JAMES T. HACKETT
CHAIRMAN, PRESIDENT AND
CHIEF EXECUTIVE OFFICER

August 17, 2009

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

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

Dear Ms. Murphy:

Thank you for providing Anadarko Petroleum Corporation the opportunity to comment on the U.S. Securities and Exchange Commission's (the "***Commission***") proposed rules regarding shareholder director nominations, as described in Release Nos. 33-9046; 34-60089 and IC-28765 (collectively, the "***Release***"). Anadarko is a Delaware corporation that has been a New York Stock Exchange ("***NYSE***") listed company since 1986. Anadarko's mission is to deliver a competitive and sustainable rate of return to shareholders by exploring for, acquiring and developing oil and natural gas resources vital to the world's health and welfare. As of year-end 2008, the company had approximately 2.3 billion barrels of oil equivalent of proved reserves, making it one of the world's largest independent exploration and production companies. We are a member of the S&P 500, a Fortune 500 company, and employ approximately 4,300 people across the United States and in several foreign jurisdictions.

We fully support the rights of shareholders under state law to nominate and elect directors to oversee the management of a corporation's affairs. We also value our relationships with our shareholders, and are frequently and actively engaged in ongoing and constructive dialogues with our shareholders regarding various corporate governance and other matters. As you are well aware, shareholders have played an increasingly fundamental role in reshaping the corporate governance landscape over the last several years. Companies like Anadarko have made substantial changes in their corporate governance practices based on shareholders' current ability to promote change at such organizations. There has been a record number of shareholder proposals in recent years, and companies have implemented many of the actions being sought by such proposals (either before such proposal is included in the proxy statement or after the shareholders have voted on such matter), particularly once a given board of directors has received a strong indication of shareholder preference. Anadarko has been part of this process, appointing an independent Lead Director, ensuring the independence of all Board members on key Committees, adopting majority voting in uncontested director elections, and implementing the declassification of our Board of Directors. As part of this movement, the State of Delaware (as well as other jurisdictions) has acted as well, recently amending its corporate law to (1) permit companies to amend their bylaws to permit shareholders to include director nominees in the company's proxy materials; and (2) explicitly permit companies to include provisions in their

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bylaws permitting reimbursement of the expenses incurred by shareholders in conducting director election contests.[1] All of this constructive dialogue and change has occurred without federal rulemaking that potentially preempts state law.

As they are set forth in the Release, we do not believe that the proposed rules give due credit to the constructive dialogue that has been and is currently occurring between corporations and their shareholders. We are concerned that federally mandated rules that preempt state law will discourage such dialogue and, in lieu thereof, impose a "one size fits all" solution on all companies. As Commissioner Kathleen Casey so aptly noted in her May 20, 2009 remarks before the Commission, the Proposed Rule metes out punishment for all companies, not just those who may have contributed to the current economic turmoil.[2] Further, we are concerned that the Commission may not truly "remove impediments" to shareholders[3] by implementing a prescriptive rule that is itself not subject to a shareholder vote.

For the reasons set forth herein, we respectfully submit to the Commission that the more appropriate course of action at this time is to refrain from adopting proposed Rule 14a-11 (the "***Proposed Rule***"), but, in lieu thereof, adopt the Commission's proposed changes to Rule 14a-8(i)(8) to enable shareholders and corporations to work together to find appropriate shareholder access solutions that work for individual companies. However, if the Commission nevertheless proceeds with the adoption of the Proposed Rule, we ask that the Commission take note of the concerns raised below.

Primary Concerns with Proposed Rule 14a-11

Although we have several concerns related to the Proposed Rule, we have highlighted below what we believe to be the elements of the Proposed Rule that we find to be the most problematic.

Applicability

- We do not believe that the Proposed Rule should apply to companies that already have provisions in their governing documents that provide a process for (or otherwise address) the inclusion of a shareholder's director nominee in a company's proxy materials. This has the potential to undo efforts that many companies and their shareholders have already undertaken to address director elections.

- As you are also aware, we and many others are concerned that the Proposed Rule directly conflicts with state law, where the concepts of fiduciary duties and board

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[1] *See* Delaware General Corporation Law §§ 112 and 113.

[2] *See* Kathleen L. Casey, Comm'r, Sec. and Exch. Comm'n, Statement at Open Meeting to Propose Amendments Regarding Facilitating Shareholder Director Nominations (May 20, 2009), *available at* http://sec.gov/news/speech/2009/spch052009klc.htm.

[3] Facilitating Shareholder Director Nominations, 74 Fed. Reg. 29,024, 29,026 (proposed June 18, 2009).

accountability rightly reside.[4] Further, the uncertainty around a proposed dispute resolution framework to address determinations by companies that a nomination can be excluded under the Proposed Rule could dramatically increase litigation costs and deprive companies like Anadarko of the benefits of incorporation in a jurisdiction (like Delaware) that is esteemed for its well-developed body of case law relating to corporate matters.

Eligibility/Thresholds

- The ownership thresholds set forth in the Proposed Rule are far too low and, in our opinion, do not meet appropriate holding requirements. Most of Anadarko's activist shareholders fall into two categories: (1) those who hold a very small number of shares but are prolific with their proposal submissions; or (2) those who acquire large stakes in the company over a relatively short time frame in order to make a quick profit and dispose of their interests. We believe that the likelihood that either of these types of investors would nominate a potential director to represent the long-term best interests of the majority of our shareholders is small. In our view, in order to nominate a candidate for election to a board of directors, a shareholder proponent should be required to maintain more significant holdings for a period of time that demonstrates a proponent's willingness to continue to support its candidate should that individual be elected to the board. To that end, and to the extent that the Proposed Rule is adopted, we would recommend that the ownership threshold for large accelerated filers, including well-known seasoned issuers be at least 5% (individually or in the aggregate) for at least 2 years, with such ownership requirements to continue for the term that a proponent's nominee (if elected) serves.

- The share ownership requirement under the Proposed Rule is limited to "beneficial" ownership. Companies should be allowed to require of proponents and their nominees the disclosure of derivative and synthetic positions that may fall short of beneficial ownership.

- Although we understand all too well the turmoil caused by the recent economic crisis, we take issue with the assertion in the Release that such crisis creates a compelling basis for imposing rules on all companies regardless of their current corporate governance practices and accountability to their shareholders. As noted in the Commission's 2003 proposed release on proxy access, the inclusion of relevant triggering events can help alleviate some of the concerns regarding the potential impact of such a nomination process.[5] The inclusion of "triggering" events (such as a certain percentage of withhold votes for a director candidate,

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[4] *See* Letter from James L. Holzman, Chair, Council of the Corp. Law Section, Delaware State Bar Ass'n, to Elizabeth M. Murphy, Sec'y, Sec. and Exch. Comm'n (July 24, 2009), *available at* http://www.sec.gov/comments/s7-10-09/s71009-65.pdf.

[5] *See* Security Holder Director Nominations, 68 Fed. Reg. 60,784, 60,790 (proposed Oct. 23, 2003).

economic performance, being delisted by an exchange, being sanctioned by the SEC or other regulations, having to restate earnings or failing to take action on a shareholder proposal that received a majority shareholder vote) could help maintain focus on companies who may have greater accountability issues. Moreover, if the proposed amendment to Rule 14a-8(i)(8) were approved, shareholders would still have a valuable avenue for establishing alternate nomination arrangements with companies and avoid a "one size fits all" approach.

- The inclusion of resubmission thresholds could also appropriately address the concerns of companies whose shareholders do not see the need for a given director nominee to repeatedly use the proxy access avenue ineffectively. For example, if a nominee does not receive at least 25% of the vote in a given year, the proponent and nominee should be prohibited from resubmitting a nominee for at least three years.

- Finally, the "first-in-time" nomination dynamic appears arbitrary and is not in the best interests of all shareholders. Deference should be given to the largest shareholder proponents in order to represent as many shareholders as possible and avoid a "race to the corporate secretary" dynamic. This approach was suggested in the Commission's 2003 proposed release on proxy access.[6]

Board Composition

- Being forced to entertain nominees who do not have to meet the same requirements as the rest of the board of directors could have several negative implications. Vital to the board's effective operation is its ability to meet the composition and independence standards required by NYSE and Commission standards, as well as its own corporate governance guidelines. For example, if a director who was not qualified to serve on Anadarko's Audit Committee or Compensation and Benefits Committee, particularly if that individual replaces a director who did meet such requirements, were nominated and elected, Anadarko could fall out of compliance with such standards. In addition, as other companies have indicated,[7] there are a host of situations where additional qualifications are required in order for an individual to serve on a given company's board of directors. Any director nominee should be required to complete company-provided questionnaires to aid in a company's evaluation of a candidate, and should also submit prior to election an irrevocable letter of resignation that would be triggered and submitted for acceptance by a majority of the board if that individual fails to meet material terms of a company's corporate governance guidelines or other procedures. Anadarko, as well as many other companies, are

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[6] *See* Security Holder Director Nominations, 68 Fed. Reg. 60,784, 60,797-60,798 (proposed Oct. 23, 2003).

[7] *See* Letter from Michael R. McAlevey, Vice President and Chief Corporate, Securities and Finance Counsel, General Electric Co., to Elizabeth M. Murphy, Sec'y, Sec. and Exch. Comm'n (August 5, 2009), *available at* http://222.sec.gov/comments/s7-10-09/s71009-81.pdf.

also increasingly focused on diversity of skills and expertise in order to have a board that is increasingly well-suited to oversee and address issues specific to that company. The Proposed Rule provides no mechanism by which companies can require qualifications above and beyond the requirements set forth in the Proposed Rule. If a candidate does not meet such criteria, then the company should not be required to include that nominee in the proxy statement.

Shareholder/Nominee Disclosures

- As suggested in the Commission's 2003 proposed release on proxy access,[8] proponents should be required to disclose any relationship(s) of a director with the proponent to encourage transparency in the process.

- Schedule 14N should also include representations by the nominee to confirm that they understand their fiduciary duties under state law.

- Further, if one of the purposes of the Proposed Rule is to encourage discussion between companies and their proponents, then having companies agree to nominate a candidate should still count towards the cap in the Proposed Rule if that director is nominated through the proposed Rule 14a-11 process. Otherwise, the presumption is that such a contest is automatically hostile, which potentially disincentivizes companies from engaging in constructive dialogue with proponents.

- There should be no additional communications from the proxy communication rules for certain preliminary communications relating to director nominees.

- With respect to the proposed exemption from 13d requirements for groups formed to nominate directors, the Commission should consider the unintended consequences if a shareholder nominee is elected and then the shareholder decides it wants to gain control of the company. We suggest that the Commission consider requiring a mandatory irrevocable contingency resignation that is triggered if (1) the shareholder seeks control of the company; or (2) the nominee does not follow company corporate governance guidelines or other governance procedures.

Role of the Nominating and Corporate Governance Committee

- We are also concerned about the confusion that would arise under the Proposed Rule with respect to the ability of our Nominating and Corporate Governance Committee to operate effectively under such a regime. It is unclear to us under the Proposed Rule what would happen the year following a "proxy access" director being elected to the board. Must he or she be nominated by the

[8] *See* Security Holder Director Nominations, 68 Fed. Reg. 60,784, 60,795-60,796 (proposed Oct. 23, 2003).

committee? If yes, does this provide more room for additional proxy access nominees? Could the Committee's conduct with respect to these issues have inadvertent fiduciary duty implications for the rest of the board?

Timeframe/Available Resources

- Although the Proposed Rule permits a company to exclude shareholder nominees from its proxy statement, the timetable for this process may be too lengthy to afford the company the opportunity to do so. Under the Proposed Rule, the process to exclude a shareholder nominee requires nearly 120 days from the date a company files its proxy materials with the Commission (or, approximately 150 to 160 days prior to its annual meeting). The advance notice provision of many companies' bylaws, including Anadarko's, require that shareholder proposals be submitted not less than 90 days prior to the anniversary date of the immediately preceding annual meeting. This shorter deadline could make it more difficult for such companies to avail themselves of the process to exclude shareholder nominations.

- The costs of complying with the Proposed Rule would be onerous. In addition to the tangible monetary costs related to proxy materials and solicitation, legal and other consulting fees, an immense amount of time would have to be spent by a company's management, legal, public affairs, and investor relations teams, resulting in increased administrative costs that could negatively affect shareholder value. Additionally, and perhaps even more importantly, the amount of time that boards of directors and company management would have to spend on the regime proposed by the Proposed Rule is time that they would no longer be able to spend on matters that have a more dramatic and positive effect on the long-term interests of shareholders.

Form of Universal Proxy Card

- As proposed, the Proposed Rule does not allow companies to provide shareholders the option of voting for the company's slate of nominees as a whole. We believe such a format should be permitted, and are concerned that combining all nominees onto one card could create confusion, limit the ability of stockholder to provide proxies for their votes, and lead to voting results that could more easily be challenged, thereby creating additional time and monetary costs for both companies and shareholders.

Other Alternatives

- If the Commission does intend to proceed with some form of the Proposed Rule, some thought should be given to making the director nomination process bi- or tri-annual as opposed to every year. This would provide boards of directors with a chance to integrate successful nominees and potentially remove some of the

discord that would exist with an annual process, while still ultimately serving the purpose of providing greater shareholder access.

- As discussed in further detail below, we generally support the Commission's proposed amendments with respect to Rule 14a-8(i)(8).

Proposed Amendments to Rule 14a-8(i)(8)

We generally support the Commission's proposed amendments to Rule 14a-8(i)(8) to permit shareholders to propose amendments to a company's governing documents, so long as such amendments are permitted by applicable state law. We believe that these amendments permit companies and shareholders to work together to find appropriate answers to the corporate governance issues raised in their specific contexts while avoiding many of the issues discussed above that are raised by the Proposed Rule. We therefore urge the Commission to adopt the proposed amendments to Rule 14a-8(i)(8) in lieu of the Proposed Rule.

Importantly, however, if these amendments are adopted, we believe that vital to the successful operation of Rule 14a-8 is a broadening of the Commission's definition of "substantial implementation" of shareholder proposals. Based on the limited no-action relief under Rule 14a-8(i)(10), the Commission appears to have a rather narrow view of what constitutes "substantial implementation" as a basis for a company to exclude a shareholder proposal. For example, if a company adopts a shareholder proposal to amend its bylaws to permit shareholders holding more than 5% of a company's outstanding shares to nominate directors, and the next year another proponent makes a similar proposal but includes a 3.5% threshold, how would the Commission respond to a no-action request that the proposal has been substantially implemented? How would the Commission respond to a proposal that had identical ownership thresholds but that also required a shorter holding period? We believe it is highly likely in the current environment that companies could be flooded with similar proposals year after year that provide no meaningful benefit to shareholders, but that require company time and resources to address if companies do not effectively have the ability to exclude such proposals when for all practical purposes such proposals have in fact been substantially implemented.

Conclusion

Given the number of questions for which the Commission solicited comment, the Commission is obviously well aware of the complicated nature of the proposal and the potential conflicts the approval of the Proposed Rule (as currently drafted) could cause. We do not believe that preempting state law with a federally mandated "proxy access" regime would ultimately serve the Commission's goal of ensuring informed investors and protecting against fraud. To the contrary, we believe that this regime would waste corporate and shareholder resources, encourage the seeking of short-term gains over the building of long-term shareholder value, and encourage dissension between corporations and their shareholders. We urge the Commission to carefully consider the progress made in corporate governance over the last several years, such as the actions that companies like Anadarko have taken (*e.g.*, adoption of majority voting in uncontested director elections and declassification of our Board of Directors) as a result of constructive dialogue with its shareholders—all without such a rule in place. We

also hope that the Commission will pay particular note to the comments provided by Business Roundtable and the Society of Corporate Secretaries and Governance Professionals[9] given their practical expertise and long history of promoting strong corporate governance practices.

Finally, given the myriad complexities and potential issues surrounding the Proposed Rule, implementing the Proposed Rule for the 2010 proxy season could do a great disservice to our shareholders if operational and mechanical issues with the Proposed Rule are identified later that could be appropriately worked out now instead of having to be addressed once the Proposed Rule is adopted. Implementing any such changes for the 2011 proxy season would also provide invaluable time for companies and their shareholders to assess and implement the changes needed to operate under the new rules.

Again, we appreciate the opportunity to comment on the Proposed Rule.

Sincerely,

James T. Hackett

Chairman, President &
Chief Executive Officer

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

Anadarko Nominating and Corporate Governance Committee:
Larry Barcus, Chairman
John R. Butler, Jr.
H. Paulett Eberhart
Peter J. Fluor
John R. Gordon
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[9] *See* Letter from Society of Corporate Secretaries and Governance Professionals to Elizabeth M. Murphy, Sec'y, Sec. and Exch. Comm'n (August 13, 2009), *available at* http://www.sec.gov/comments/s7-10-09/s71009-122.pdf.