



Lydia I. Beebe
Corporate Secretary and
Chief Governance Officer

Corporate Governance
6001 Bollinger Canyon Road
San Ramon, CA 94583
Tel 925 842 3232
Fax 925 842 2846
lydia.beebe@chevron.com

August 17, 2009

Ms. Elizabeth M. Murphy
Secretary
United States Securities and Exchange Commission
100 F. Street, NE
Washington, D.C. 20549-1090

Re: File No. S7-10-09, Release No. 34-60089 (June 10, 2009), Facilitating Shareholder
Director Nominations

Dear Ms. Murphy:

On behalf of Chevron Corporation, I would like to thank the Securities and Exchange Commission for the opportunity to respond to its request for comments to the "proxy access" proposal, Release No. 34-60089 (June 10, 2009). Chevron Corporation does not support across-the-board application of proxy access as proposed in Exchange Act Rule 14a-11, because we believe it creates a preference for contested director elections and jeopardizes the effective operation of boards of directors to guide and oversee corporations. If the Commission takes any action in this area, a better approach would be to adopt amendments to current director election restrictions in the shareholder proposal rules, as proposed in Rule 14a-8(i)(8) and Rule 14a-19, with certain modifications described below.

Concerns Regarding Proposed Rule 14a-11

- **The Rule creates a preference for contested director elections.**

Chevron does not support proposed Rule 14a-11 primarily because it will create a preference for contested director elections that will undermine the cooperative nature of today's boards of directors by placing directors in competition with each other.¹ We believe the strength of the current corporate governance structure of U.S. corporations lies in the consensus-driven leadership and oversight resulting from the free and open exchange of knowledge and perspective by a board of directors working in a collegial manner for the good of the stockholders. Despite the headline-generating issues faced by some companies, most have been well-served by a group of peers, each of whom excels in his or her profession or area of expertise, who come together and work cooperatively to lead the organization.

¹ Chevron Corporation has previously apprised the Commission of its views concerning proxy access generally in connection with the Commission's 2007 proposal on the same subject (Release Nos. 34-56161 and 34-56160, July 27, 2007). See Comment Letter Submitted by Lydia I. Beebe, Chevron Corporation, dated October 2, 2007.

Purposefully facilitating proxy contests raises a number of additional problems. It will, among other things, encourage short-term decision making by directors wanting to avoid being targeted in contested elections, create an adversarial aspect in director interactions, distract boards and management from actually managing, create incentives for special interest stockholders to abuse the director election process to achieve narrow objectives not shared by all stockholders, and subject companies to the distraction and significant expense of a contested election regardless of whether the shareholder nominees are ultimately supported by other shareholders. Although the Commission has stated that proposed Rule 14a-11 "would not apply where [stockholders] relying on the rule are seeking to change the control of the issuer," it is difficult to see how the proposed Rule would prevent this practice over an extended period of time.

- **The Rule undermines the role of state law in corporate governance.**

Additionally, Chevron believes proposed Rule 14a-11 undermines the traditional role of state law in matters of corporate governance. Historically, the Commission's proxy related rules have focused principally on disclosure and empowering stockholders by putting information into their hands, while respecting state law concerning the substantive aspects of director elections. The Commission itself has stated that "the federal proxy authority is not intended to supplant state law, but rather to reinforce state law rights with a sturdy federal disclosure and proxy solicitation regime."² Chevron believes that the Commission should regulate the disclosures stockholders receive and the procedures by which proxy solicitations are conducted rather than the substantive aspects of stockholder voting rights and director elections.

State corporate laws allow corporations and stockholders to craft governance standards appropriate for the individual company. Delaware law, as recently amended, confers broad powers upon stockholders to adopt bylaws establishing the terms and conditions of rights relating to the election of directors. The growth of majority voting for directors is one example of the effectiveness of current state law to facilitate change. Over the past few years, as more attention has focused on the importance of the stockholder vote, more corporations have evolved from plurality voting to majority voting for directors, without legislative, regulatory or judicial requirements.

If adopted, proposed Rule 14a-11 would substantially circumscribe the ability of stockholders to exercise their state law rights to adopt a proxy access regime best suited to the circumstances of their corporation.³ Even though the Commission's stated concerns in the Proposing Release are stockholder rights and removing impediments to stockholders exercising those rights, the Commission seeks to "create a mandatory form of proxy access to be imposed on all publicly-traded corporations . . . even if the majority of [a] corporation's shareholders object strenuously to the operation of the Proposed Rules."⁴

² Release No. 34-56160 (July 27, 2007).

³ See Comment Letter Submitted by James L. Holzman, Chair, Council of the Corporation Law Section, Delaware State Bar Association, dated July 24, 2009.

⁴ Comment Letter submitted by Professor Joseph A. Grundfest, dated July 24, 2009, at 5.

- **The Rule fails to appropriately limit proxy access.**

Consistent with Delaware law, Chevron stockholders, as well as those of most other publicly-traded companies, are currently permitted to recommend nominees for election to the Board of Directors. However, other than a smattering of self-nominations over the years, in our experience, stockholders virtually never suggest director candidates for consideration. Given the ongoing opportunity for stockholders to put forward director candidates in the normal course of events and the serious and potentially negative impact of contested proxy elections on a company's ongoing operations, Chevron strongly believes stockholders should be precluded from relying upon proposed Rule 14a-11 without the occurrence of specific triggering events.⁵ Triggering events could include a board's failure to accept the resignation of a director who received less than a majority of votes cast, a board's failure to act on a stockholder proposal that received a majority vote, the absence of majority voting for the election of directors, and a nominating committee's refusal to meet with a nominating stockholder to consider a nominee submitted to the committee or to nominate a candidate as a result of such meeting. These triggering events would focus proxy contests on companies that have demonstrated a need for greater director accountability.

Chevron believes that the final triggering event suggested above, which has not previously been considered by the Commission, should receive serious consideration prior to adoption of a rule such as the proposed Rule 14a-11. The suggested triggering event would require nominating stockholders to submit nominees to a company's nominating committee and be available to meet and dialog with the committee, prior to placing a nominee on a company's proxy. Rule 14a-11 as proposed circumvents the critical role of a board's nominating committee to assemble a board of directors that as a whole can best serve the company. Nominating committees not only screen candidates for clear conflicts of interest and impediments to their independence, but they also seek out candidates with complementary skills, a variety of expertise and experience, multiple different industry and business model backgrounds, and a diversity of personal characteristics. Only through dialog with the nominating committee can stockholders understand the various considerations involved in selecting director candidates.

Our view that a requirement for such dialog is necessary is based in part on our extensive experience with stockholder proposals. While the majority of stockholders who are active in submitting stockholder proposals publicly state that a primary goal is dialog, few proponents engage in meaningful dialog before a proposal is filed. This may be the result of calendar submission requirements and the number of companies many proponents are targeting, and meaningful dialog can be held after a proxy proposal is submitted. However, once a director election becomes contested, opportunity for productive dialog will be limited. We are hopeful that a requirement for such dialog in advance of a Rule 14a-11 nomination would help to maintain the cooperative and collegial nature of a company's board of directors. Such dialogue may also avoid the unnecessary expenditure of resources incident to relying upon proposed Rule 14a-11.

⁵ Request for Comment No. B.14.-B.17.

In addition to these triggering events, Chevron believes appropriate limitations to proxy access include:

- Nominating stockholders should be required to meet ownership thresholds higher than those currently proposed—at least 5% for large companies like ourselves—and a holding period requirement of at least two years. Even this significant increase in the proposed ownership requirement still grants a hugely disproportionate power to a small minority of stockholders, at the expense of the stockholders as a whole.
- Nominating stockholders or groups of stockholders should be given priority based upon the size of their holdings, rather than the proposed “first-in” approach.⁶
- Incumbent directors who were previously nominated and elected under proposed Rule 14a-11 and who will stand for reelection should be counted against the maximum number of nominees allowed to be nominated under proposed Rule 14a-11, even if the Board includes the directors in the Board-nominated slate of directors. To do otherwise will be a disincentive for boards to re-nominate any such director, resulting in further deterioration in the cooperative nature of boards of directors.
- Nominating stockholders should not be permitted to nominate a director for at least two years if their prior nominee fails to obtain at least 25% of the votes outstanding.⁷

Modifications to Rule 14a-8(i)(8) and Rule 14a-19

The Commission has the opportunity to create a more effective and limited form of proxy access through the proposed amendments to Rule 14a-8(i)(8) and proposed Rule 14a-19, rather than adoption of Rule 14a-11. Chevron believes significant modifications are needed in these proposals before their adoption in order to prevent undue disruption in corporate affairs. These modifications include:⁸

- codifying the prior Staff interpretations of the election exclusion delineating certain types of proposals that a company would continue to be permitted to exclude (such as a proposal that would disqualify a nominee that is standing for reelection);⁹
- requiring an ownership threshold of at least 1% of the company’s securities for a stockholder proponent (or proponents) to submit stockholder proposals under Rule 14a-8(i)(8);
- amending Rule 14a-8(i)(12) to provide that proxy access stockholder proposals are subject to higher resubmission thresholds, i.e. 10%, 15% and 20%; and
- amending proposed Rule 14a-19 and proposed Schedule 14N to clarify that a corporation’s stockholder nomination procedures may, so long as consistent with state law, impose additional disclosure obligations upon nominating stockholders.

⁶ Request for Comment Nos. E.10-E.13. This approach is supported by, among others, the Council of Institutional Investors. See Comment Letter submitted by Jeff Mahoney, General Counsel, Council of Institutional Investors, August 4, 2009.

⁷ Request for Comment No. C.18.

⁸ Request for Comment No. I.4.

⁹ Request for Comment No. I.13.

Adopting the proposed amendments to Rule 14a-8(i)(8) and proposed Rule 14a-19 (as modified in the manner suggested above) rather than adopting Rule 14a-11 creates a path for stockholder proxy access without risk of litigation, and it frees the Commission from the necessity of establishing and enforcing new and additional proxy season timelines and another elaborate no-action letter process when it can accomplish its objectives through existing structures. Finally, it preserves flexibility for stockholders and their corporations.

Conclusion

Chevron urges the Commission to reconsider its proposal and decline to adopt a federally mandated proxy access regime. The Commission should instead allow proxy access systems to develop under the framework created by state law, enhanced if the Commission so decides by proposed Rule 14a-8(i)(8) as modified by the comments above. Thank you for the opportunity to share our views on these matters.

Very truly yours,

A handwritten signature in cursive script that reads "Lydia I. Beebe". The signature is written in dark ink and is positioned above the printed name.

Lydia I. Beebe