klein from Mr. Sodhani reaffirming Intel s offer price of $11.00 and the other transaction terms set forth in the Intel letter of May 7, 2009. The letter also indicated that Intel would be flexible with respect to the type of consideration in the transaction, offering all cash, all Intel stock or a combination of the two.

On the evening of May 8, 2009, the Board held a telephonic meeting to discuss the Intel offer. Representatives of Wilson Sonsini and Goldman Sachs were present at the meeting. The Board discussed issues relating to how the current proposal compared to a stand-alone strategy by Wind River and other possible alternatives, as well as the likelihood of an alternative proposal. In order to better assess the proposal, the Board requested that management and Goldman Sachs present additional analysis at the next meeting of the Board, which was scheduled for the evening of May 11, 2009.

On May 11, 2009, at a special meeting of the Board held in person, Mr. Klein updated the Board on the negotiations with Intel on the terms of the potential acquisition. A discussion then ensued among the Board, Wind River s senior management and representatives of Wilson Sonsini and Goldman Sachs regarding Goldman Sachs financial analysis of the proposed transaction, as well as the status of contacts with, and feedback from, various other possible strategic partners. The Board then discussed whether negotiations with Intel should continue, and if so, whether to enter into an exclusivity agreement with Intel; a review of the financial community s expectations of Wind River s stock performance; the upcoming earnings release and expected financial results for the quarter and the year; future stock price analysis under various scenarios; and other matters. Then, a representative of Wilson Sonsini gave a detailed presentation of the Board s fiduciary duties in light of the proposal by Intel of a strategic acquisition, and other considerations. After much deliberation and discussion, the Board authorized management and Goldman Sachs to make a counter offer to Intel in the amount of no less than $11.50 per share, in an all cash transaction, and to indicate to Intel the Company s willingness to enter into an exclusivity agreement with Intel at that price.

Later in the evening of May 11, 2009, a representative of Goldman Sachs called Mr. Sodhani and indicated that Wind River would not go forward with the transaction as proposed by Intel, but would pursue a transaction with Intel at $11.50 per share.

On May 12, 2009, representatives of Intel confirmed in a telephonic conversation with representatives of Goldman Sachs the willingness of Intel to accept Wind River s proposal to acquire Wind River at a purchase price of $11.50 per share and confirmed that Wind River would enter into an exclusivity agreement. After

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substantial negotiations, the parties executed an exclusivity agreement on May 14, 2009 with an exclusive period through 11:59 p.m. on May 30, 2009, subject to automatic extensions of 24 hours at a time, unless one party notified the other that it wished to terminate the exclusivity agreement rather than grant an additional 24-hour extension. Wind River and Intel re-engaged on due diligence regarding the proposed acquisition.

Between May 14, 2009 and June 3, 2009, Intel continued its due diligence investigation of Wind River. A due diligence session was conducted on Saturday, May 16, 2009, at the San Francisco offices of Morrison & Foerster LLP (Morrison & Foerster), Intel s legal counsel. Numerous business, financial, legal, technical, communications and other presentations occurred in the following two and a half weeks, mostly at the San Francisco offices of Morrison & Foerster or telephonically, involving the management teams of Wind River and of Intel. Representatives of Goldman Sachs, Credit Suisse, Wilson Sonsini and Morrison & Foerster and other advisors and accountants of each side also participated in various of these meetings.

On the night of May 20, 2009, Morrison & Foerster sent the first draft of the Merger Agreement to Wilson Sonsini. Over the course of the next several days, Wilson Sonsini discussed the Merger Agreement with Wind River and its other advisors and prepared a response. Among other matters, Wind River focused on certainty of closing, Intel s regulatory commitment to the transaction, the fiduciary-out standards proposed in the Merger Agreement in the event of any superior bids, and the ability of Wind River s management to run the business effectively in the period between signing definitive documents and consummating the proposed transaction.

Over the next several days, Wilson Sonsini and Morrison & Foerster exchanged written drafts of the Merger Agreement. On May 28, 2009 and over the following days, attorneys from each of Intel, Morrison & Foerster, Wind River and Wilson Sonsini had various calls to discuss a number of the provisions of the Merger Agreement, including those issues considered by Wind River to be the material open issues, such as certain tender offer conditions, fiduciary termination rights, certain representations, regulatory matters, interim covenants and other matters.

Various telephonic conversations continued among the parties over May 29 and 30, 2009, regarding the terms of the Merger Agreement, due diligence and other transaction issues.

On May 30, 2009, at a special telephonic meeting of the Board, Messrs. Klein and Halifax, and representatives of Wilson Sonsini and Goldman Sachs, provided the Board with an update on the status of the proposed transaction with Intel and reviewed in detail with the Board the material terms and conditions in the Merger Agreement still to be negotiated and resolved with Intel. The Board carefully weighed the interests of Wind River and its Company s stockholders with respect to the matters discussed. A representative of Wilson Sonsini then reviewed with the Board once again its fiduciary duties.

From May 31, 2009 through June 1, 2009, Wilson Sonsini and Morrison & Foerster exchanged drafts of the Merger Agreement and continued to negotiate open issues, while Intel and its advisers continued their due diligence on the Company.

On June 2, 2009, the Board convened telephonically to discuss the outstanding issues in the proposed transaction with Intel. Messrs. Klein and Halifax, and representatives of Wilson Sonsini and Goldman Sachs, updated the Board on the status of the negotiations of the Merger Agreement and the remaining open issues. Representatives from Wilson Sonsini then discussed the importance of the Board retaining the ability to respond to unsolicited competing offers post-signing of any definitive agreement with Intel. Mr. Klein then presented to the Board the projected timeline for resolving the issues and entering into the Merger Agreement, which was targeted for the end of business the next day.

By the middle of the afternoon on June 3, 2009, Morrison & Foerster distributed a further revised draft of the Merger Agreement that reflected the issues that had been negotiated over the prior few days.

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Later in the afternoon on June 3, 2009, the Compensation Committee of the Board met telephonically to discuss certain facets of the transaction related to retention matters. Immediately thereafter, the Board convened telephonically to consider the proposed transaction with Intel. Representatives of Goldman Sachs presented its financial analysis of the proposed transaction to the Board. Representatives of Wilson Sonsini made a presentation concerning the fiduciary duties of the Board with respect to a sale of Wind River and then described in detail the principal terms of the proposed Merger Agreement, including the status of negotiations of the material issues that had been previously identified to the Board. This discussion had a particular focus on the terms of the transaction that impacted the certainty of closing once the offer had been launched, including the market-out condition to closing the offer that had been negotiated, involving a specified drop in the Standard & Poor s 500 index over a specified measurement period prior to the close of the offer. Goldman Sachs delivered to the Board an oral opinion, which opinion was subsequently confirmed in writing as of June 4, 2009, to the effect that, as of that date and based upon and subject to the factors and assumptions set forth therein, the terms of the Offer, including the cash price of $11.50 for each share of Common Stock to be received by the holders of the outstanding shares of Common Stock pursuant to the Merger Agreement, was fair from a financial point of view to Wind River s stockholders. The full text of the written opinion of Goldman Sachs dated June 4, 2009, which sets forth the assumptions made, procedures followed, matters considered, and limitations on the review undertaken in connection with such opinion, is attached as Annex B hereto. After considering the proposed terms of the Merger Agreement and the various presentations of its legal and financial advisors, and taking into consideration the factors described under Reasons for the Board s Recommendation, the Board unanimously determined that the Offer, the Merger and the other transactions contemplated by the Merger Agreement are fair to and in the best interests of Wind River s stockholders, and adopted and approved the Merger Agreement, the Offer, the Merger and the other transactions contemplated by the Merger Agreement and recommend that the stockholders of Wind River accept the Offer. As part of the meeting, the Compensation Committee then convened separately to pass upon certain matters related to the transaction.

In the early morning of June 4, 2009, Wind River and Intel each executed the definitive Merger Agreement. Concurrently, Intel, Mr. Klein, Jerry Fiddler and related entities and Narendra Gupta and related entities each executed the Tender and Support Agreement. In addition, Messrs. Klein and Halifax each executed new employment agreements with Intel and Wind River and, in the case of Mr. Klein, a non-competition agreement with Intel and Wind River. Shortly thereafter and before the opening of the market, Wind River and Intel issued a joint press release announcing the execution of the Merger Agreement and the related transactions.

Reasons for the Board s Recommendation

In approving the Merger Agreement and the other transactions contemplated thereby, including the Offer and the Merger, and recommending that all holders of Shares accept the Offer and tender their Shares pursuant to the Offer, the Board consulted with its financial and legal advisors and with senior management of the Company and considered a number of positive and negative factors including, but not limited to, the following:

The Company s Operating and Financial Condition; Prospects of the Company. The Board considered the current and historical financial condition, results of operations, business and prospects of the Company, as well as the Company s financial plan and prospects, if the Company were to remain an independent company and the potential impact on the trading price of the Shares (which is not feasible to quantify numerically). The Board also discussed the Company s current business plan, including the risks associated with achieving and executing upon the Company s business plan, the uncertainty of being able to sustain long-term growth in revenues as a stand-alone company, the impact of general economic market trends on the Company s sales, as well as general market risks that could reduce the market price of the Shares. The Board also discussed the potential benefits of an acquisition by Parent, including the potential increase in the Company s revenues, ability to sell highly-differentiated products to Parent s customer base, and creating compelling sales propositions by combining the Company s global services and support with Parent s technology investment, employee base, global sales force and brand.

Strategic Alternatives. The Board considered the possible alternatives to the acquisition by Parent (including the possibility of being acquired in whole or in part by another entity or continuing to operate the Company as an independent entity, and the desirability and perceived risks of those alternatives), the range of potential benefits to the Company s stockholders of these alternatives and the timing and the likelihood of accomplishing the goals of such alternatives, as well as the Board s assessment that none of these alternatives were reasonably likely to present superior opportunities for the Company to create greater value for the Company s stockholders, taking into account risks of execution as well as business, competitive, industry and market risks.

Transaction Financial Terms; Premium to Market Price. The Board considered that the Offer Price to be paid in cash for each Share would provide stockholders with the opportunity to receive a significant premium over the current and historical market price of the Shares. The Board reviewed the historical market prices, volatility and trading information with respect to the Shares, including the fact that the Offer Price represented (a) a premium of approximately 43.8% over the $8.00 closing price per Share on the Nasdaq Global Select Market on June 3, 2009, the last full trading day prior to the Board s meeting to approve the Merger Agreement, (b) a premium of approximately 55.4% over $7.40, the one month average closing price per Share prior to the date of the Board s meeting to approve the Merger Agreement, (c) a premium of approximately 65% over $6.97, the three month average closing price per Share prior to the date of the Board s meeting to approve the Merger Agreement, and (d) a premium of approximately 51.1% over $7.61, the six month average closing price per Share prior to the date of the Board s meeting to approve the Merger Agreement.

Cash Consideration; Certainty of Value. The Board considered the form of consideration to be paid to the stockholders in the Offer and the Merger and the certainty of the value of cash consideration compared to stock or other forms of consideration, as well as the fact that Parent s proposal was not subject to obtaining any outside financing.

Timing of Completion. The Board considered the anticipated timing of the consummation of the transactions contemplated by the Merger Agreement (including in relation to the anticipated timing of any potential transaction with any other entity), and the structure of the transaction as a cash tender offer for all outstanding Shares, which should allow stockholders who tender their Shares in the Offer to receive the Offer Price in a relatively short time frame, followed by the Merger in which the remaining stockholders (other than the Company, Parent and their subsidiaries) will receive the same consideration as received by those stockholders who tendered their Shares in the Offer. The Board considered that the potential for closing in a relatively short time frame could also reduce the amount of time in which the Company s business would be subject to the potential uncertainty of closing and related disruption.

Business Reputation of Parent. The Board considered the business reputation of Parent and its management and the substantial financial resources of Parent and, by extension, Purchaser, which the Board believed supported the conclusion that a transaction with Parent and Purchaser could be completed relatively quickly and in an orderly manner. The Board also considered the impact of the Offer and the Merger on the Company s and its subsidiaries employees, business partners, customers and others having dealings with them.

Opinion of the Company s Financial Advisor. The Board considered the financial analyses and the oral opinion of Goldman Sachs, which opinion was subsequently confirmed in writing as of June 4, 2009, to the effect that, as of such date and based upon and subject to the factors and assumptions set forth therein, the $11.50 per Share in cash to be paid to the holders of the Shares pursuant to the Merger Agreement is fair from a financial point of view to such holders. The full text of the written opinion of Goldman Sachs, dated June 4, 2009, which sets forth assumptions made, procedures followed, matters considered and limitations on the review undertaken in connection with the opinion, is attached as Annex B. **Goldman Sachs provided its opinion for the information and assistance of the Board in connection with its consideration of the transaction. The Goldman Sachs opinion is not a recommendation as to whether or not any holder of Shares should tender such Shares in**

connection with the Offer or how any holder of Shares should vote with respect to the Merger or any other matter. For a further discussion of Goldman Sachs opinion, see (d) Opinion of the Company s Financial Advisor below.

The Merger Agreement. The Board considered the provisions of the Merger Agreement, including the respective representations, warranties and covenants and termination rights of the parties and the termination fee payable by the Company thereunder. These provisions included:

Required Representations and Warranties. The Board considered that the required representations and warranties were, in general, more detailed than typical for a transaction of this size and nature. The Board also discussed that some representations were qualified by materiality standards, some by knowledge and others by material adverse effect standards.

Ability to Respond to Certain Unsolicited Takeover Proposals. While the Company is prohibited from soliciting, initiating, knowingly encouraging or knowingly facilitating any Acquisition Proposal (as defined in the Merger Agreement) or the making thereof, entering into, continuing or otherwise participating in any discussions or negotiations regarding, or furnishing any information to, or otherwise cooperating in any way with, any third party with respect to any Acquisition Proposal or waiving, terminating, modifying or failing to enforce any provision of any contractual standstill or similar obligation of any person other than Parent or its affiliates, the Merger Agreement does permit the Board, prior to the Acceptance Date, in response to an unsolicited, bona fide written Acquisition Proposal that the Board determines in good faith (after consultation with outside counsel and a financial advisor of nationally recognized reputation) is or is reasonably likely to result in a Superior Proposal (as defined in the Merger Agreement), to (x) furnish information (previously or concurrently provided to Parent) regarding the Company and its subsidiaries to the person making such Acquisition Proposal (and its representatives) pursuant to a confidentiality agreement not less restrictive to such person than the Confidentiality Agreement is to Parent, and (y) participate in discussions or negotiations with the person making such Acquisition Proposal (and its representatives) regarding such Acquisition Proposal, subject to certain procedural requirements and other terms of the Merger Agreement (including that the Company shall have notified the Parent in writing at least three business days prior to taking such action that it intends to take such action and the basis for such action).

Change in Recommendation. Prior to the Acceptance Date, in the event the Company receives an Acquisition Proposal that the Board determines in good faith (after consultation with outside counsel and a financial advisor of nationally recognized reputation) constitutes an unsolicited Superior Proposal made after the date of the Merger Agreement, the Board may make a Change in Recommendation (as defined in the Merger Agreement), if the Board determines in good faith (after consultation with its outside legal counsel) that such Change in Recommendation is necessary to comply with its fiduciary duties under applicable law. Subject to compliance with the terms of the Merger Agreement and certain procedural requirements (including a five business day period of good faith negotiations with Parent to amend the terms of the Merger Agreement in such a manner that the Acquisition Proposal that was determined to constitute a Superior Proposal no longer is a Superior Proposal).

Termination Right to Accept Superior Proposals. Prior to the Acceptance Date, in the event the Company receives an Acquisition Proposal that the Board determines in good faith (after consultation with outside counsel and a financial advisor of nationally recognized reputation) constitutes a Superior Proposal, the Board may cause the Company to terminate the Merger Agreement and concurrently with such termination enter into an agreement with the party making such Acquisition Proposal if the Board has concluded in good faith, after consultation with its outside legal counsel, that, in light of the receipt of such Superior Proposal, such termination is necessary to comply with its fiduciary duties under applicable law, subject to compliance with the terms of the Merger Agreement and certain procedural requirements (including a five business day

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period of good faith negotiations with Parent to amend the terms of the Merger Agreement in such a manner that the Acquisition Proposal that was determined to constitute a Superior Proposal no longer is a Superior Proposal) and simultaneous payment of a termination fee of $30,000,000 in cash. Notwithstanding the foregoing, if the Superior Proposal involves consideration that includes equity securities or other securities convertible into equity securities and the per Share cash consideration, if any, is less than the Offer Price, the Company may not terminate the Merger Agreement as described in the previous sentence until after the fifth business day following the day after the fortieth business day following the commencement of the Offer on which there shall not be in effect any law or interpretation or position of the SEC which requires the Offer to remain open.

Termination Fee; Expenses. The Board also discussed that certain termination provisions (including such provision described above) in the Merger Agreement provide that, in connection with the termination of the Merger Agreement under specified circumstances, the Company may be required to (i) pay to Parent a termination fee of $30,000,000 and/or (ii) reimburse Parent for up to $4,000,000 in transaction expenses. The Board was of the view that the payment of the termination fee and/or reimbursement of transaction expenses was comparable to termination and reimbursement fees in transactions of a similar size, was reasonable, would not likely deter competing bids and would not likely be required to be paid unless the Company entered into or intended to enter into a more favorable transaction.

Conditions to the Consummation of the Offer and the Merger; Likelihood of Closing. The Board considered the likelihood of the consummation of the transactions contemplated by the Merger Agreement in light of the conditions to Parent s obligations to accept for payment and pay for the Shares tendered pursuant to the Offer, including (i) satisfaction of the Minimum Condition, (ii) absence of a decline in the Standard & Poor s 500 Stock Index below 737 over certain measurement periods ranging from five to ten days prior to the expiration of the Offer, (iii) the absence of certain pending or threatened legal action by a governmental authority immediately prior to the expiration of the Offer and (iv) the expiration, termination or receipt of any applicable waiting periods, clearances, consents or approvals of any government authority, prior to the expiration of the Offer. The Board also considered that the consummation of the Offer and the Merger was not contingent on Parent s ability to secure financing commitments.

Material Adverse Effect. The Board considered the provisions in the Merger Agreement that would permit Parent to elect not to consummate the Offer if there occurs and is continuing as of or otherwise arising before the expiration of the Offer any event, condition, circumstance, development, state of facts, change or effect, individually or in the aggregate, that is or would reasonably be expected to have a Material Adverse Effect on the Company, including the definition of Material Adverse Effect and the exclusions therefrom contained in the Merger Agreement.

Extension of Offer Period. The Board considered that, under certain circumstances set forth in the Merger Agreement, Purchaser would have the ability to extend the Offer beyond the initial expiration date of the Offer or, if applicable, subsequent expiration dates, if certain conditions to the consummation of the Offer are not satisfied or waived and in some instances would be required to extend the Offer, including:

- for any period required by any rule, regulation, interpretation or position of the SEC or the staff thereof applicable to the Offer;

- for two consecutive ten business day periods beyond the original expiration date of the Offer if, at the time of such scheduled expiration, all of the Offer Conditions, other than the Minimum Condition, are satisfied;

- for such period of time up to ten business days from the date of notice to the Company regarding inaccuracies in the Company s representations or breach of the Company s

covenants in the Merger Agreement to the extent necessary to provide the Company a ten business day period to attempt to cure such inaccuracies or breaches if they are reasonably curable; provided, that, Purchaser is only required to extend the Offer one time for such a cure period; or

(A) for any period of time, if all of the Offer Conditions, other than the Minimum Condition and the receipt of required governmental approvals with respect to the Offer and the Merger, are satisfied for such period of time as is necessary to obtain such governmental consents and (B) for one ten business day period after receipt of all required governmental approvals with respect to the Offer and the Merger, if all other Offer Conditions, other than the Minimum Condition, are satisfi