

SUN MICROSYSTEMS, INC.  
Form 8-K  
August 01, 2006

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

**Form 8-K**

**Current Report**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): 07/27/2006**

**Sun Microsystems, Inc.**

(Exact name of registrant as specified in its charter)

**Commission File Number: 0-15086**

**Delaware**  
(State or other jurisdiction of  
incorporation)

**94-2805249**  
(IRS Employer  
Identification No.)

**4150 Network Circle**  
Santa Clara, California 95054-1778  
(Address of principal executive offices, including zip code)

**(650) 960-1300**  
(Registrant's telephone number, including area code)

**N/A**  
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
  - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
  - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
  - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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**Item 1.01. Entry into a Material Definitive Agreement**

On July 27, 2006, the Leadership Development and Compensation Committee of the Board of Directors of Sun Microsystems, Inc. (the "Company") approved various amendments to the form of Change of Control Agreement executed by each executive officer, other than the chief executive officer, of the Company and the form of Change of Control Agreement executed by the chief executive officer of the Company. The Company expects that each executive officer of the Company will enter into such amended Change of Control Agreement.

Among other things, the amendments (i) provide for acceleration of restricted stock, restricted stock units and other long-term incentives, in addition to options in the event benefits are triggered under the agreements, (ii) revised several administrative provisions in order to comply with Section 409A of the Internal Revenue Code of 1986, as amended, and (iii) revised the definition of Change of Control so that it reads as follows:

"Change of Control" of the Company means and includes, consistent with Section 409A of the Code, each and all of the following occurrences:

(i) The stockholders of the Company approve a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or its parent company) more than fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity, or its parent company, outstanding immediately after such merger or consolidation, or the stockholders of the Company approve a plan of complete liquidation of the Company or an agreement for the sale or disposition by the Company of all or substantially all the Company's assets.

(ii) The acquisition by any Person as Beneficial Owner, directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the total voting power represented by the Company's then outstanding voting securities.

(iii) A change in the composition of the Board of Directors of the Company as a result of which fewer than a majority of the directors are "Incumbent Directors." "Incumbent Directors" shall mean directors who either (A) are directors of the Company as of the date hereof or (B) are elected, or nominated for election, to the Board of Directors with the affirmative votes (either by a specific vote or by approval of the proxy statement of the Company in which such person is named as a nominee for election as a director without objection to such nomination) of at least three-quarters of the Incumbent Directors at the time of such election or nomination (but shall not include an individual whose election or nomination is in connection with an actual or threatened proxy contest relating to the election of directors of the Company).

Any other provision of this Section notwithstanding, the term Change in Control shall not include either of the following events undertaken at the election of the Company:

(x) Any transaction, the sole purpose of which is to change the state of the Company's incorporation;

(y) A transaction, the result of which is to sell all or substantially all of the assets of the Company to another corporation (the "surviving corporation"); provided that the surviving corporation is owned directly or indirectly by the stockholders of the Company immediately following such transaction in substantially the same proportions as their ownership of the Company's Common Stock immediately preceding such transaction; and provided, further, that the surviving corporation expressly assumes this Agreement.

**Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year**

(a) Amendment to Bylaws.

On July 27, 2006, the Board of Directors of Sun Microsystems, Inc. ("Sun") voted to amend Section 3.2 of Sun's Bylaws, effective November 2, 2006, prior to the commencement of the Annual Meeting of the Stockholders, to decrease the size of the Board from ten members to nine members as permitted under Sun's Bylaws, as follows:

**"3.2 Number of Directors**

The number of directors of the corporation shall be no less than six (6) or more than eleven (11). The exact number of directors shall be nine (9), until changed, within the limits specified above, by a resolution duly adopted by the board of directors. The indefinite number of directors may be changed, or a definite number fixed without provision for an indefinite number, by an adopted amendment to this Bylaw duly adopted by the vote or written consent of holders of a majority of the outstanding shares entitled to vote; provided, however, that an amendment reducing the number or the minimum number of directors to a number less than five (5) cannot be adopted if the votes cast against its adoption at a meeting of the stockholders, or the shares not consenting in the case of action by written consent, are equal to more than sixteen and two-thirds percent (16-2/3%) of the outstanding shares entitled to vote thereon. No amendment may change the stated maximum number of authorized directors to a number greater than two (2) times the stated number of directors minus one (1).

No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires."

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**Signature(s)**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Sun Microsystems, Inc.

Date: August 01, 2006

By: /s/ Michael A. Dillon

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Michael A. Dillon  
Executive Vice President, General Counsel and Secretary