



*Via Electronic Mail (rule-comments@sec.gov)*

October 2, 2007

Nancy M. Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: File Number S7-16-07 – Shareholder Proposals (Release No. 34-56160; IC-27913) and File Number S7-17-07 – Shareholder Proposals Relating to the Election of Directors (Release No. 34-56161; IC-27914)

Dear Ms. Morris:

As President and Chief Executive Officer of Apache Corporation, a 53-year old oil and gas exploration and production company, I would like to thank the Commission for taking the initiative to correct the confusion created by the recent decision of the United States Court of Appeals for the Second Circuit. Apache was founded in 1954, by Chairman of the Board Raymond Plank, with an original capital investment of \$250,000 and has grown over the years to an enterprise value of \$30 billion. Apache is an S&P 500 company, listed on both the New York Stock Exchange and NASDAQ.

### **Introduction**

The issues addressed in this letter are important to all public companies, both small and large, that would like to continue to build value for the benefit of their shareholders and contribute to the growth of the U.S. economy in the same manner that Apache has over the last 50 years. However, flight of U.S. corporations initially to foreign jurisdictions and more recently away from public listing and toward private equity continues at an alarming pace, with an ever increasing amount of shareholder value leaving the U.S. public stock markets each year. In November 2006, The Wall Street Journal wrote, “private-equity firms have announced deals for 939 U.S. companies valued at \$357.88 billion. That is more than the going-private deals announced in all of 2003, 2004 and 2005 combined.”

It is important that the Commission address the obstacles that are causing public companies to flee in record number from burdensome rules and regulations. The Commission should reject its proposal styled as File Number S7-16-07 – Shareholder Proposals (Release No. 34-56160; IC-27913) (the “New Full Access Proposal”) and adopt its proposal styled as File Number S7-17-07

– Shareholder Proposals Relating to the Election of Directors (Release No. 34-56161; IC-27914) (the “Status Quo Proposal”).

The New Full Access Proposal: (I) would place U.S. energy interests at an even greater disadvantage against their international competitors; (II) would promote special interest group agendas that are harmful to the health of the U.S. economy and the investment community; and (III) would undermine long-term investment by U.S. public companies.

## I. Disadvantaging U.S. Energy Interests

**A. U.S. energy security depends on the long-term success of U.S. public oil and gas companies.** Incorporated in Delaware and headquartered in Houston, Texas, Apache Corporation is one of many U.S. oil and gas industry companies that operate worldwide, but are private sector companies listed on the U.S. securities exchanges. There is no national oil company in the United States. According to API, “Forty years ago, world oil reserves were largely owned by public, investor-owned oil and natural gas companies, most based in the United States. Reserves are a critical measure of a company’s ability to serve its future customers. Today, world oil reserves are 77 percent owned by national oil companies formed during the past 30+ years, while only 6 percent of world-wide reserves are now held by investor-owned oil and natural gas companies.” In today’s worldwide competition for increasingly scarce energy supplies, the U.S. depends on public companies and free enterprise to secure its energy needs. The oil and gas opportunities available to U.S. public companies require long-term investment and a long-term commitment to the business. U.S. public oil and gas companies, governed by their boards of directors, have a long record of finding oil and natural gas and bringing them to market. It would be counterproductive and dangerous to adopt governance rules that would subordinate long-term business judgment to the judgments and harassment of conflicted interest groups and activists with short-term expectations or non-energy agendas.

**B. International competition is fierce.** This year alone, ExxonMobil received 15 unsolicited proposals from activist shareholders, which it had to include in its proxy statement. That is up from 13 in 2006 and 8 in 2005, a rising number each year. Foreign oil companies PetroChina, Royal Dutch Shell, and BP Amoco had no shareholder proposals in their proxy solicitations for 2007. National oil companies, which control 77 percent of the world’s oil and gas reserves, received none. The current system does not favor U.S. companies; instead, it distracts them to the advantage of national oil companies. It favors the national interests of other countries, such as China’s efforts to tie up the developing world’s oil resources.

**C. Liquidating U.S. oil and gas companies is not good for America.** Private equity investors and other hostile takeover artists would be delighted to buy U.S. public oil and gas companies, deplete their resources, fire all the employees, and cash out. By neglecting investment in future production and firing those who know how to find and recover oil and gas, these predators could get rich quick, but at the expense of America’s future energy security. ExxonMobil has been in the oil and gas business for 125 years. It has continued to supply the world with ever increasing amounts of energy, despite a depleting asset base that will run out every 20 years unless renewed through constant investment, innovation, and new discoveries. Who knows better how to run such a business, ExxonMobil’s board of directors or ISS? What happened to the business judgment rule that deferred business decisions to those who have the expertise to run such a business?

## II. Separation of Powers is a Long Established Principle

**A. *Unfettered majority rule is not a good thing.*** The founding fathers recognized this important principle and built into our Constitution a number of checks and balances to ensure that the democratic process was not used to abuse, such as a strong appointed judiciary. Those checks and balances resulted in the longest lasting, strongest democracy in the world.

**B. *The system of governance by boards of directors has been very successful.*** According to UCLA law professor Lynn A. Stout, who serves as the principal investigator for the UCLA-Sloan Foundation Research Program on Business Organizations:

" Since the public corporation first evolved over a century ago, U.S law has discouraged shareholders from taking an active role in corporate governance, and this "hands off" approach has proven a recipe for tremendous success.

According to the Economist, 13 of the world's 30 largest corporations are American. Japan (which is also famously unfriendly to shareholders) is runner-up with six of the largest firms, while Germany and France tie for third place with three each. No other nation on earth comes close in terms of nurturing great corporations.

. . . If shareholder democracy were good for corporations and investors, the U.K. would be a corporate powerhouse. Instead, it's an also-ran in the global race for corporate competitiveness. The SEC shouldn't mess with U.S. corporate success. Shareholder democracy is a shallow idea based on a fundamental misunderstanding of what makes good companies tick. "

*The Wall Street Journal*, September 27, 2007.

**C. *Special interest groups will benefit most from proposed new proxy access rules at company and shareholder expense.*** This they will do in order to further their own narrow agendas rather than the business and economic interests of shareholders at large and the United States of America. They will group together to nominate activist directors year after year until the other shareholders, the board, or management give them concessions in order to avoid the nuisance, the threat, and the distraction. These distracting concessions will not increase shareholder value or benefit the corporation's business, but will only further the narrow agendas of special interest groups. Indeed one of the great problems of democracy without checks and balances is that it gives disproportionate weight to the minority, some of whom use this power for destructive purposes, at the expense of the vast majority of shareholders, who have the right to expect that their interests are being protected.

**D. *ISS and other self-proclaimed "experts" – on everything from corporate governance to merger valuations to social justice – are consultants with no economic interest in common with the underlying investors, the companies, or the U.S. capital system.*** ISS and the other proxy consultants have made businesses out of exploiting the current system. It is in their economic self interest to create issues for shareholders to vote, so they can earn money by giving

advice on how to vote. The rise of corporate governance consultants has caused some institutional shareholders to separate voting, on the one hand, from ownership and economic risk/reward, on the other hand, which is not good for either corporate governance or the American economy. Any proposal that increases the importance and the role of corporate governance consultants, who have no economic risk or reward at stake, is ill-founded.

### III. Undermining the Long-Term Goals of U.S. Companies

**A. U.S. public companies have long been criticized by the international investment community as lacking focus on long-term value creation.** According to the May 1, 2007, issue of CFO Magazine, the "U.S. Chamber of Commerce recently called short-termism one of the biggest threats to America's competitiveness. 'This focus on the short term is a huge problem,' agrees William Donaldson, former chairman of the Securities and Exchange Commission. 'With all the attention paid to quarterly performance, managers are taking their eyes off of long-term strategic goals.'" European, Japanese and Chinese companies are perceived as more successfully focusing on the long-term. Enabling activist groups and short-term motivated shareholders to further distract management teams of U.S. companies will exacerbate a problem (short-term focus) that is already a major issue.

**B. The unparalleled success of the U.S. economy is due primarily to the development of a successful governance system for U.S. companies.** Without a governance system designed to focus U.S. companies on long-term success, the U.S. economy would have been susceptible to short-term profiteering and would never have grown into the great success that it is today. The key to the U.S. corporate governance system is the delegation of authority to boards of directors in recognition of the fact that shareholders do not always share the same interests as the companies themselves. Again, according to the principal investigator for the UCLA-Sloan Foundation Research Program on Business Organizations:

" Companies seem to succeed best when they are controlled by boards of directors, not by shareholders. Why? . . . Corporations typically pursue projects that require huge sunk-cost investments. In the 19th and 20th centuries, they built railroads, canals and factories. Today they design complex software and electronics, produce new drugs and medical treatments, and create valuable trademarks and brand names. Board control over corporate assets protects those assets and gives them time to work, allowing shareholders collectively to recoup the value of their initial investment (and then some) over the long haul.

Conversely, long-term investment becomes impossible if shareholders have the power to drain cash out of the firm at any time -- say, by threatening to remove directors who refuse to cut expenses or sell assets in order to pay shareholders a special dividend or fund a massive share repurchase program.

Whether out of ignorance, greed, or short-sightedness, these are exactly the sorts of threats that today's activist shareholders, usually at **hedge** funds, typically make. . . . By giving activists even greater **leverage** over boards, the SEC's proposed proxy access rule will undermine American corporations' ability to do exactly what investors, and the larger society, want them to do: pursue big, long-term, innovative business projects. "

*The Wall Street Journal*, September 27, 2007.

Adoption of the New Full Access Proposal by the Commission would defy the tested and established business model of U.S. companies that places directors in fiduciary roles to protect both the short-term and long-term interests of U.S. companies and would enable non-fiduciary and self-interested, short-term investors to succeed directors in business decision-making roles for U.S. companies.

***C. If the Commission adopts the New Full Access Proposal, shareholders of U.S. public companies will wrest decision-making ability from directors but will not relieve directors of any corresponding liability.*** Just as U.S. companies are fleeing the public markets, highly qualified, high net-worth individuals will flee the boardrooms of the remaining U.S. companies. U.S. public companies are already experiencing problems with recruiting and retaining high quality directors for their boards. If the Commission adopts the New Full Access Proposal, it is likely that more directors will choose to avoid contested elections and increased personal liability by resigning from their board positions, and the U.S. market will suffer.

### **Responses to Other Questions from the Commission**

The most critical problem for American markets is the flight of American corporations away from U.S. public markets. Gifting more political power to corporate governance consultants is not the answer to that problem. It is the problem.

The right solution is, first, to abolish non-binding shareholder proposals and, second, to increase the resubmission thresholds for repeat shareholder proposals.

**Abolish Non-Binding Shareholder Proposals:** In Section C.1. of the New Full Access Proposal, “Request for Comment on Proposals Generally – Bylaw Amendments Concerning Non-Binding Shareholder Proposals,” you recognize that “several participants in the Commission’s recent proxy roundtables expressed concern that by requiring the inclusion of non-binding shareholder proposals in company proxy materials, Rule 14a-8 expands rather than vindicates the framework of shareholder rights in state corporate law.” You then request comment as to whether the Commission “should adopt rules that would enable shareholders, if they could choose to do so, to determine the particular approach they wish to follow with regard to non-binding proposals in the company’s proxy materials.”

Non-binding proposals should not be permitted at all. They have no legal standing under the corporate laws of Delaware and other states, are an inefficient and ineffective method of communication between shareholders and companies, and distract attention from the genuine business issues presented for shareholder votes at shareholder meetings. The Commission should eliminate the federally created right of shareholders to make non-binding proposals.

**Increase the Resubmission Thresholds for Repeat Shareholder Proposals:** In Section C.1. of the New Full Access Proposal, “Request for Comment on Proposals Generally – Bylaw Amendments Concerning Non-Binding Shareholder Proposals,” you ask whether “the Commission [should] amend the rule to alter the resubmission thresholds for proposals that deal with substantially the same subject matter as another proposal that previously has been included

in the company's proxy materials? If so, what should the resubmission thresholds be – 10%, 15%, 20%?"

Yes, the resubmission thresholds should be amended to be 33% for the first resubmission, 40% for the second resubmission, and 45% for each resubmission thereafter. These thresholds are not inconsistent with accepted tenets of U.S. democracy. For example, 60 out of 100 votes are required to shut down a filibuster in the U.S. Senate and bring a matter to vote. A corporation should not be required to put a matter to a vote each and every year unless there has been substantial support for the proposal in the prior year.

**Conclusion**

The decisions that the Commission makes with respect to these issues will have far-reaching and long-term impacts that go well beyond today. At stake are America's public competitive system and its continued economic success. We urge the Commission to avoid jeopardizing the long established practices that have served the U.S. well, creating the strongest economy in the world and raising the American standard of living well above that of any other country.

Therefore, the Commission should reject the New Full Access Proposal, adopt the Status Quo Proposal, eliminate the federally created right of shareholders to make non-binding proposals, and increase substantially the number of shares required to be held by shareholders making shareholder proposals.

Very truly yours,

APACHE CORPORATION



By:

G. Steven Farris  
President and Chief Executive Officer

cc: Board of Directors  
Apache Corporation