



TESORO

August 19, 2009

By Electronic and United States Mail

U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090
Attn: Ms. Elizabeth Murphy, Secretary

Re: Release Nos. 33-9046; 34-60089; IC-28765 (File No. S7-10-09)
Facilitating Shareholder Director Nominations

Ladies and Gentlemen:

This letter is submitted on behalf of the Governance Committee of the Board of Directors of Tesoro Corporation, a Delaware corporation, in response to the request for comments by the Securities and Exchange Commission in its June 10, 2009 release referenced above.

A *Fortune 100* and a *Global Fortune 500* company, Tesoro is one of the largest independent petroleum refiners and marketers in the Western United States, operating seven refineries with a combined capacity of approximately 664,000 barrels per day. Tesoro's retail-marketing system includes over 870 branded retail stations, of which more than 380 are company-owned under the Tesoro®, Shell®, Mirastar® and USA Gasoline® brands.

Consistent with Tesoro's commitment to high standards of corporate governance, we have spent significant time analyzing and reflecting on the Proposed Release Nos. 33-9046; 34-60089; IC-28765. For the reasons set forth below, we believe that the proposed new Rule 14a-11

denies corporations and their shareholders the flexibility necessary to adapt their governance practices to each company's distinctive qualities and circumstances. We also believe that the recent amendments to Delaware General Corporation Law, Section 112, which became effective on August 1, 2009, provide shareholders a more effective framework to address the proxy access issue by giving them the choice as to what standards should apply on a case-by-case and issuer-by-issuer basis, rather than the one-size-fits-all approach under the proposed Rule 14a-11. In our view, such an approach provides a greater voice to the shareholders who have a long-term interest in our corporation, and we recommend that the Commission allow state law changes to be considered and evaluated by the marketplace prior to any adoption of a one-size-fits-all federal mandate. As a result, we urge the Commission to refrain from adopting the proposed Rule 14a-11 at this time, and to consider (together with evaluating the proxy rules as a whole) proposing rules amending the existing Rule 14a-8(i)(8) to permit shareholders to include in their company's proxy materials bylaw proposals that would allow shareholders access to the company's proxy for nominating directors.¹

If the Commission determines to move ahead with the proposed Rule 14a-11, we recommend that it consider the revisions mentioned below and to further consider delaying the effective date of the proposed Rule 14a-11 until after the 2010 proxy season. Our reasons are discussed below.

¹ We note this proposal is consistent with the views of Hon. Troy A. Paredes, who advanced similar remarks at the Center for Capital Markets Competitiveness, U.S. Chamber of Commerce on June 23, 2009 in Washington, D.C.

The Proposed Rule

If adopted in its current form, the proposed Rule 14a-11 would require companies to include shareholder nominees for election for director in the corporation's proxy materials. To be eligible to submit director nominations for inclusion in the corporation's proxy materials pursuant to the proposed Rule 14a-11, the nominating shareholder would have to meet certain stock ownership thresholds based upon the value of the company's net assets. The tiered minimum ownership requirements under the proposed Rule are as follows: (i) one percent of the shares of a large accelerated filer (net assets of \$700 million or more) that are entitled to be voted on the election of directors, (ii) three percent of the shares of an accelerated filer (net assets of \$75 million or more, but less than \$700 million) that are entitled to be voted on the election of directors, and (iii) five percent of the shares of a non-accelerated filer (net assets of less than \$75 million) that are entitled to be voted on the election of directors. In addition, the nominating shareholder would have to provide verification that they have continuously owned the requisite number shares for at least one year prior to the date it notifies the company of its intent to nominate a director and affirm that they will continue to own the securities at least through the date of the annual or special meeting.

Suggested Revisions to the Proposed Rule

1. Increase the Minimum Stock Ownership Threshold to Five Percent for Accelerated Filers and Large Accelerated Filers

If the proposed Rule 14a-11 is adopted, we believe that a minimum stock ownership threshold of five percent for accelerated filers and large accelerated filers would be more appropriate. In its current form, the stock ownership thresholds for mandatory inclusion of a shareholder's director nominees in a company's proxy materials are, in our view, too low, and accordingly, provide shareholders with little ownership interest in the company too permissive of an avenue to nominate directors at little or no cost to them. Under the proposed Rule 14a-11, an investor with a small one percent stake in a large accelerated filer would have the ability to mandate that a company include in its proxy materials the shareholder's director nominees. We believe that by providing one percent and three percent shareholders with a virtually expense-free means to nominate directors, the proposed Rule 14a-11 would provide these shareholders (with little economic interest in the corporation and, arguably, with a very short-term view of shareholder value) an unwarranted amount of influence over boards of directors, which may interfere with overall interests of companies and their other investors in maximizing shareholder value. In addition, the minimal stock ownership requirements of the proposed Rule 14a-11 would provide an avenue for board representation for many different shareholders with divergent and often competing interests, which may create the kind of distrust and disharmony on a board that undercuts the ability of the board and management to run the company's business productively.

In an attempt to address these concerns, we would urge the Commission to require a minimum ownership of at least five percent of the company's outstanding stock for all companies. A five percent ownership threshold would alleviate some of the foregoing concerns because only those shareholders with a significant vested interest in the company would have the ability to utilize the company's funds to seek board representation. Moreover, the Commission's reporting requirements under Section 13(d) of the Securities and Exchange Act of 1934, as amended, and the rules promulgated thereunder, which mandates certain shareholders of a corporation disclose their dealings in the corporation's securities due to their level of control, is triggered by a five percent ownership threshold. As Congress has already deemed this level of stock ownership is significant for purposes of disclosing shareholder information, requiring a five percent minimum threshold for shareholder access to proxy materials would be consistent with such regulations and require the shareholder to make required disclosures to the marketplace that the Commission has already deemed material to investors. Accordingly, we would urge the Commission to increase the stock ownership threshold of the proposed Rule 14a-11 to at least five percent for all public companies.

2. *Increase the Minimum Holding Period Requirement to Three Years and Require Nominating Shareholders to Retain Stock Holdings Subsequent to the Election of Directors if the Nominee is Elected.*

For similar reasons, we believe that a minimum holding period of three years would be more appropriate. In its current form, the proposed Rule 14a-11's one-year holding period for mandatory inclusion of a shareholder's director nominees in a company's proxy materials

provides shareholders with only a short-term interest in a company with a ready regime of access to the company's proxy materials. By providing these shareholders with the ability to include director nominees in their company's proxy materials, the proposed Rule 14a-11 easily allows such shareholders to advance their own specific purposes, which may be contrary to the overall, long-term interests of the company and its other investors.

To address this concern that only shareholders with a long-term economic interest have the ability to mandate that the corporation include the shareholder's director nominees in the corporation's proxy materials, we would urge the Commission to revise the minimum holding period of the proposed Rule 14a-11 to at least three years. Requiring that shareholders own the requisite amount of stock for three years before enabling them with direct access to the corporation's proxy materials would distinguish short-term shareholders seeking to advance a specific purpose from long-term shareholders concerned with the overall goal of maximizing the value of the corporation. Accordingly, we believe that three years would be a more reasonable test with respect to longevity of stock ownership.

We would also suggest that the nominating shareholder be required to commit to retain its holdings for a period subsequent to the election of directors if the shareholder's nominee is elected (with a requirement that any sale during that period be justified by clear changed circumstances). The effectiveness of a board of directors is dependent upon the board's ability to attract and retain qualified and diverse directors in light of the overall goal of enhancing shareholder value. In addition, a key ingredient to a board's successful oversight of a company is the creation of an environment that fosters meaningful and ongoing dialogue between the

board and management and amongst the directors themselves. While the proposed Rule 14a-11 may result in more diverse boards of directors, it does so only at the expense of disrupting board dynamics and operation. By failing to require a nominating shareholder to maintain share ownership subsequent to the election of directors if his or her nominee is elected, the proposed Rule 14a-11 could lead to the creation of different factions within a board of directors as the interests of directors who have a short-term or lack of ownership interest in the company would effectively be placed at odds with directors focused on the long-term interests of the company. Accordingly, in addition to requiring a larger percentage ownership, the proposed Rule 14a-11 should also mandate that shareholders maintain their ownership interest for a period subsequent to the election of directors if their nominee is elected, in order to ensure a board's operations and dynamics are not disrupted.

3. *Shareholder Nominees should be required to comply with the Company's Governance Guidelines.*

Many companies, including Tesoro, have adopted governance guidelines to ensure that the members of their boards comply with the rules and requirements promulgated by the Commission, the New York Stock Exchange and other governance standards. These guidelines may include, among other things, age limits for directors, limitations on the number of boards of public companies on which a director can serve, share ownership guidelines for directors, and independence and minimum meeting attendance requirements. We believe that the proposed Rule 14a-11 should also require that shareholder nominees for director satisfy these applicable guidelines and standards to the same extent as the company's other directors. As such corporate

guidelines have been implemented by corporations and regulatory bodies to improve the governance of public companies, allowing shareholders to circumvent such guidelines would undermine such efforts.

Conclusion and Recommendations

For the reasons set forth above, we respectfully suggest that the Commission not approve at this time the adoption of the proposed Rule 14a-11. Should the Commission determine to move ahead with the adoption of the proposed Rule 14a-11, then we recommend that it consider the revisions mentioned above and also consider delaying the effective date of proposed Rule 14a-11 until after the 2010 proxy season to allow private ordering to be considered and dealt with effectively.

The Committee appreciates the opportunity to comment on the Proposing Release and respectfully requests that the Commission consider the recommendations set forth above. We are prepared to meet and discuss these matters with the Commission and its Staff and to respond to any questions they may have. Please contact Charles S. Parrish, Executive Vice President, General Counsel and Secretary of Tesoro, should you have any questions or wish to discuss.

Respectfully submitted,

/s/ Robert. W. Goldman

Robert W. Goldman,

Chair, Governance Committee of the Board of

Directors of Tesoro Corporation

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cc: Hon. Mary L. Schapiro, Chairman
Hon. Kathleen L. Casey, Commissioner
Hon. Elisse B. Walter, Commissioner
Hon. Luis A. Aguilar, Commissioner
Hon. Troy A. Paredes, Commissioner
Ms. Meredith Cross, Director, Division of Corporate Finance
Mr. David M. Becker, General Counsel