

# MERCURY INTERACTIVE CORPORATION

A Delaware corporation  
(the “Company”)

## Corporate Governance Guidelines

Adopted May 15, 2003; Amended and Restated February 23, 2005

### 1. Board and Director Responsibilities

The Board acts as the ultimate decision-making body of the Company and advises and oversees management, who are responsible for the day-to-day operations and management of the Company. In fulfilling these roles, each director must act in what he or she reasonably believes to be in the best interests of the Company and must exercise his or her business judgment.

#### Participation at and Preparation for Board Meetings

The Company expects directors to be active and engaged in discharging their duties and to keep themselves informed about the business and operations of the Company. Directors are expected to attend all Board meetings and the meetings of the committees on which they serve and to prepare themselves for these meetings.

In order for the Board to exercise fully its oversight functions, management provides the Board with access to information regarding the Company and the markets in which the Company operates. Any written materials which would assist directors in preparing for a Board or committee meeting shall be distributed to the directors in advance of the meeting, to the extent possible, and directors are expected to review such materials prior to the meeting.

#### Company Performance and Corporate Strategy

The Board reviews the Company’s financial performance on a regular basis at Board meetings and through periodic updates, with a particular focus on peer and competitive comparisons. These reviews include the views of management.

The Board also conducts an annual meeting to review and approve the Company’s long-term strategy, and assess its strategic, competitive and financial performance, on both an absolute basis and in relation to the performance, practices and policies of its peers and competitors.

### 2. Composition of the Board and Board Membership Criteria

The Nominating and Corporate Governance Committee shall establish criteria for Board membership, which shall include the criteria set forth in these

Corporate Governance Guidelines, and shall recommend individuals for membership on the Company's Board of Directors. In making its recommendations, the Nominating and Corporate Governance Committee shall:

- review candidates' qualifications for membership on the Board (including a determination as to the independence of the candidate) based on the criteria established by the Nominating and Corporate Governance Committee and approved by the Board (and taking into account the enhanced independence, financial literacy and financial expertise standards that may be required under law or Nasdaq rules for audit committee membership purposes);
- in evaluating current directors for re-nomination to the Board, assess the performance of such director; and
- periodically review the composition of the Board in light of the current challenges and needs of the Board and the Company, and determine whether it may be appropriate to add or remove individuals after considering issues of judgment, diversity, age, skills, background and experience.

### **3. Director Qualifications**

#### Independence

A substantial majority of the Board shall be comprised of directors meeting the independence requirements of NASDAQ. The Board shall make an affirmative determination at least annually as to the independence of each director.

#### Term Limits

It is the policy of the Board to avoid term limits which have the disadvantage of discontinuing the availability and contributions of directors who have developed experience with, and insight into, the Company and its needs over a period of time.

#### Retirement Age

The current mandatory retirement age for directors is 70. No director who is or would be over the age of 70 at the expiration of his or her current term may be nominated to a new term, unless the Board waives the mandatory retirement age for a specific director in exceptional circumstances. Such waiver must be renewed annually.

### Simultaneous Service on Other Company Boards

It is suggested that no director should serve on the Boards of more than 5 other companies while serving on the Company's Board, although a three month transition period may be required for existing directors whose board positions exceed these suggested limits.

It is the policy of the Board that every director must notify the Board and the Nominating and Corporate Governance Committee prior to accepting any invitation to serve on another corporate board or with a government or advisory group. The Nominating and Corporate Governance Committee shall evaluate the continued appropriateness of Board membership under the new circumstances and make a recommendation to the Board as to any action to be taken with respect to continued Board membership.

It is the policy of the Board that no member of the Audit Committee of the Board may simultaneously serve on the audit committees of more than three public companies, including the Company.

### Changes in Primary Employment

It is the policy of the Board that every director, including the CEO and any other inside directors, must notify the Board and the Nominating and Corporate Governance Committee of his or her retirement, any change in employer and any other significant change in professional roles and responsibilities. The Nominating and Corporate Governance Committee shall evaluate the continued appropriateness of Board membership under the new circumstances and make a recommendation to the Board as to any action to be taken with respect to continued Board membership.

### Conflicts of Interest

If an actual or potential conflict of interest develops because of a change in the business of the Company or a subsidiary, or in a director's circumstances (for example, significant and ongoing competition between the Company and a business with which the director is affiliated), the director should report the matter immediately to the Board and the Nominating and Corporate Governance Committee for evaluation and appropriate resolution.

If a director has a personal interest in a matter before the Board, the director shall disclose the interest to the full Board, shall recuse himself or herself from participation in the discussion, and shall not vote on the matter.

## **4. Board Agenda**

The Chairman of the Board, in conjunction with the CEO, establishes on an annual basis an agenda of topics for consideration and review by the Board

during the following year. This annual schedule of topics is then provided to the full Board for review and comment and is adjusted, as appropriate, during the year. The Chairman of the Board, in conjunction with the CEO, shall determine the frequency and length of Board meetings.

## **5. Lead Director**

The Board shall elect a Lead Director from the independent directors. The duties of the Lead Director are as follows:

- presides at all meetings of the Board at which the chairman is not present, including executive sessions of the independent directors;
- serves as a liaison between the chairman and the independent directors;
- approves information sent to the Board;
- approves meeting agenda for the Board;
- approves meeting schedules to assure that there is sufficient time for discussion of all items;
- the Lead Director has authority to call meetings of the independent directors; and
- if requested by major shareholders, ensures that he is available for consultation and direct communication.

## **6. Meetings of Non-Management Directors**

The Company's non-management directors shall regularly schedule executive sessions in which management does not participate which are led by the Lead Director.

The non-management directors shall establish and publicly disclose in the annual proxy statement the method for interested parties to communicate directly with the Company's non-management directors.

## **7. Board Committees**

The Board shall have at all times an Audit Committee, a Compensation Committee and a Nominating and Corporate Governance Committee.

Subject to any changes that the Board may make from time to time:

- the Audit Committee shall generally be responsible for overseeing the integrity of the Company's financial statements, its independent auditor, its internal audit function and compliance by the Company with legal and regulatory requirements, and shall also act as the Qualified Legal Compliance Committee;
- the Compensation Committee shall generally be responsible for overseeing the Company's compensation and benefits policies, evaluating executive officer performance and compensation and reviewing the Company's management succession plan; and
- the Nominating and Corporate Governance Committee shall generally be responsible for identifying qualified Board candidates, recommending director nominees and appointments to Board committees, evaluating Board performance, overseeing director compensation and overseeing the Company's Corporate Governance Guidelines and Code of Business Conduct and Ethics.

Each of the Audit Committee, Compensation Committee and Nominating and Corporate Governance Committee shall operate pursuant to its own written charter. Each such charter, and amendments thereto, shall be approved by the independent directors of the Board. These charters shall, among other things, set forth the purpose, goals and responsibilities of the particular committee, the procedures for committee member appointment and removal and committee structure and operations, as well as reporting to the Board. The charters shall also provide for an annual evaluation of each committee's performance.

Only independent directors meeting the independence requirements of NASDAQ and the Sarbanes-Oxley Act of 2002 and any related rules promulgated by the Securities and Exchange Commission may serve on these three committees. Committee members shall be appointed by the Board each year based upon the recommendation of the Nominating and Corporate Governance Committee, except for the Nominating and Corporate Governance Committee, which is directly appointed by the independent members of the Board. The Board may, from time to time, establish or maintain additional committees as it deems appropriate and in the best interests of the Company.

In making its recommendations for committee appointments, the Nominating and Corporate Governance Committee shall:

- review candidates' qualifications for membership on the committee (including a determination as to the independence of the candidate) based on the criteria established by the Nominating and Corporate Governance Committee;

- in evaluating current directors for re-appointment to a committee, assess the performance of such director and of such committee; and
- periodically review the composition of the committee in light of the current challenges and needs of the committee, and determine whether it may be appropriate to add or remove individuals after considering issues of judgment, diversity, age, skills, background and experience.

## **8. Board Member Access to Management and Independent Advisors**

Board members shall have access to the management and employees of the Company and to its outside counsel and auditors. Any meetings or contacts that a director wishes to initiate may be arranged through the CEO or the Secretary or directly by the director in appropriate circumstances.

Executive officers and other members of senior management are expected to be present at Board meetings at the invitation of the Board. The Board encourages senior management to make presentations and to invite to Board meetings managers and other employees who can provide additional insight into the items being discussed. The Board also encourages senior management to include in Board meetings individuals that the senior management believes may become prospective leaders of the Company.

The Board and each of its committees is authorized to hire independent legal, financial or other advisors as they may consider necessary, without conferring with or obtaining the approval of management or, in the case of committees, the full Board.

## **9. Director Compensation**

The Nominating and Corporate Governance Committee shall review and approve compensation (including stock option grants and other equity-based compensation) for the Company's directors. In so reviewing and approving director compensation, the Nominating and Corporate Governance Committee shall, among other things:

- identify corporate goals and objectives relevant to director compensation;
- evaluate the performance of the Board in light of such goals and objectives and set director compensation based on such evaluation and such other factors as the Nominating and Corporate Governance Committee deems appropriate and in the best interests of the Company (including the cost to the Company of such compensation); and

- determine any long-term incentive component of director compensation based on the awards given to directors in past years, the Company's performance, shareholder return and the value of similar incentive awards relative to such targets at comparable companies and such other factors as the Nominating and Corporate Governance Committee deems appropriate and in the best interests of the Company (including the cost to the Company of such compensation).

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

All new members of the Board and new members of committees are encouraged to participate in the Company's orientation program for directors. Other directors are also encouraged to attend the orientation program.

All directors will be offered the opportunity, and are encouraged, to participate in continuing education programs in order to stay current and knowledgeable about the business of the Company.

Such orientation and continuing education programs shall be overseen by the Nominating and Corporate Governance Committee of the Board.

## **11. Management Evaluation and Management Succession**

The Compensation Committee shall evaluate the performance of the senior management of the Company and shall present its findings to the full Board. The Board shall review the Compensation Committee's report in order to ensure that management's performance is satisfactory and that management is providing the best leadership for the Company in the long and short-term.

The Compensation Committee shall review and report to the Board on the Company's succession planning, including succession planning in the case of the incapacitation, retirement or removal of the CEO. The CEO shall provide an annual report to the Compensation Committee recommending and evaluating potential successors, along with a review of any development plans recommended for such individuals. The CEO shall also provide to the Board, on an ongoing basis, his or her recommendation as to a successor in the event of an unexpected emergency.

## **12. Annual Performance Evaluation**

The Board, led by the Nominating and Corporate Governance Committee, shall establish and conduct an annual self-evaluation to determine whether it and its committees are functioning effectively. The Nominating and Corporate Governance Committee shall oversee the evaluation with each director completing a questionnaire developed by the Nominating and Corporate Governance Committee with respect to various criteria. The collective

evaluations shall be compiled in advance of the review session and shall be presented by the Chairman of the Nominating and Corporate Governance Committee to the full Board for discussion. This process shall also include annual self-assessments by each Board committee, relying on a review process similar to that used by the Board, with performance criteria for each committee established on the basis of its charter.

### **13. Evaluation of Individual Director Performance**

It is the policy of the Board to have the Nominating and Corporate Governance Committee assess, on the basis of established criteria, the performance of each individual director standing for re-election at the next shareholders' meeting. The established criteria address each director's core competencies, independence and level of commitment.

The Nominating and Corporate Governance Committee considers not only an individual's qualities, performance and professional responsibilities, but also the then composition of the Board and the challenges and needs of the Board at that time. The Nominating and Corporate Governance Committee also considers the impact of any change in the principal occupation of existing directors. Upon completion of the individual director evaluation process, the Committee reports to the full Board its conclusions and recommendations for nominations to the Board.

It is the policy of the Board that the Nominating and Corporate Governance Committee also should review and consider the performance of any individual director if a situation were to arise that interfered with the proper performance of his or her duties as a member of the Board.