

# SUN MICROSYSTEMS, INC.

## CORPORATE GOVERNANCE GUIDELINES

### **A. BOARD COMPOSITION**

#### **1. Selection of Chairman and CEO**

The Board does not have a policy on whether the roles of Chief Executive Officer and Chairman should be separate and, if they are separate, whether the Chairman should be selected from the non-employee directors.

#### **2. Size of the Board**

The authorized range of the Board is six to eleven members. The Board believes that this range is appropriate. However, the Board may change the authorized range to accommodate the availability of an outstanding candidate or candidates.

#### **3. Independent Directors**

A majority of the members of the Board shall be independent. However, the Board is willing to have non-independent persons, including members of management, as directors. Disclosure of the names of the independent directors will be included in the Company's proxy statement.

#### **4. Definition of Independence**

The Board believes that the definition of independence adopted by the Nasdaq Stock Market is the appropriate standard by which to measure the independence of board members.

#### **5. Board Membership Criteria**

The Corporate Governance and Nominating Committee is responsible for evaluating and then reviewing with the Board from time to time the appropriate qualifications, expertise and characteristics required of Board members. During its evaluation and review, the CGNC should consider a candidate's independence, diversity, character, acumen, strategic vision and relevant experience, such as technology, accounting and finance, sales and marketing or international experience, all in the context of an assessment of the perceived needs of the Board at a particular point in time. Board members are expected to carefully prepare for, attend and participate in all Board and applicable committee meetings. Each Board member is expected to ensure that other existing and planned future commitments do not interfere with service as a Sun director.

In determining whether to recommend a director for re-election, the Corporate Governance and Nominating Committee shall also consider the director's tenure on the Board, past attendance at meetings, participation in and contributions to the activities of the Board, the director's continued independence (including any actual, potential or perceived conflicts of interest), as well as the director's age and changes in his or her principal occupation or professional status.

## **6. Selection of New Director Candidates**

The Corporate Governance and Nominating Committee assists the Board by identifying, evaluating and recommending director nominees.

## **7. Majority Vote Standard**

The Board endorses the principle of using a majority vote standard for director elections as set forth in the Company's Bylaws and the following guideline.

In the event that any nominee for director in an uncontested election of directors (i.e. an election in connection with which none of our stockholders has provided our Secretary notice of an intention to nominate one or more candidates to compete with the Board's nominees or in connection with which stockholders have withdrawn all such nominations by the twentieth day preceding the date we mail our notice of meeting to our stockholders) receives a greater number of votes "against" his or her election than votes "for" his or her election (a "**Majority Against Vote**") the Corporate Governance and Nominating Committee will recommend to the Board the action to be taken with respect to such Majority Against Vote (which can range from accepting such director's resignation, to maintaining the director but addressing what the Committee believes to be the underlying cause of the Majority Against Vote, to resolving that the director not be re-nominated for election in the future, to recommending against accepting such director's resignation). In considering its recommendation, the Corporate Governance and Nominating Committee will consider all of the factors deemed relevant by its members, including, without limitation: any stated reasons that stockholders voted "against" election of such director; whether or not stockholders cumulated their votes with respect to the election in question; whether it is possible to maintain such director on the Board and cure the underlying cause(s) of such "against" votes; the percentage of the Company's outstanding shares represented by such "against" votes; such director's qualifications and length of service on the Board; such director's contributions to the Company; and the other provisions of these Corporate Governance Guidelines.

The Board will act on the Corporate Governance and Nominating Committee's recommendation. In reviewing such recommendation, the Board will consider the factors considered by the Corporate Governance and Nominating Committee and such additional information and factors as the Board believes to be relevant.

The Board expects a director to tender his or her resignation if he or she fails to receive the required number of votes for re-election in an uncontested election. The

Board shall nominate for election or re-election as director only candidates who have previously tendered or, in the case of candidates who have not yet become members of the Board, have agreed to tender promptly following the annual meeting at which they are elected or re-elected as director, irrevocable resignations that will be effective upon (i) a failure to receive the required majority vote at any annual or special meeting at which they face re-election in an election for which the majority voting standard is applicable, and (ii) Board acceptance of such resignation. In addition, the Board shall fill director vacancies and new directorships only with candidates who agree to tender, promptly following their appointment to the Board, the same form of irrevocable resignation tendered by other directors in accordance with these guidelines.

Within 90 days from the date election results are certified, the Company will publicly disclose the Board's decision whether or not to accept the director's resignation (providing a full explanation of the process by which the decision was reached, and, if applicable, the reasons the Board decided not to accept the director's resignation) and, if applicable, the fact that such resignation was accepted by the Board, in a Form 8-K filed with the Securities and Exchange Commission.

To the extent that one or more directors' resignations are accepted by the Board, the Corporate Governance and Nominating Committee will recommend to the Board whether to fill such vacancy or vacancies or to reduce the size of the Board.

The Board expects any director who is subject to a Majority Against Vote to abstain from participating in the Corporate Governance and Nominating Committee's recommendation and the Board's consideration of the action to be taken with respect to his or her resignation. If a majority of the members of the Corporate Governance and Nominating Committee receive a Majority Against Vote at the same election, then a Board committee shall be formed solely for the purpose of considering such resignations, composed of at least three independent directors (as defined in accordance with the Company's Corporate Governance Guidelines), none of whom shall have received a Majority Against Vote; provided, however, that if there are fewer than three independent directors then serving on the Board who have not received Majority Against Votes, then the Board committee shall be comprised of all the independent directors, and the Board expects each independent director who received a Majority Against Vote to recuse himself or herself from the Board committee and Board's deliberations and voting with respect to his or her individual resignation. For each director who is the subject of a Majority Against Vote, the Company will disclose in the Form 8-K whether or not the director recused himself or herself from participating in the decision regarding the acceptance of his or her resignation.

This guideline shall be disclosed in each proxy statement relating to an election of directors of the Company.

## **8. Director Orientation and Continuing Education**

The Board believes that management should develop and maintain a

comprehensive orientation process for new directors that includes background material, meetings with senior management and visits to Company facilities. The Board further believes that management, under the supervision of the Corporate Governance and Nominating Committee, should develop and maintain, through third-party service providers or otherwise, an ongoing continuing education program for incumbent directors that satisfies all applicable requirements, including Nasdaq rules.

#### **9. Directors Who Change Their Job Responsibility or Accept Other Directorships**

The Board does not believe that directors who retire or change jobs should necessarily leave the Board. There should, however, be an opportunity for the Board, through the Corporate Governance and Nominating Committee, to review the continued appropriateness of such director's Board membership under these circumstances. Accordingly, in the event any director has a principal job change, including retirement, such director shall promptly inform the Board. The Corporate Governance and Nominating Committee shall review such job change and, after consideration of the continued appropriateness of such director's Board membership under the new circumstances, determine whether to recommend that the Board request that such director tender his or her resignation. The Board will act on the Corporate Governance and Nominating Committee's recommendation. The Board expects such director to promptly tender his or her resignation if so requested.

In addition, prior to accepting an invitation to serve on the Board of Directors of another company, whether public or private, whether for-profit or non-profit and whether in a formal or advisory capacity, a Director must follow the Board's Process for Approval to Join an Outside Board, so that potential conflicts of interest may be evaluated. The Board expects such Director to either refuse the other directorship or promptly tender his or her resignation from the Board if so requested.

#### **10. Term Limits**

Directors stand for reelection every year. The Board does not believe it should establish term limits. While term limits could help insure that there are fresh ideas and viewpoints available to the Board, they hold the disadvantage of losing the contribution of directors who over time have developed increasing insight into the Company and its operations and therefore provide an increasing contribution to the Board as a whole. As an alternative to term limits, the Corporate Governance and Nominating Committee, in conjunction with the Chairman of the Board, will formally review each director's continuation on the Board every year. This will also allow each director the opportunity to conveniently confirm his/her desire to continue as a member of the Board.

#### **11. Mandatory Retirement**

When a director reaches 75 years of age, the Corporate Governance and Nominating Committee shall review the continued appropriateness of such director's Board

membership. Based upon its review of all relevant circumstances, the Corporate Governance and Nominating Committee will recommend to the Board whether it should request such director's resignation. The Board will act on the Corporate Governance and Nominating Committee's recommendation. The Board expects such director to promptly tender his or her resignation if so requested. If the Board accepts a director's resignation, it may, in accordance with its judgment, allow the director to continue to serve until a successor is elected at the next annual meeting following the resignation.

## **12. Board Compensation Review**

The Company's Bylaws authorize the Board to fix the compensation of directors. As part of a director's total compensation and to create a direct linkage with corporate performance, the Board believes that a meaningful portion of a director's compensation should be linked to the performance of the Company. The Board has delegated the review of director compensation and benefits to the Corporate Governance and Nominating Committee.

## **B. BOARD MEETINGS**

### **1. Scheduling and Selection of Agenda Items for Board Meetings**

Board meetings are scheduled in advance, generally every other month. Meetings are normally held at the Company's offices in Northern California, but occasionally a meeting is held elsewhere. The Company's Bylaws permit Board meetings to be held by conference call. The Chairman of the Board, together with the corporate secretary and the Presiding Director, sets the agenda for each Board meeting and distributes it in advance to the Board. Each Board member is free to suggest items for the agenda.

### **2. Board Material Distributed in Advance**

Information that is important to the Board's understanding of the business should be distributed in writing to the Board a reasonable time before each Board meeting. As a general rule, materials on specific subjects should be sent to the Board members in advance so that Board meeting time may be conserved and discussion time focused on questions that the Board has about the material. However, matters may be discussed at the meeting without written materials being distributed in advance or at the meeting.

### **3. Board Presentations and Access to Employees**

The Board encourages management to schedule managers to present at Board meetings who: (a) can provide additional insight into the items being discussed because of personal involvement in these areas, or (b) have future potential that management believes should be given exposure to the Board. The Board has access to the Company's employees regarding any questions or concerns the Board may have.

#### **4. Executive Sessions**

There shall be at least two executive sessions of the Board's independent directors during each calendar year. It is also the Board's policy is to have regularly convened sessions of the Board's non-employee directors.

#### **5. Chairman of the Board**

The corporate governance responsibilities of the Chairman of the Board include, but are not limited to, the following:

##### **Ensuring Board Operational Effectiveness:**

- Ensuring that the Board is effectively structured and operated according to the Company's Bylaws, these Corporate Governance Guidelines, and state and federal laws;
- Ensuring that the Board committees are operated pursuant to the Company's Bylaws and these Corporate Governance Guidelines, as well as the committees' respective charters;
- Taking steps to foster the Board's understanding of its responsibilities and boundaries with management;
- Overseeing the responsibilities delegated to all Board committees, including, but not limited to, compensation, performance evaluations and internal control systems;
- Ensuring that the Board is reviewing and monitoring the Company's long-term business plan, strategies and policies and the achievement of its objectives;
- Establishing procedures to govern the effective and efficient conduct of the Board's work;
- In consultation with the Presiding Director, scheduling meetings of the Board and working with committee chairs to schedule meetings for committees;
- In consultation with the Presiding Director, developing agendas for Board meetings based on input from directors and management;
- Presiding over Board meetings and conducting the meetings in an efficient, effective and focused manner;
- Working with the Presiding Director to address the concerns of the independent directors;
- Helping the Board fulfill the goals it sets by assigning specific tasks to members of the Board; and,
- Working with the committees appointed by the Board so that they have a proper structure and appropriate assignments.

##### **Ensuring Board Member Effectiveness:**

- Overseeing the implementation of measures stemming from Board and

- committee annual self-evaluations;
- Addressing Board member development and training needs; and,
- Overseeing new Board member assimilation.

#### **Serving as a Stockholder Interface:**

- Assisting the Company's management with developing and maintaining effective stockholder relationships;
- Chairing stockholder meetings; and,
- Maintaining relationships with key stockholders and stockholder interest groups as agreed to with the Company's Chief Executive Officer.

#### **5. Presiding Director**

The non-employee Directors shall designate one independent Director to serve as Presiding Director. It is the general intention of the Board that each Presiding Director shall serve for a term of two years. The Presiding Director shall: (a) coordinate, develop the agenda for, and moderate executive sessions of the Board's independent directors and of non-employee directors; (b) advise the Chairman of the Board as to an appropriate schedule of Board meetings, seeking to ensure that the independent directors can perform their duties responsibly, while not interfering with the flow of Company operations; (c) approves with the Chairman of the Board the content of Board meeting agendas; (d) advise the Chairman of the Board as to the quality, quantity and timeliness of the flow of information from Management that is necessary for the independent directors to effectively and responsibly perform their duties; although Management is responsible for the preparation of materials for the Board, the Presiding Director may specifically request the inclusion of certain material; (e) recommend to the Chairman of the Board the retention of consultants who report directly to the full Board; (f) act as the principal liaison between the independent directors and the Chairman of the Board on sensitive issues; and (g) perform such other duties, as the Board may from time to time delegate to the Presiding Director, to assist the Board in the fulfillment of its responsibilities. The Presiding Director shall serve for such term as the Board shall determine.

### **C. BOARD COMMITTEES**

#### **1. Number of Committees**

The Board currently has three committees: (i) Audit, (ii) Leadership Development and Compensation and (iii) Corporate Governance and Nominating. There may, from time to time, be occasions on which the Board may want to form a new committee or disband a current committee depending upon the circumstances. Each committee shall comply with the independence and other requirements established by applicable law, including SEC and Nasdaq rules.

The Audit Committee selects the Company's independent auditors; monitors the independence and effectiveness of the independent auditors; pre-approves audit and

permitted non-audit services; and evaluates the Company's accounting principles, internal controls, disclosure controls and procedures, financial reporting, and procedures relating to internal auditing functions and controls. The Audit Committee also reviews and approves related-party transactions.

The Leadership Development and Compensation Committee administers the Company's stock option and stock purchase plans, including the review and grant of stock options to all eligible employees under the Company's existing stock option plans, reviews and approves salaries and other matters relating to compensation of the executive officers of the Company, and provides input on executive and leadership development policies and management succession.

The Corporate Governance and Nominating Committee makes recommendations to the Board regarding the size, composition and governance of the Board and its committees, establishes procedures for the nomination process, evaluates and approves candidates for election to the Board, oversees the evaluation of directors, and develops and maintains corporate governance principles.

## **2. Assignment and Term of Service of Committee Members**

While the Corporate Governance and Nominating Committee is responsible for making recommendations about the composition and chairs of each committee, the Board is responsible for the appointment of committee members and committee chairs.

## **3. Frequency and Length of Committee Meetings and Committee Agenda**

The Board or the respective committees may determine the frequency and length of the committee meetings and develop the committee's agenda. The agendas and meeting minutes of the committees will be shared with the full Board. Other Board members are welcome to attend committee meetings.

# **D. REVIEW AND RESPONSIBILITY**

## **1. Formal Evaluation of Officers**

At least annually, the Board evaluates the performance of the Chief Executive Officer. The Leadership Development and Compensation Committee conducts, and reviews with the Board, an evaluation annually in connection with the determination of the salary and bonus of all executive officers, including the Chief Executive Officer.

## **2. Succession Planning and Management Development**

The Leadership Development and Compensation Committee should review succession planning and management development with the Board on an annual basis. There should be available, on a continuing basis, the Chief Executive Officer's recommendation as a successor should he/she die or become disabled.

### **3. Board Interaction with Institutional Investors, Press, Customers, Etc.**

The Board believes that management speaks for the Company. Individual Board members may, from time to time, meet or otherwise communicate with various constituencies that are involved with the Company, but it is expected that Board members would do this with the prior knowledge of management and, in most instances, at the request of management.

### **4. Planning**

At least annually, the Board should review the Company's strategic long-range plan, business unit initiatives, capital projects and budget matters.

### **5. Self-Assessment**

The Board should develop and maintain a process whereby the Board, its committees and its members are subject to periodic self-evaluation and self-assessment.

## **E. ANNUAL MEETING**

It is the policy of the Board that all directors are encouraged to attend the Company's annual meeting of stockholders. Such attendance is not mandatory.

## **F. STOCKHOLDER COMMUNICATIONS WITH THE BOARD**

The Board encourages the Company's stockholders who are interested in communicating with the independent directors as a group to do so electronically by clicking on "Contact Sun's Board of Directors" on our corporate governance website located at <http://www.sun.com/company/cgov/> or by mail addressed to: Corporate Secretary, Sun Microsystems, 4150 Network Circle, SCA 12-202, Santa Clara, CA 95054.

Correspondence received that is addressed to the independent directors will be reviewed by our general counsel or his designee, who will regularly forward to the independent directors all correspondence that, in the opinion of our general counsel, deals with the functions of the Board or committees thereof or that the general counsel otherwise determines requires their attention. Directors may at any time review a log of all correspondence received by Sun that is addressed to the independent directors and request copies of any such correspondence. Concerns relating to accounting, internal controls or auditing matters are immediately brought to the attention of Audit Committee and handled in accordance with procedures established by the Audit Committee with respect to such matters.

## **G. AUTHORITY TO RETAIN ADVISORS**

The Board and each committee has the authority, at the Company's expense, to obtain advice, reports or opinions from internal or external counsel and expert advisors and

shall have the sole authority to approve related fees and retention terms.

#### **H. POLICY STATEMENT ON POISON PILLS**

The Company no longer has a stockholder rights plan, or “poison pill.”

The Board must obtain stockholder approval prior to adopting a poison pill, unless the Board, including a majority of the independent members of the Board, in the exercise of its fiduciary responsibilities, determines that, under the circumstances then existing, it would be in the best interests of the Company and its stockholders to adopt a poison pill without prior stockholder approval.

If a poison pill is adopted by the Board without prior stockholder approval, the poison pill must provide that it will expire within one year of adoption unless ratified by stockholders.