

**FORM 10-K**  
**UNITED STATES SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

**For the fiscal year ended December 31, 2011**

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

**Commission file number 1-13175**

**VALERO ENERGY CORPORATION**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of  
incorporation or organization)

**74-1828067**

(I.R.S. Employer  
Identification No.)

**One Valero Way  
San Antonio, Texas**

(Address of principal executive offices)

**78249**

(Zip Code)

Registrant's telephone number, including area code: (210) 345-2000

**Securities registered pursuant to Section 12(b) of the Act:** Common stock, \$0.01 par value per share listed on the New York Stock Exchange.

**Securities registered pursuant to Section 12(g) of the Act:** None.

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

Yes  No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. [X]

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

The aggregate market value of the voting and non-voting common stock held by non-affiliates was approximately \$14.6 billion based on the last sales price quoted as of June 30, 2011 on the New York Stock Exchange, the last business day of the registrant's most recently completed second fiscal quarter.

As of January 31, 2012, 555,069,442 shares of the registrant's common stock were outstanding.

**DOCUMENTS INCORPORATED BY REFERENCE**

We intend to file with the Securities and Exchange Commission a definitive Proxy Statement for our Annual Meeting of Stockholders scheduled for May 3, 2012, at which directors will be elected. Portions of the 2012 Proxy Statement are incorporated by reference in Part III of this Form 10-K and are deemed to be a part of this report.

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## CROSS-REFERENCE SHEET

The following table indicates the headings in the 2012 Proxy Statement where certain information required in Part III of this Form 10-K may be found.

<b><u>Form 10-K Item No. and Caption</u></b>	<b><u>Heading in 2012 Proxy Statement</u></b>
10. Directors, Executive Officers and Corporate Governance	<i>Information Regarding the Board of Directors, Independent Directors, Audit Committee, Proposal No. 1 Election of Directors, Information Concerning Nominees and Other Directors, Identification of Executive Officers, Section 16(a) Beneficial Ownership Reporting Compliance, and Governance Documents and Codes of Ethics</i>
11. Executive Compensation	<i>Compensation Committee, Compensation Discussion and Analysis, Director Compensation, Executive Compensation, and Certain Relationships and Related Transactions</i>
12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	<i>Beneficial Ownership of Valero Securities and Equity Compensation Plan Information</i>
13. Certain Relationships and Related Transactions, and Director Independence	<i>Certain Relationships and Related Transactions and Independent Directors</i>
14. Principal Accountant Fees and Services	<i>KPMG Fees for Fiscal Year 2011, KPMG Fees for Fiscal Year 2010, and Audit Committee Pre-Approval Policy</i>

Copies of all documents incorporated by reference, other than exhibits to such documents, will be provided without charge to each person who receives a copy of this Form 10-K upon written request to Jay D. Browning, Senior Vice President – Corporate Law and Secretary, Valero Energy Corporation, P.O. Box 696000, San Antonio, Texas 78269-6000.

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## PART I

The terms “Valero,” “we,” “our,” and “us,” as used in this report, may refer to Valero Energy Corporation, to one or more of our consolidated subsidiaries, or to all of them taken as a whole. In this Form 10-K, we make certain forward-looking statements, including statements regarding our plans, strategies, objectives, expectations, intentions, and resources, under the safe harbor provisions of the Private Securities Litigation Reform Act of 1995. You should read our forward-looking statements together with our disclosures beginning on page 24 of this report under the heading: “CAUTIONARY STATEMENT FOR THE PURPOSE OF SAFE HARBOR PROVISIONS OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995.”

### ITEMS 1., 1A., and 2. BUSINESS, RISK FACTORS, AND PROPERTIES

**Overview.** We are a Fortune 500 company based in San Antonio, Texas. Our corporate offices are at One Valero Way, San Antonio, Texas, 78249, and our telephone number is (210) 345-2000. Our common stock trades on the New York Stock Exchange under the symbol “VLO.” We were incorporated in Delaware in 1981 under the name Valero Refining and Marketing Company. We changed our name to Valero Energy Corporation on August 1, 1997. On January 31, 2012, we had 21,942 employees.

Our 16 petroleum refineries are located in the United States (U.S.), Canada, the United Kingdom (U.K.), and Aruba. Our refineries can produce conventional gasolines, distillates, jet fuel, asphalt, petrochemicals, lubricants, and other refined products as well as a slate of premium products including CBOB and RBOB<sup>1</sup>, gasoline meeting the specifications of the California Air Resources Board (CARB), CARB diesel fuel, and low-sulfur and ultra-low-sulfur diesel fuel.

We market branded and unbranded refined products on a wholesale basis in the U.S., Canada, and the U.K. through an extensive bulk and rack marketing network, and we sell refined products through a network of about 6,800 retail and branded wholesale outlets in the U.S., Canada, the U.K., Aruba, and Ireland.

We also own 10 ethanol plants in the central plains region of the U.S. with a combined ethanol nameplate production capacity of about 1.1 billion gallons per year.

**Available Information.** Our website address is [www.valero.com](http://www.valero.com). Information on our website is not part of this annual report on Form 10-K. Our annual reports on Form 10-K, quarterly reports on Form 10-Q, and current reports on Form 8-K filed with (or furnished to) the Securities and Exchange Commission (SEC) are available on our website (under “Investor Relations”) free of charge, soon after we file or furnish such material. In this same location, we also post our corporate governance guidelines, codes of ethics, and the charters of the committees of our board of directors. These documents are available in print to any stockholder that makes a written request to Jay D. Browning, Senior Vice President – Corporate Law and Secretary, Valero Energy Corporation, P.O. Box 696000, San Antonio, Texas 78269-6000.

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<sup>1</sup> CBOB, or “conventional blendstock for oxygenate blending,” is conventional gasoline blendstock intended for blending with oxygenates downstream of the refinery where it was produced. CBOB becomes conventional gasoline after blending with oxygenates. RBOB is a base unfinished reformulated gasoline mixture known as “reformulated gasoline blendstock for oxygenate blending.” It is a specially produced reformulated gasoline blendstock intended for blending with oxygenates downstream of the refinery where it was produced to produce finished gasoline that meets or exceeds U.S. emissions performance requirements for federal reformulated gasoline. Ethanol is the primary oxygenate currently used in gasoline blending in the U.S.

## SEGMENTS

We have three reportable business segments: refining, ethanol, and retail. The financial information about our segments is discussed in Note 18 of Notes to Consolidated Financial Statements and is incorporated herein by reference.

- Our refining segment includes refining operations, wholesale marketing, product supply and distribution, and transportation operations. The refining segment is segregated geographically into the U.S. Gulf Coast, U.S. Mid-Continent, North Atlantic, and U.S. West Coast regions.
- Our ethanol segment includes sales of internally produced ethanol and distillers grains. Our ethanol operations are geographically located in the central plains region of the U.S.
- Our retail segment includes company-operated convenience stores, Canadian dealers/jobbers, truckstop facilities, cardlock facilities, and home heating oil operations. The retail segment is segregated into two geographic regions. Our retail operations in the U.S. are referred to as Retail-U.S. Our retail operations in Canada are referred to as Retail-Canada.

**VALERO'S OPERATIONS**

**REFINING**

On December 31, 2011, our refining operations included 16 refineries in the U.S., Canada, the U.K., and Aruba, with a combined total throughput capacity of approximately 3.0 million barrels per day (BPD). The following table presents the locations of these refineries and their approximate feedstock throughput capacities as of December 31, 2011.

<b>Refinery</b>	<b>Location</b>	<b>Throughput Capacity <sup>(a)</sup> (BPD)</b>
<b>U.S. Gulf Coast:</b>		
Corpus Christi <sup>(b)</sup>	Texas	325,000
Port Arthur	Texas	310,000
St. Charles	Louisiana	270,000
Texas City	Texas	245,000
Aruba	Aruba	235,000
Houston	Texas	160,000
Meraux	Louisiana	135,000
Three Rivers	Texas	100,000
		<b>1,780,000</b>
<b>U.S. Mid-Continent:</b>		
Memphis	Tennessee	195,000
McKee	Texas	170,000
Ardmore	Oklahoma	90,000
		<b>455,000</b>
<b>North Atlantic:</b>		
Pembroke	Wales, U.K.	270,000
Quebec City	Quebec, Canada	235,000
		<b>505,000</b>
<b>U.S. West Coast:</b>		
Benicia	California	170,000
Wilmington	California	135,000
		<b>305,000</b>
<b>Total</b>		<b>3,045,000</b>

<sup>(a)</sup> "Throughput capacity" represents estimated capacity for processing crude oil, intermediates, and other feedstocks. Total estimated crude oil capacity is approximately 2.6 million BPD.

<sup>(b)</sup> Represents the combined capacities of two refineries – the Corpus Christi East and Corpus Christi West Refineries.

### Total Refining System

The following table presents the percentages of principal charges and yields (on a combined basis) for all of our refineries for the year ended December 31, 2011 (includes the results of operations of our Meraux and Pembroke Refineries from the dates of their acquisition through the end of the year). Our total combined throughput volumes averaged 2.4 million BPD for the year ended December 31, 2011.

Combined Total Refining System Charges and Yields

<b>Charges:</b>	
sour crude oil	37%
acidic sweet crude oil	5%
sweet crude oil	31%
residual fuel oil	11%
other feedstocks	5%
blendstocks	11%
<b>Yields:</b>	
gasolines and blendstocks	46%
distillates	34%
petrochemicals	3%
other products (includes gas oil, No. 6 fuel oil, petroleum coke, and asphalt)	17%

### U.S. Gulf Coast

The following table presents the percentages of principal charges and yields (on a combined basis) for the nine refineries in this region for the year ended December 31, 2011 (includes the results of operations of our Meraux Refinery from October 1, 2011, the date of its acquisition, through the end of the year). Total throughput volumes for the U.S. Gulf Coast refining region averaged 1.45 million BPD for the year ended December 31, 2011.

Combined U.S. Gulf Coast Region Charges and Yields

<b>Charges:</b>	
sour crude oil	50%
acidic sweet crude oil	2%
sweet crude oil	10%
residual fuel oil	19%
other feedstocks	6%
blendstocks	13%
<b>Yields:</b>	
gasolines and blendstocks	41%
distillates	33%
petrochemicals	4%
other products (includes gas oil, No. 6 fuel oil, petroleum coke, and asphalt)	22%

**Corpus Christi East and West Refineries.** Our Corpus Christi East and West Refineries are located on the Texas Gulf Coast along the Corpus Christi Ship Channel. The East Refinery processes sour crude oil into conventional gasoline, diesel, jet fuel, asphalt, aromatics, and other light products. The West Refinery specializes in processing primarily sour crude oil and residual fuel oil into premium products such as RBOB. The East and West Refineries allow for the transfer of various feedstocks and blending components between the two refineries and the sharing of resources. The refineries typically receive and deliver feedstocks and products by tanker and barge via deepwater docking facilities along the Corpus Christi Ship Channel. Three truck racks with a total of 16 bays service local markets for gasoline, diesel, jet fuels, liquefied petroleum gases, and asphalt. Finished products are distributed across the refineries' docks into ships or barges, and are transported via third-party pipelines to the Colonial, Explorer, Valley, and other major pipelines.

**Port Arthur Refinery.** Our Port Arthur Refinery is located on the Texas Gulf Coast approximately 90 miles east of Houston. The refinery processes primarily heavy sour crude oils and other feedstocks into gasoline, diesel, jet fuel, petrochemicals, intermediates, petroleum coke, and sulfur. The refinery receives crude oil over marine docks and through crude oil pipelines, and has access to the Sunoco and Oiltanking terminals at Nederland, Texas. Finished products are distributed into the Colonial, Explorer, and TEPPCO pipelines and across the refinery docks into ships or barges.

**St. Charles Refinery.** Our St. Charles Refinery is located approximately 15 miles from New Orleans along the Mississippi River. The refinery processes sour crude oils and other feedstocks into gasoline, distillates, and other light products. The refinery receives crude oil over five marine docks and has access to the Louisiana Offshore Oil Port where it can receive crude oil through a 24-inch pipeline. Finished products can be shipped over these docks or through the Colonial pipeline network for distribution to the eastern U.S.

**Texas City Refinery.** Our Texas City Refinery is located southeast of Houston on the Texas City Ship Channel. The refinery processes sour crude oils into a wide slate of products. The refinery receives and delivers its feedstocks and products by ship and barge via deepwater docking facilities along the Texas City Ship Channel and uses the Colonial, Explorer, and TEPPCO pipelines for distribution of its products.

**Aruba Refinery.** Our Aruba Refinery is located on the island of Aruba in the Caribbean Sea. It processes primarily heavy sour crude oil and produces intermediate feedstocks and finished distillate products. Significant amounts of the refinery's intermediate feedstock production are transported and further processed in our other refineries in the U.S. Gulf Coast and U.S. West Coast regions. The refinery receives crude oil by ship at its two deepwater marine docks, which can berth ultra-large crude carriers. The refinery's products are delivered by ship primarily into markets in the U.S., the Caribbean, Europe, and South America.

**Houston Refinery.** Our Houston Refinery is located on the Houston Ship Channel. It processes a mix of crude oils and low-sulfur residual fuel oil into reformulated gasoline and distillates. The refinery receives its feedstocks via tanker at deepwater docking facilities along the Houston Ship Channel and interconnecting pipelines with the Texas City Refinery. It delivers its products through major refined-product pipelines, including the Colonial, Explorer, Orion, and TEPPCO pipelines.

**Meraux Refinery.** Our Meraux Refinery is located in St. Bernard Parish southeast of New Orleans. We acquired the refinery on October 1, 2011. The refinery processes primarily medium sour crude oils into gasoline, distillates, and other light products. The refinery receives crude oil at its marine dock and has access to the Louisiana Offshore Oil Port where it can receive crude oil via the Clovelly-Alliance-Meraux pipeline system. Finished products can be shipped from the refinery's dock or through the Colonial pipeline network for distribution to the eastern U.S. The Meraux Refinery is located about 40 miles from our St. Charles Refinery, allowing for integration of feedstocks and refined product blending.



**Three Rivers Refinery.** Our Three Rivers Refinery is located in South Texas between Corpus Christi and San Antonio. It processes sweet and medium sour crude oils into gasoline, distillates, and aromatics. The refinery has access to crude oil from sources outside the U.S. delivered to the Texas Gulf Coast at Corpus Christi as well as crude oil from U.S. sources through third-party pipelines and trucks. A 70-mile pipeline transports crude oil via connections to the Three Rivers Refinery from Corpus Christi. The refinery distributes its refined products primarily through pipelines owned by NuStar Energy L.P.

#### U.S. Mid-Continent

The following table presents the percentages of principal charges and yields (on a combined basis) for the three refineries in this region for the year ended December 31, 2011. Total throughput volumes for the U.S. Mid-Continent refining region averaged approximately 411,000 BPD for the year ended December 31, 2011.

Combined U.S. Mid-Continent Region Charges and Yields

<b>Charges:</b>	
sour crude oil	9%
sweet crude oil	82%
other feedstocks	1%
blendstocks	8%
<b>Yields:</b>	
gasolines and blendstocks	54%
distillates	35%
petrochemicals	5%
other products (includes gas oil, No. 6 fuel oil, and asphalt)	6%

**Memphis Refinery.** Our Memphis Refinery is located in Tennessee along the Mississippi River's Lake McKellar. It processes primarily sweet crude oils. Most of its production is light products, including regular and premium gasoline, diesel, jet fuels, and petrochemicals. Crude oil is supplied to the refinery via the Capline pipeline and can also be received, along with other feedstocks, via barge. The refinery's products are distributed via truck racks at our three product terminals, barges, and a pipeline network, including one pipeline directly to the Memphis airport.

**McKee Refinery.** Our McKee Refinery is located in the Texas Panhandle. It processes primarily sweet crude oils into conventional gasoline, RBOB, low-sulfur diesel, jet fuels, and asphalt. The refinery has access to crude oil from Texas, Oklahoma, Kansas, and Colorado through third-party pipelines. The refinery also has access at Wichita Falls, Texas to third-party pipelines that transport crude oil from West Texas to the U.S. Mid-Continent region. The refinery distributes its products primarily via NuStar Energy L.P.'s pipelines to markets in Texas, New Mexico, Arizona, Colorado, and Oklahoma.

**Ardmore Refinery.** Our Ardmore Refinery is located in Ardmore, Oklahoma, approximately 100 miles south of Oklahoma City. It processes medium sour and sweet crude oils into conventional gasoline, ultra-low-sulfur diesel, liquefied petroleum gas products, and asphalt. Local crude oil is gathered by TEPPCO's crude oil gathering/trunkline systems and trucking operations, and is then transported to the refinery through third-party crude oil pipelines. The refinery also receives crude oil from other locations via third-party pipelines. Refined products are transported to market via railcars, trucks, and the Magellan pipeline system.

## North Atlantic

The following table presents the percentages of principal charges and yields (on a combined basis) for the two refineries in this region for the year ended December 31, 2011 (includes the results of operations of our Pembroke Refinery from August 1, 2011, the date of its acquisition, through the end of the year). Total throughput volumes for the North Atlantic refining region averaged approximately 317,000 BPD for the year ended December 31, 2011.

North Atlantic Region Charges and Yields

<b>Charges:</b>	
sour crude oil	2%
acidic sweet crude oil	11%
sweet crude oil	78%
residual fuel oil	3%
other feedstocks	1%
blendstocks	5%
<b>Yields:</b>	
gasolines and blendstocks	43%
distillates	44%
petrochemicals	1%
other products (includes gas oil, No. 6 fuel oil, and other products)	12%

**Pembroke Refinery.** Our Pembroke Refinery is located in the County of Pembrokeshire in southwest Wales, U.K. We acquired the refinery on August 1, 2011. The refinery processes primarily sweet crude oils into ultra-low sulfur gasoline and diesel, jet fuel, heating oil, and low sulfur fuel oil. The refinery receives all of its feedstocks and delivers the majority of its products by ship and barge via deepwater docking facilities along the Milford Haven Waterway with its remaining products being delivered by the Mainline pipeline system.

**Quebec City Refinery.** Our Quebec City Refinery is located in Lévis, Canada (near Quebec City). It processes sweet, high mercaptan crude oils and lower-quality, sweet acidic crude oils into conventional gasoline, low-sulfur diesel, jet fuel, heating oil, and propane. The refinery receives crude oil by ship at its deepwater dock on the St. Lawrence River. We charter large ice-strengthened, double-hulled crude oil tankers that can navigate the St. Lawrence River year-round. The refinery transports its products to its terminals in Quebec and Ontario primarily by train, and also uses ships and trucks extensively throughout eastern Canada.

## U.S. West Coast

The following table presents the percentages of principal charges and yields (on a combined basis) for the two refineries in this region for the year ended December 31, 2011. Total throughput volumes for the U.S. West Coast refining region averaged approximately 256,000 BPD for the year ended December 31, 2011.

Combined U.S. West Coast Region Charges and Yields

<b>Charges:</b>	
sour crude oil	48%
acidic sweet crude oil	17%
sweet crude oil	7%
other feedstocks	13%
blendstocks	15%
<b>Yields:</b>	
gasolines and blendstocks	62%
distillates	25%
other products (includes gas oil, No. 6 fuel oil, petroleum coke, and asphalt)	13%

**Benicia Refinery.** Our Benicia Refinery is located northeast of San Francisco on the Carquinez Straits of San Francisco Bay. It processes sour crude oils into premium products, primarily CARBOB gasoline. (CARBOB is a reformulated gasoline mixture that meets the specifications of the CARB when blended with ethanol.) The refinery receives crude oil feedstocks via a marine dock that can berth large crude oil carriers and a 20-inch crude oil pipeline connected to a southern California crude oil delivery system. Most of the refinery's products are distributed via the Kinder Morgan pipeline system in California.

**Wilmington Refinery.** Our Wilmington Refinery is located near Los Angeles, California. The refinery processes a blend of lower-cost heavy and high-sulfur crude oils. The refinery can produce all of its gasoline as CARBOB gasoline and produces ultra-low-sulfur diesel, CARB diesel, and jet fuel. The refinery is connected by pipeline to marine terminals and associated dock facilities that can move and store crude oil and other feedstocks. Refined products are distributed via the Kinder Morgan pipeline system and various third-party terminals in southern California, Nevada, and Arizona.

## **Feedstock Supply**

Approximately 63 percent of our current crude oil feedstock requirements are purchased through term contracts while the remaining requirements are generally purchased on the spot market. Our term supply agreements include arrangements to purchase feedstocks at market-related prices directly or indirectly from various national oil companies (including feedstocks originating in the Middle East, Africa, Asia, Mexico, and South America) as well as international and U.S. oil companies. The contracts generally permit the parties to amend the contracts (or terminate them), effective as of the next scheduled renewal date, by giving the other party proper notice within a prescribed period of time ( *e.g.*, 60 days, 6 months) before expiration of the current term. The majority of the crude oil purchased under our term contracts is purchased at the producer's official stated price ( *i.e.*, the "market" price established by the seller for all purchasers) and not at a negotiated price specific to us.

The U.S. network of crude oil pipelines and terminals allows us to acquire crude oil from producing leases, crude oil trading centers, and ships delivering cargoes of crude oil. Our Pembroke, Quebec City, and Aruba Refineries rely on crude oil that is delivered to the refineries' dock facilities by ship.

## **Refining Segment Sales**

Our refining segment includes sales of refined products in both the wholesale rack and bulk markets. These sales include refined products that are manufactured in our refining operations as well as refined products purchased or received on exchange from third parties. Most of our refineries have access to marine transportation facilities and interconnect with common-carrier pipeline systems, allowing us to sell products in the U.S., Canada, the U.K., and other countries. No customer accounted for more than 10 percent of our total operating revenues in 2011.

### ***Wholesale Marketing***

We market branded and unbranded transportation fuels on a wholesale basis through an extensive rack marketing network. The principal purchasers of our transportation fuels from terminal truck racks are wholesalers, distributors, retailers, and truck-delivered end users throughout the U.S., the U.K., and Ireland.

The majority of our rack volume is sold through unbranded channels. The remainder is sold to distributors and dealers that are members of the Valero-brand family that operate approximately 4,000 branded sites in the U.S. and approximately 1,000 branded sites in the U.K. and Ireland. These sites are independently owned and are supplied by us under multi-year contracts. For wholesale branded sites, we promote our Valero<sup>®</sup>, Beacon<sup>®</sup>, and Shamrock<sup>®</sup> brands in the U.S., and the Texaco<sup>®</sup> brand in the U.K. and Ireland.

### ***Bulk Sales and Trading***

We sell a significant portion of our gasoline and distillate production through bulk sales channels in U.S. and international markets. Our bulk sales are made to various oil companies and traders as well as certain bulk end-users such as railroads, airlines, and utilities. Our bulk sales are transported primarily by pipeline, barges, and tankers to major tank farms and trading hubs.

We also enter into refined product exchange and purchase agreements. These agreements help minimize transportation costs, optimize refinery utilization, balance refined product availability, broaden geographic distribution, and provide access to markets not connected to our refined product pipeline systems. Exchange agreements provide for the delivery of refined products by us to unaffiliated companies at our and third parties' terminals in exchange for delivery of a similar amount of refined products to us by these unaffiliated companies at specified locations. Purchase agreements involve our purchase of refined products from third

parties with delivery occurring at specified locations.

### ***Specialty Products***

We sell a variety of other products produced at our refineries, which we refer to collectively as “Specialty Products.” Our Specialty Products include asphalt, lube oils, natural gas liquids (NGLs), petroleum coke, petrochemicals, and sulfur.

- We produce asphalt at five of our refineries. Our asphalt products are sold for use in road construction, road repair, and roofing applications through a network of refinery and terminal loading racks.
- We produce naphthenic oils at one of our refineries suitable for a wide variety of lubricant and process applications.
- NGLs produced at our refineries include butane, isobutane, and propane. These products can be used for gasoline blending, home heating, and petrochemical plant feedstocks.
- We are a significant producer of petroleum coke, supplying primarily power generation customers and cement manufacturers. Petroleum coke is used largely as a substitute for coal.
- We produce and market a number of commodity petrochemicals including aromatic solvents (benzene, toluene, and xylene) and two grades of propylene. Aromatic solvents and propylenes are sold to customers in the chemical industry for further processing into such products as paints, plastics, and adhesives.
- We are a large producer of sulfur with sales primarily to customers in the agricultural sector. Sulfur is used in manufacturing fertilizer.

**ETHANOL**

We own 10 ethanol plants with a combined ethanol nameplate production capacity of about 1.1 billion gallons per year. Our ethanol plants are dry mill facilities<sup>1</sup> that process corn to produce ethanol and distillers grains.<sup>2</sup> We source our corn supply from local farmers and commercial elevators. Our facilities receive corn by rail and truck. We publish on our website a corn bid for local farmers and cooperative dealers to use to facilitate corn supply transactions.

After processing, our ethanol is held in storage tanks on-site pending loading to trucks and railcars. We sell our ethanol (i) to large customers – primarily refiners and gasoline blenders – under term and spot contracts, and (ii) in bulk markets such as New York, Chicago, Dallas, Florida, and the U.S. West Coast. We also use our ethanol for our own needs in blending gasoline. We ship our dry distillers grains (DDG) by truck or rail primarily to animal feed customers in the U.S. and Mexico, with some sales into the Far East. We also sell modified distillers grains locally at our plant sites.

The following table presents the locations of our ethanol plants, their approximate ethanol and DDG production capacities, and their approximate corn processing capacities.

<b>State</b>	<b>City</b>	<b>Ethanol Nameplate Production (in gallons per year)</b>	<b>Production of DDG (in tons per year)</b>	<b>Corn Processed (in bushels per year)</b>
Indiana	Linden	110 million	350,000	40 million
Iowa	Albert City	110 million	350,000	40 million
	Charles City	110 million	350,000	40 million
	Fort Dodge	110 million	350,000	40 million
	Hartley	110 million	350,000	40 million
Minnesota	Welcome	110 million	350,000	40 million
Nebraska	Albion	110 million	350,000	40 million
Ohio	Bloomingsburg	110 million	350,000	40 million
South Dakota	Aurora	120 million	390,000	43 million
Wisconsin	Jefferson	110 million	350,000	40 million
	<b>Total</b>	<b>1,110 million</b>	<b>3,540,000</b>	<b>403 million</b>

The combined ethanol production from our plants in 2011 averaged 3.4 million gallons per day.

<sup>1</sup> Ethanol is commercially produced using either the wet mill or dry mill process. Wet milling involves separating the grain kernel into its component parts (germ, fiber, protein, and starch) prior to fermentation. In the dry mill process, the entire grain kernel is ground into flour. The starch in the flour is converted to ethanol during the fermentation process, creating carbon dioxide and distillers grains.

<sup>2</sup> During fermentation, nearly all of the starch in the grain is converted into ethanol and carbon dioxide, while the remaining nutrients (proteins, fats, minerals, and vitamins) are concentrated to yield modified distillers grains, or, after further drying, dried distillers grains. Distillers grains generally are an economical partial replacement for corn, soybean, and dicalcium phosphate in feeds for livestock, swine, and poultry.

## **RETAIL**

Our retail segment operations include:

- sales of transportation fuels at retail stores and unattended self-service cardlocks,
- sales of convenience store merchandise and services in retail stores, and
- sales of home heating oil to residential customers.

We are one of the largest independent retailers of transportation fuels in the central and southwest U.S. and eastern Canada. Our retail operations are segregated geographically into two groups: Retail-U.S. and Retail-Canada.

### **Retail-U.S.**

Sales in Retail-U.S. represent sales of transportation fuels and convenience store merchandise and services through our company-operated retail sites. For the year ended December 31, 2011, total sales of transportation fuels through Retail-U.S.'s sites averaged 119,780 BPD. In addition to transportation fuels, our company-operated stores sell convenience-type items, such as tobacco products, beer, snacks and beverages, and fast foods. Our stores also offer services such as ATM access, money orders, lottery tickets, car wash facilities, air and water, and video rentals. On December 31, 2011, we had 998 company-operated sites in Retail-U.S. (of which 80 percent were owned and 20 percent were leased). Our company-operated stores are operated primarily under the Corner Store<sup>®</sup> brand name. Transportation fuels sold in our Retail-U.S. stores are sold primarily under the Valero<sup>®</sup> brand.

### **Retail-Canada**

Sales in Retail-Canada include:

- sales of transportation fuels and convenience store merchandise through our company-operated retail sites and cardlocks,
- sales of transportation fuels through sites owned by independent dealers and jobbers, and
- sales of home heating oil to residential customers.

Retail-Canada includes retail operations in eastern Canada where we are a major supplier of transportation fuels serving Quebec, Ontario, Newfoundland, Nova Scotia, New Brunswick, and Prince Edward Island. For the year ended December 31, 2011, total retail sales of transportation fuels through Retail-Canada averaged approximately 76,100 BPD. Transportation fuels are sold under the Ultramar<sup>®</sup> brand through a network of 791 outlets throughout eastern Canada. On December 31, 2011, we owned or leased 381 retail stores in Retail-Canada and distributed gasoline to 410 dealers and independent jobbers. In addition, Retail-Canada operates 82 cardlocks, which are card- or key-activated, self-service, unattended stations that allow commercial, trucking, and governmental fleets to buy transportation fuel 24 hours a day. Retail-Canada operations also include a large home heating oil business that provides home heating oil to approximately 133,000 households in eastern Canada. Our home heating oil business is seasonal to the extent of increased demand for home heating oil during the winter.

## RISK FACTORS

### **Our financial results are affected by volatile refining margins, which are dependent upon factors beyond our control.**

Our financial results are primarily affected by the relationship, or margin, between refined product prices and the prices for crude oil and other feedstocks. Our cost to acquire feedstocks and the price at which we can ultimately sell refined products depend upon several factors beyond our control, including regional and global supply of and demand for crude oil, gasoline, diesel, and other feedstocks and refined products. These in turn depend on, among other things, the availability and quantity of imports, the production levels of U.S. and international suppliers, levels of refined product inventories, productivity and growth (or the lack thereof) of U.S. and global economies, U.S. relationships with foreign governments, political affairs, and the extent of governmental regulation. Historically, refining margins have been volatile, and we believe they will continue to be volatile in the future.

Economic turmoil and political unrest or hostilities, including the threat of future terrorist attacks, could affect the economies of the U.S. and other countries. Lower levels of economic activity could result in declines in energy consumption, including declines in the demand for and consumption of our refined products, which could cause our revenues and margins to decline and limit our future growth prospects.

Refining margins are also significantly impacted by additional refinery conversion capacity through the expansion of existing refineries or the construction of new refineries. Worldwide refining capacity expansions may result in refining production capability exceeding refined product demand, which would have an adverse effect on refining margins.

A significant portion of our profitability is derived from the ability to purchase and process crude oil feedstocks that historically have been cheaper than benchmark crude oils, such as Louisiana Light Sweet (LLS) and Brent crude oils. These crude oil feedstock differentials vary significantly depending on overall economic conditions and trends and conditions within the markets for crude oil and refined products, and they could decline in the future, which would have a negative impact on our results of operations.

### **Uncertainty and illiquidity in credit and capital markets can impair our ability to obtain credit and financing on acceptable terms, and can adversely affect the financial strength of our business partners.**

Our ability to obtain credit and capital depends in large measure on capital markets and liquidity factors that we do not control. Our ability to access credit and capital markets may be restricted at a time when we would like, or need, to access those markets, which could have an impact on our flexibility to react to changing economic and business conditions. In addition, the cost and availability of debt and equity financing may be adversely impacted by unstable or illiquid market conditions. Protracted uncertainty and illiquidity in these markets also could have an adverse impact on our lenders, commodity hedging counterparties, or our customers, causing them to fail to meet their obligations to us. In addition, decreased returns on pension fund assets may also materially increase our pension funding requirements.

Our access to credit and capital markets also depends on the credit ratings assigned to our debt by independent credit rating agencies. We currently maintain investment-grade ratings by Standard & Poor's Ratings Services (S&P), Moody's Investors Service (Moody's), and Fitch Ratings (Fitch) on our senior unsecured debt. (Ratings from credit agencies are not recommendations to buy, sell, or hold our securities. Each rating should be evaluated independently of any other rating.) We cannot provide assurance that any of our current ratings will remain in effect for any given period of time or that a rating will not be lowered or withdrawn entirely



by a rating agency if, in its judgment, circumstances so warrant. Specifically, if S&P, Moody's, or Fitch were to downgrade our long-term rating, particularly below investment grade, our borrowing costs would increase, which could adversely affect our ability to attract potential investors and our funding sources could decrease. In addition, we may not be able to obtain favorable credit terms from our suppliers or they may require us to provide collateral, letters of credit, or other forms of security which would increase our operating costs. As a result, a downgrade below investment grade in our credit ratings could have a material adverse impact on our future operations and financial position.

From time to time, our cash needs may exceed our internally generated cash flow, and our business could be materially and adversely affected if we were unable to obtain necessary funds from financing activities. From time to time, we may need to supplement our cash generated from operations with proceeds from financing activities. We have existing revolving credit facilities, committed letter of credit facilities, and an accounts receivable sales facility to provide us with available financing to meet our ongoing cash needs. In addition, we rely on the counterparties to our derivative instruments to fund their obligations under such arrangements. Uncertainty and illiquidity in financial markets may materially impact the ability of the participating financial institutions and other counterparties to fund their commitments to us under our various financing facilities or our derivative instruments, which could have a material adverse effect on our operations and financial position.

**Compliance with and changes in environmental laws, including proposed climate change laws and regulations, could adversely affect our performance.**

The principal environmental risks associated with our operations are emissions into the air and releases into the soil, surface water, or groundwater. Our operations are subject to extensive environmental laws and regulations, including those relating to the discharge of materials into the environment, waste management, pollution prevention measures, greenhouse gas emissions, and characteristics and composition of gasoline and diesel fuels. Certain of these laws and regulations could impose obligations to conduct assessment or remediation efforts at our facilities as well as at formerly owned properties or third-party sites where we have taken wastes for disposal or where our wastes have migrated. Environmental laws and regulations also may impose liability on us for the conduct of third parties, or for actions that complied with applicable requirements when taken, regardless of negligence or fault. If we violate or fail to comply with these laws and regulations, we could be fined or otherwise sanctioned.

Because environmental laws and regulations are becoming more stringent and new environmental laws and regulations are continuously being enacted or proposed, such as those relating to greenhouse gas emissions and climate change, the level of expenditures required for environmental matters could increase in the future. Current and future legislative action and regulatory initiatives could result in changes to operating permits, material changes in operations, increased capital expenditures and operating costs, increased costs of the goods we sell, and decreased demand for our products that cannot be assessed with certainty at this time. We may be required to make expenditures to modify operations or install pollution control equipment that could materially and adversely affect our business, financial condition, results of operations, and liquidity. For example, the U.S. Environmental Protection Agency (EPA) has announced its intent to promulgate in 2012 more stringent requirements for refinery air emissions through revisions to existing New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants. In addition, the EPA has, in recent years, adopted final rules making more stringent the National Ambient Air Quality Standards (NAAQS) for ozone, sulfur dioxide and nitrogen dioxide, and the EPA is considering further revisions to the NAAQS. Emerging rules and permitting requirements implementing these revised standards may require us to install more stringent controls at our facilities, which may result in increased capital expenditures.

Governmental restrictions on greenhouse gas emissions – including so-called “cap-and-trade” programs targeted at reducing carbon dioxide emissions – could result in material increased compliance costs, additional operating restrictions for our business, and an increase in the cost of, and reduction in demand for, the products we produce, which could have a material adverse effect on our financial position, results of operations, and liquidity.

**Disruption of our ability to obtain crude oil could adversely affect our operations .**

A significant portion of our feedstock requirements is satisfied through supplies originating in the Middle East, Africa, Asia, North America, and South America. We are, therefore, subject to the political, geographic, and economic risks attendant to doing business with suppliers located in, and supplies originating from, these areas. If one or more of our supply contracts were terminated, or if political events disrupt our traditional crude oil supply, we believe that adequate alternative supplies of crude oil would be available, but it is possible that we would be unable to find alternative sources of supply. If we are unable to obtain adequate crude oil volumes or are able to obtain such volumes only at unfavorable prices, our results of operations could be materially adversely affected, including reduced sales volumes of refined products or reduced margins as a result of higher crude oil costs.

In addition, the U.S. government can prevent or restrict us from doing business in or with other countries. These restrictions, and those of other governments, could limit our ability to gain access to business opportunities in various countries. Actions by both the U.S. and other countries have affected our operations in the past and will continue to do so in the future.

**We are subject to interruptions of supply and increased costs as a result of our reliance on third-party transportation of crude oil and refined products.**

We often use the services of third parties to transport feedstocks and refined products to and from our facilities. If we experience prolonged interruptions of supply or increases in costs to deliver refined products to market, or if the ability of the pipelines or vessels to transport feedstocks or refined products is disrupted because of weather events, accidents, governmental regulations, or third-party actions, it could have a material adverse effect on our business, financial condition, results of operations, and liquidity.

**Competitors that produce their own supply of feedstocks, have more extensive retail outlets, have greater financial resources, or provide alternative energy sources may have a competitive advantage .**

The refining and marketing industry is highly competitive with respect to both feedstock supply and refined product markets. We compete with many companies for available supplies of crude oil and other feedstocks and for outlets for our refined products. We do not produce any of our crude oil feedstocks. Many of our competitors, however, obtain a significant portion of their feedstocks from company-owned production and some have more extensive retail outlets than we have. Competitors that have their own production or extensive retail outlets (and greater brand-name recognition) are at times able to offset losses from refining operations with profits from producing or retailing operations, and may be better positioned to withstand periods of depressed refining margins or feedstock shortages.

Some of our competitors also have materially greater financial and other resources than we have. Such competitors have a greater ability to bear the economic risks inherent in all phases of our industry. In addition, we compete with other industries that provide alternative means to satisfy the energy and fuel requirements of our industrial, commercial, and individual consumers.

**A significant interruption in one or more of our refineries could adversely affect our business.**

Our refineries are our principal operating assets. As a result, our operations could be subject to significant interruption if one or more of our refineries were to experience a major accident or mechanical failure, encounter work stoppages relating to organized labor issues, be damaged by severe weather or other natural or man-made disaster, such as an act of terrorism, or otherwise be forced to shut down. If any refinery were to experience an interruption in operations, earnings from the refinery could be materially adversely affected (to the extent not recoverable through insurance) because of lost production and repair costs. Significant interruptions in our refining system could also lead to increased volatility in prices for crude oil feedstocks and refined products, and could increase instability in the financial and insurance markets, making it more difficult for us to access capital and to obtain insurance coverage that we consider adequate.

**We are subject to operational risks and our insurance may not be sufficient to cover all potential losses arising from operating hazards. Failure by one or more insurers to honor its coverage commitments for an insured event could materially and adversely affect our future liquidity, operating results, and financial condition.**

Our refining and marketing operations are subject to various hazards common to the industry, including explosions, fires, toxic emissions, maritime hazards, and natural catastrophes. As protection against these hazards, we maintain insurance coverage against some, but not all, such potential losses and liabilities. We may not be able to maintain or obtain insurance of the type and amount we desire at reasonable rates. As a result of market conditions, premiums and deductibles for certain of our insurance policies could increase substantially. In some instances, certain insurance could become unavailable or available only for reduced amounts of coverage. For example, coverage for hurricane damage is very limited, and coverage for terrorism risks includes very broad exclusions. If we were to incur a significant liability for which we were not fully insured, it could have a material adverse effect on our financial position.

Our insurance program includes a number of insurance carriers. Significant disruptions in financial markets could lead to a deterioration in the financial condition of many financial institutions, including insurance companies. We can make no assurances that we will be able to obtain the full amount of our insurance coverage for insured events.

**Compliance with and changes in tax laws could adversely affect our performance.**

We are subject to extensive tax liabilities imposed by multiple jurisdictions, including income taxes, transactional taxes (excise/duty, sales/use, and value-added taxes), payroll taxes, franchise taxes, withholding taxes, and ad valorem taxes. New tax laws and regulations and changes in existing tax laws and regulations are continuously being enacted or proposed that could result in increased expenditures for tax liabilities in the future. Many of these liabilities are subject to periodic audits by the respective taxing authority. Subsequent changes to our tax liabilities as a result of these audits may subject us to interest and penalties.

**We may incur losses as a result of our forward-contract activities and derivative transactions.**

We currently use commodity derivative instruments, and we expect to continue their use in the future. If the instruments we use to hedge our exposure to various types of risk are not effective, we may incur losses.

## ENVIRONMENTAL MATTERS

We incorporate by reference into this Item the environmental disclosures contained in the following sections of this report:

- Item 1 under the caption “Risk Factors – Compliance with and changes in environmental laws, including proposed climate change laws and regulations, could adversely affect our performance,”
- Item 3 “Legal Proceedings” under the caption “Environmental Enforcement Matters,” and
- Item 8 “Financial Statements and Supplementary Data” in Note 10 of Notes to Consolidated Financial Statements under the caption “*Environmental Liabilities*” and Note 12 of Notes to Consolidated Financial Statements under the caption “*Environmental Matters*.”

*Capital Expenditures Attributable to Compliance with Environmental Regulations*. In 2011, our capital expenditures attributable to compliance with environmental regulations were approximately \$241 million, and are currently estimated to be \$140 million for 2012 and \$155 million for 2013. The estimates for 2012 and 2013 do not include amounts related to capital investments at our facilities that management has deemed to be strategic investments. These amounts could materially change as a result of governmental and regulatory actions.

## PROPERTIES

Our principal properties are described above under the caption “Valero’s Operations,” and that information is incorporated herein by reference. We also own feedstock and refined product storage and transportation facilities in various locations. We believe that our properties and facilities are generally adequate for our operations and that our facilities are maintained in a good state of repair. As of December 31, 2011, we were the lessee under a number of cancelable and noncancelable leases for certain properties. Our leases are discussed more fully in Notes 11 and 12 of Notes to Consolidated Financial Statements.

Our patents relating to our refining operations are not material to us as a whole. The trademarks and tradenames under which we conduct our retail and branded wholesale business – including Valero®, Diamond Shamrock®, Shamrock®, Ultramar®, Beacon®, Texaco®, Corner Store®, and Stop N Go® – and other trademarks employed in the marketing of petroleum products are integral to our wholesale and retail marketing operations.

## ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

### ITEM 3. LEGAL PROCEEDINGS

#### *Litigation*

We incorporate by reference into this Item our disclosures made in Part II, Item 8 of this report included in Note 12 of Notes to Consolidated Financial Statements under the caption “*Litigation Matters.*”

#### *Environmental Enforcement Matters*

While it is not possible to predict the outcome of the following environmental proceedings, if any one or more of them were decided against us, we believe that there would be no material effect on our financial position or results of operations. We are reporting these proceedings to comply with SEC regulations, which require us to disclose certain information about proceedings arising under federal, state, or local provisions regulating the discharge of materials into the environment or protecting the environment if we reasonably believe that such proceedings will result in monetary sanctions of \$100,000 or more.

*EPA* (mobile source enforcement). In November 2010, the EPA issued a letter to us formalizing a proposed penalty of \$585,000 in connection with eight alleged violations of U.S. federal fuels regulations (most of which were self-reported) purportedly occurring from March 2004 to 2006 at various refineries and terminals. We are negotiating with the EPA to resolve this matter.

*EPA* (Port Arthur Refinery). We expect the EPA to assess a penalty in an amount greater than \$100,000 for a flaring event that occurred at our Port Arthur Refinery in 2011. The penalty would be a stipulated amount prescribed under our consent decree with the EPA. We have not yet received a formal penalty assessment from the EPA.

*EPA* (Three Rivers Refinery). We expect the EPA to assess a penalty in an amount greater than \$100,000 for a flaring event that occurred at our Three Rivers Refinery in 2011. The penalty would be a stipulated amount prescribed under our consent decree with the EPA. We have not yet received a formal penalty assessment from the EPA.

*Bay Area Air Quality Management District (BAAQMD)* (Benicia Refinery). In the fourth quarter of 2011, we settled 23 violation notices (VN’s) with the BAAQMD that were issued in 2009. In the first quarter of 2012, we settled five VN’s from 2009 and nine VN’s from 2010. We presently have outstanding 75 VN’s issued by the BAAQMD from 2010 to the present. These VN’s are for various alleged air regulation and air permit violations at our Benicia Refinery and asphalt plant.

*People of the State of Illinois, ex rel. v. The Premcor Refining Group Inc., et al.*, Third Judicial Circuit Court, Madison County (Case No. 03-CH-00459, filed May 29, 2003) (Hartford Refinery and terminal). The Illinois Environmental Protection Agency has issued several notices of violation alleging violations of air and waste regulations at Premcor’s Hartford, Illinois terminal and closed refinery. We are negotiating the terms of a consent order for corrective action.

*South Coast Air Quality Management District (SCAQMD)* (Wilmington Refinery). Due to excess flare related emissions in 2011 at our Wilmington Refinery, we will pay a mitigation fee of about \$2.3 million under SCAQMD Rule 1118 for emissions from refinery flares. We will pay the fee in the first quarter of 2012.

*Texas Commission on Environmental Quality (TCEQ)* (Corpus Christi West Refinery). In our annual report on Form 10-K for the year ended December 31, 2010, we disclosed that in the second quarter of 2009, the TCEQ issued a notice of enforcement (NOE) to our Corpus Christi West Refinery. The NOE alleged excess air emissions relating to two cooling tower leaks that occurred in 2008. We settled this matter with the TCEQ

in the fourth quarter of 2011.

*TCEQ* (Three Rivers Refinery). In our quarterly report on Form 10-Q for the quarter ended September 30, 2011, we disclosed that the TCEQ had issued a proposed agreed order to our Three Rivers Refinery for various alleged air violations. We settled this matter with the TCEQ in the first quarter of 2012.

**ITEM 4. RESERVED**

**PART II**

**ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS, AND ISSUER PURCHASES OF EQUITY SECURITIES**

Our common stock trades on the New York Stock Exchange under the symbol "VLO."

As of January 31, 2012 there were 7,659 holders of record of our common stock.

The following table shows the high and low sales prices of and dividends declared on our common stock for each quarter of 2011 and 2010.

Quarter Ended	Sales Prices of the Common Stock		Dividends Per Common Share
	High	Low	
<b>2011:</b>			
December 31	\$ 26.70	\$ 17.17	\$ 0.15
September 30	26.89	17.78	0.05
June 30	30.50	23.18	0.05
March 31	30.73	23.19	0.05
<b>2010:</b>			
December 31	\$ 23.35	\$ 17.25	\$ 0.05
September 30	18.31	15.65	0.05
June 30	21.37	16.36	0.05
March 31	20.69	17.45	0.05

On January 24, 2012, our board of directors declared a quarterly cash dividend of \$0.15 per common share payable March 14, 2012 to holders of record at the close of business on February 15, 2012.

Dividends are considered quarterly by the board of directors and may be paid only when approved by the board.

The following table discloses purchases of shares of Valero's common stock made by us or on our behalf during the fourth quarter of 2011.

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Not Purchased as Part of Publicly Announced Plans or Programs (a)	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs (b)
October 2011	195,078	\$ 25.08	195,078	—	\$ 3.46 billion
November 2011	1,986,045	\$ 23.43	1,986,045	—	\$ 3.46 billion
December 2011	1,338,789	\$ 20.76	1,338,789	—	\$ 3.46 billion
Total	3,519,912	\$ 22.51	3,519,912	—	\$ 3.46 billion

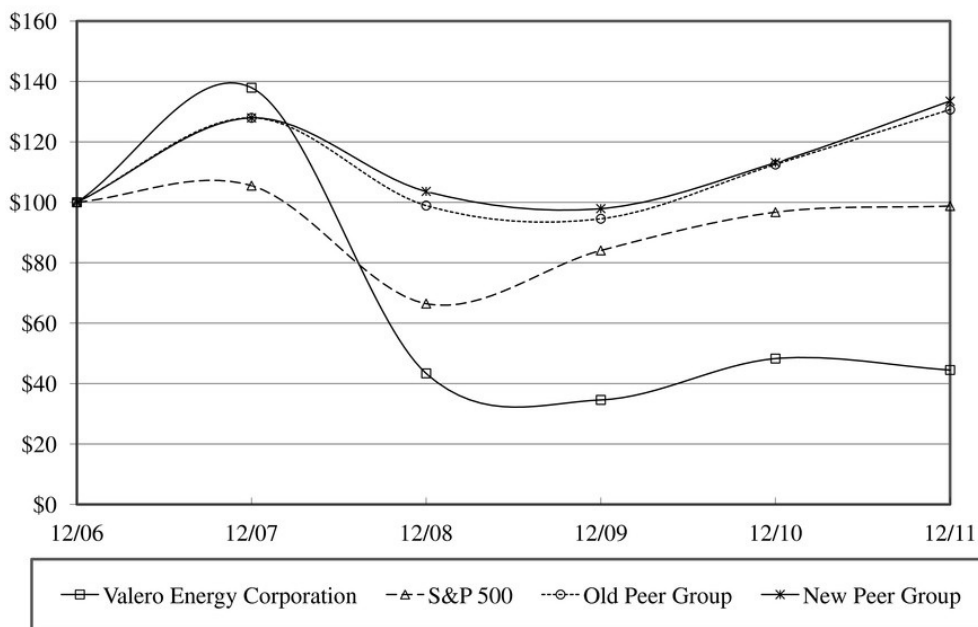
- (a) The shares reported in this column represent purchases settled in the fourth quarter of 2011 relating to (a) our purchases of shares in open-market transactions to meet our obligations under incentive compensation plans, and (b) our purchases of shares from our employees and non-employee directors in connection with the exercise of stock options, the vesting of restricted stock, and other stock compensation transactions in accordance with the terms of our incentive compensation plans.
- (b) On April 26, 2007, we publicly announced an increase in our common stock purchase program from \$2 billion to \$6 billion, as authorized by our board of directors on April 25, 2007. The \$6 billion common stock purchase program has no expiration date. On February 28, 2008, we announced that our board of directors approved a \$3 billion common stock purchase program, which is in addition to the \$6 billion program. This \$3 billion program has no expiration date.



The following performance graph is not “soliciting material,” is not deemed filed with the SEC, and is not to be incorporated by reference into any of Valero’s filings under the Securities Act of 1933 or the Securities Exchange Act of 1934, as amended, respectively.

This performance graph and the related textual information are based on historical data and are not indicative of future performance. The following line graph compares the cumulative total return<sup>1</sup> on an investment in our common stock against the cumulative total return of the S&P 500 Composite Index and an index of peer companies (that we selected) for the five-year period commencing December 31, 2006 and ending December 31, 2011. Our peer group consists of the following nine companies that are engaged in refining operations in the U.S.: Alon USA Energy, Inc.; Chevron Corporation; CVR Energy, Inc.; Exxon Mobil Corporation; Hess Corporation; HollyFrontier Corporation; Marathon Petroleum Corporation; Tesoro Corporation; and Western Refining, Inc. Our peer group previously included ConocoPhillips; Marathon Oil Corporation; Murphy Oil Corporation; and Sunoco, Inc., but they are not included in our current peer group because they have exited or are exiting refining operations in the U.S. Frontier Oil Corporation and Holly Corporation are now represented in our peer group as HollyFrontier Corporation.

COMPARISON OF 5 YEAR CUMULATIVE TOTAL RETURN<sup>1</sup>  
Among Valero Energy Corporation, the S&P 500 Index,  
Old Peer Group, and New Peer Group



	12/2006	12/2007	12/2008	12/2009	12/2010	12/2011
Valero Common Stock	\$ 100.00	\$ 137.91	\$ 43.38	\$ 34.60	\$ 48.28	\$ 44.49
S&P 500	100.00	105.49	66.46	84.05	96.71	98.75
Old Peer Group	100.00	127.94	98.91	94.54	112.51	130.65
New Peer Group	100.00	127.92	103.60	97.91	113.09	133.47

<sup>1</sup> Assumes that an investment in Valero common stock and each index was \$100 on December 31, 2006. “Cumulative total return” is based on share price appreciation plus reinvestment of dividends from December 31, 2006 through December 31, 2011.

**ITEM 6. SELECTED FINANCIAL DATA**

The selected financial data for the five-year period ended December 31, 2011 was derived from our audited financial statements. The following table should be read together with the historical financial statements and accompanying notes included in Item 8, "Financial Statements and Supplementary Data," and with Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operations."

The following summaries are in millions of dollars, except for per share amounts:

	Year Ended December 31,				
	2011 (a)	2010 (b)	2009 (b)	2008	2007
Operating revenues	\$ 125,987	\$ 82,233	\$ 64,599	\$ 106,676	\$ 85,079
Income (loss) from continuing operations	2,096	923	(273)	(1,154)	4,230
Earnings per common share from continuing operations - assuming dilution	3.69	1.62	(0.50)	(2.20)	7.31
Dividends per common share	0.30	0.20	0.60	0.57	0.48
Total assets	42,783	37,621	35,572	34,417	42,722
Debt and capital lease obligations, less current portion	6,732	7,515	7,163	6,264	6,470

(a) We acquired the Meraux Refinery on October 1, 2011 and the Pembroke Refinery on August 1, 2011. The information presented for 2011 includes the results of operations from these acquisitions commencing on their respective acquisition dates.

(b) We acquired three ethanol plants in the first quarter of 2010 and seven ethanol plants in the second quarter of 2009. The information presented for 2010 and 2009 includes the results of operations of these plants commencing on their respective acquisition dates.

## **ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

The following review of our results of operations and financial condition should be read in conjunction with Items 1, 1A, and 2, "Business, Risk Factors, and Properties," and Item 8, "Financial Statements and Supplementary Data," included in this report. In the discussions that follow, per-share amounts include the effect of common equivalent shares for periods reflecting income from continuing operations and exclude the effect of common equivalent shares for periods reflecting a loss from continuing operations.

### **CAUTIONARY STATEMENT FOR THE PURPOSE OF SAFE HARBOR PROVISIONS OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995**

This report, including without limitation our disclosures below under the heading "OVERVIEW AND OUTLOOK," includes forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. You can identify our forward-looking statements by the words "anticipate," "believe," "expect," "plan," "intend," "estimate," "project," "projection," "predict," "budget," "forecast," "goal," "guidance," "target," "could," "should," "may," and similar expressions.

These forward-looking statements include, among other things, statements regarding:

- future refining margins, including gasoline and distillate margins;
- future retail margins, including gasoline, diesel, home heating oil, and convenience store merchandise margins;
- future ethanol margins;
- expectations regarding feedstock costs, including crude oil differentials, and operating expenses;
- anticipated levels of crude oil and refined product inventories;
- our anticipated level of capital investments, including deferred refinery turnaround and catalyst costs and capital expenditures for environmental and other purposes, and the effect of these capital investments on our results of operations;
- anticipated trends in the supply of and demand for crude oil and other feedstocks and refined products globally and in the regions where we operate;
- expectations regarding environmental, tax, and other regulatory initiatives; and
- the effect of general economic and other conditions on refining, retail, and ethanol industry fundamentals.

We based our forward-looking statements on our current expectations, estimates, and projections about ourselves and our industry. We caution that these statements are not guarantees of future performance and involve risks, uncertainties, and assumptions that we cannot predict. In addition, we based many of these forward-looking statements on assumptions about future events that may prove to be inaccurate. Accordingly, our actual results may differ materially from the future performance that we have expressed or forecast in the forward-looking statements. Differences between actual results and any future performance suggested in these forward-looking statements could result from a variety of factors, including the following:

- acts of terrorism aimed at either our facilities or other facilities that could impair our ability to produce or transport refined products or receive feedstocks;
- political and economic conditions in nations that produce crude oil or consume refined products;
- demand for, and supplies of, refined products such as gasoline, diesel fuel, jet fuel, home heating oil, petrochemicals, and ethanol;
- demand for, and supplies of, crude oil and other feedstocks;

- the ability of the members of the Organization of Petroleum Exporting Countries (OPEC) to agree on and to maintain crude oil price and production controls;
- the level of consumer demand, including seasonal fluctuations;
- refinery overcapacity or undercapacity;
- our ability to successfully integrate any acquired businesses into our operations;
- the actions taken by competitors, including both pricing and adjustments to refining capacity in response to market conditions;
- the levels of competitors' imports into markets that we supply;
- accidents, unscheduled shutdowns, or other catastrophes affecting our refineries, machinery, pipelines, equipment, and information systems, or those of our suppliers or customers;
- changes in the cost or availability of transportation for feedstocks and refined products;
- the price, availability, and acceptance of alternative fuels and alternative-fuel vehicles;
- the levels of government subsidies for ethanol and other alternative fuels;
- delay of, cancellation of, or failure to implement planned capital projects and realize the various assumptions and benefits projected for such projects or cost overruns in constructing such planned capital projects;
- earthquakes, hurricanes, tornadoes, and irregular weather, which can unforeseeably affect the price or availability of natural gas, crude oil, grain and other feedstocks, and refined products and ethanol;
- rulings, judgments, or settlements in litigation or other legal or regulatory matters, including unexpected environmental remediation costs, in excess of any reserves or insurance coverage;
- legislative or regulatory action, including the introduction or enactment of legislation or rulemakings by governmental authorities, including tax and environmental regulations, such as those to be implemented under the California Global Warming Solutions Act (also known as AB 32) and the EPA's regulation of greenhouse gases, which may adversely affect our business or operations;
- changes in the credit ratings assigned to our debt securities and trade credit;
- changes in currency exchange rates, including the value of the Canadian dollar, the pound sterling, and the euro relative to the U.S. dollar;
- overall economic conditions, including the stability and liquidity of financial markets; and
- other factors generally described in the "Risk Factors" section included in Items 1, 1A, and 2, "Business, Risk Factors, and Properties" in this report.

Any one of these factors, or a combination of these factors, could materially affect our future results of operations and whether any forward-looking statements ultimately prove to be accurate. Our forward-looking statements are not guarantees of future performance, and actual results and future performance may differ materially from those suggested in any forward-looking statements. We do not intend to update these statements unless we are required by the securities laws to do so.

All subsequent written and oral forward-looking statements attributable to us or persons acting on our behalf are expressly qualified in their entirety by the foregoing. We undertake no obligation to publicly release any revisions to any such forward-looking statements that may be made to reflect events or circumstances after the date of this report or to reflect the occurrence of unanticipated events.

## OVERVIEW AND OUTLOOK

We reported net income attributable to Valero stockholders from continuing operations of \$2.1 billion, or \$3.69 per share, for the year ended December 31, 2011 compared to \$923 million, or \$1.62 per share, for the year ended December 31, 2010. The improvement in net income attributable to Valero stockholders from continuing operations in 2011 versus 2010 was primarily due to an increase in operating income of \$1.8 billion attributable to the business segments outlined in the following table (in millions):

	Year Ended December 31,		
	2011	2010	Change
Operating income (loss) by business segment:			
Refining	\$ 3,516	\$ 1,903	\$ 1,613
Retail	381	346	35
Ethanol	396	209	187
Corporate	(613)	(582)	(31)
Total	\$ 3,680	\$ 1,876	\$ 1,804

The increase of \$1.6 billion in refining operating income was primarily due to the favorable difference between the price of sweet crude oils sourced from the inland U.S., such as West Texas Intermediate (WTI), versus the price of benchmark sweet crude oils, such as LLS and Brent. Historically, the price of WTI-type crude oil has closely approximated LLS and Brent crude oils. Due to the significant development of crude oil reserves within the U.S. Mid-Continent region and increased deliveries of crude oil from Canada into the U.S. Mid-Continent region, the increased supply of WTI-type crude oil resulted in WTI-type crude oil being priced at a significant discount to LLS and Brent crude oils for most of 2011 as compared to 2010. Our McKee and Ardmere Refineries in the U.S. Mid-Continent region process WTI-type crude oils and significantly benefited from this favorable price difference.

The increase of \$35 million in retail operating income was primarily due to higher fuel margins and volumes in our Canadian operations, including a favorable impact from the strengthening of the Canadian dollar relative to the U.S. dollar.

The increase of \$187 million in ethanol operating income was primarily due to improved operating margins combined with an increase in production volumes to an average of 3.4 million gallons per day. The ethanol business is dependent on margins between ethanol and corn feedstocks and is impacted by U.S. government subsidies and biofuels (including ethanol) mandates.

On August 1, 2011, we acquired 100 percent of the outstanding shares of Chevron Limited from a subsidiary of Chevron Corporation and we subsequently changed the name of Chevron Limited to Valero Energy Ltd. Valero Energy Ltd owns and operates the Pembroke Refinery. Valero Energy Ltd also owns, directly and through various subsidiaries, an extensive network of marketing and logistics assets throughout the U.K. and Ireland. On the acquisition date, we initially paid \$1.8 billion from available cash, of which \$1.1 billion was for working capital. Subsequent to the acquisition date, we recorded an adjustment to working capital (primarily inventory), resulting in an adjusted purchase price of \$1.7 billion. This acquisition is referred to as the Pembroke Acquisition.

On October 1, 2011, we acquired the Meraux Refinery and related logistics assets from Murphy Oil Corporation for an initial payment of \$586 million, which was funded from available cash. In the fourth quarter of 2011, we recorded an adjustment related to inventories acquired that reduced the purchase price to \$547 million.

The benefit we experienced in our refining business for most of 2011 from processing discounted WTI-type crude oils declined significantly during the fourth quarter of 2011 as the premium of LLS and Brent crude oils versus WTI-type crude oil narrowed considerably. In addition, our fourth quarter 2011 results reflected a significant decline in margins for most of the products we produce. Product margins have since improved in early 2012, but we expect the energy markets and margins to be volatile. The U.S. and worldwide refining business continues to experience capacity rationalization, particularly in Europe, the U.S. East Coast, and the Caribbean, where declining product margins have negatively impacted refineries in those regions. In particular, our Aruba Refinery has been negatively impacted. We restarted the Aruba Refinery in January 2011 after shutting it down temporarily in July 2009, but the refinery has not yet generated positive cash flows on a sustained basis. We are exploring strategic alternatives for the refinery, including alternative feedstocks, configuration changes, and a temporary or permanent shutdown of the refinery facilities. We expect to conclude our evaluation of these strategic alternatives in the first quarter of 2012. A decision to temporarily or permanently shut down the refinery or a revision to the future operating plans for the refinery that results in a decrease in future expected cash flows could result in the refinery being impaired. The Aruba Refinery had a net book value of \$958 million as of December 31, 2011; therefore, an impairment loss would be material to our results of operations.

As of the date of the filing of this report, the financial markets continue to experience significant volatility and the overall impact on our business is uncertain at this time.

**RESULTS OF OPERATIONS**

The following tables highlight our results of operations, our operating performance, and market prices that directly impact our operations. The narrative following these tables provides an analysis of our results of operations.

**2011 Compared to 2010**

**Financial Highlights (a) (b) (c) (d)**  
(millions of dollars, except per share amounts)

	Year Ended December 31,		
	2011	2010	Change
Operating revenues	\$ 125,987	\$ 82,233	\$ 43,754
Costs and expenses:			
Cost of sales	115,719	74,458	41,261
Operating expenses:			
Refining	3,406	2,944	462
Retail	678	654	24
Ethanol	399	363	36
General and administrative expenses	571	531	40
Depreciation and amortization expense:			
Refining	1,338	1,210	128
Retail	115	108	7
Ethanol	39	36	3
Corporate	42	51	(9)
Asset impairment loss	—	2	(2)
Total costs and expenses	122,307	80,357	41,950
Operating income	3,680	1,876	1,804
Other income, net	43	106	(63)
Interest and debt expense, net of capitalized interest	(401)	(484)	83
Income from continuing operations before income tax expense	3,322	1,498	1,824
Income tax expense	1,226	575	651
Income from continuing operations	2,096	923	1,173
Loss from discontinued operations, net of income taxes	(7)	(599)	592
Net income	2,089	324	1,765
Less: Net loss attributable to noncontrolling interests	(1)	—	(1)
Net income attributable to Valero stockholders	\$ 2,090	\$ 324	\$ 1,766
Net income attributable to Valero stockholders:			
Continuing operations	\$ 2,097	\$ 923	\$ 1,174
Discontinued operations	(7)	(599)	592
Total	\$ 2,090	\$ 324	\$ 1,766
Earnings per common share – assuming dilution:			
Continuing operations	\$ 3.69	\$ 1.62	\$ 2.07
Discontinued operations	(0.01)	(1.05)	1.04
Total	\$ 3.68	\$ 0.57	\$ 3.11

See note references on page 33.

**Operating Highlights**  
(millions of dollars, except per barrel amounts)

	Year Ended December 31,		
	2011	2010	Change
<b>Refining (a) (b) (c):</b>			
Operating income	\$ 3,516	\$ 1,903	\$ 1,613
Throughput margin per barrel (e)	\$ 9.30	\$ 7.80	\$ 1.50
Operating costs per barrel:			
Operating expenses	3.83	3.79	0.04
Depreciation and amortization expense	1.51	1.56	(0.05)
Total operating costs per barrel	5.34	5.35	(0.01)
Operating income per barrel	\$ 3.96	\$ 2.45	\$ 1.51
<b>Throughput volumes (thousand BPD):</b>			
Feedstocks:			
Heavy sour crude	454	458	(4)
Medium/light sour crude	442	386	56
Acidic sweet crude	116	60	56
Sweet crude	745	668	77
Residuals	282	204	78
Other feedstocks	122	110	12
Total feedstocks	2,161	1,886	275
Blendstocks and other	273	243	30
Total throughput volumes	2,434	2,129	305
<b>Yields (thousand BPD):</b>			
Gasolines and blendstocks	1,120	1,048	72
Distillates	834	712	122
Other products (f)	494	395	99
Total yields	2,448	2,155	293

See note references on page 33.



**Refining Operating Highlights by Region (g)**  
(millions of dollars, except per barrel amounts)

	Year Ended December 31,		
	2011	2010	Change
<b>U.S. Gulf Coast: (a)</b>			
Operating income	\$ 1,833	\$ 1,349	\$ 484
Throughput volumes (thousand BPD)	1,450	1,280	170
Throughput margin per barrel (e)	\$ 8.63	\$ 8.20	\$ 0.43
Operating costs per barrel:			
Operating expenses	3.66	3.71	(0.05)
Depreciation and amortization expense	1.50	1.60	(0.10)
Total operating costs per barrel	5.16	5.31	(0.15)
Operating income per barrel	\$ 3.47	\$ 2.89	\$ 0.58
<b>U.S. Mid-Continent:</b>			
Operating income	\$ 1,413	\$ 339	\$ 1,074
Throughput volumes (thousand BPD)	411	398	13
Throughput margin per barrel (e)	\$ 15.10	\$ 7.33	\$ 7.77
Operating costs per barrel:			
Operating expenses	4.15	3.60	0.55
Depreciation and amortization expense	1.52	1.40	0.12
Total operating costs per barrel	5.67	5.00	0.67
Operating income per barrel	\$ 9.43	\$ 2.33	\$ 7.10
<b>North Atlantic (b):</b>			
Operating income	\$ 171	\$ 129	\$ 42
Throughput volumes (thousand BPD)	317	195	122
Throughput margin per barrel (e)	\$ 5.43	\$ 6.18	\$ (0.75)
Operating costs per barrel:			
Operating expenses	3.08	2.99	0.09
Depreciation and amortization expense	0.87	1.39	(0.52)
Total operating costs per barrel	3.95	4.38	(0.43)
Operating income per barrel	\$ 1.48	\$ 1.80	\$ (0.32)
<b>U.S. West Coast:</b>			
Operating income	\$ 99	\$ 88	\$ 11
Throughput volumes (thousand BPD)	256	256	—
Throughput margin per barrel (e)	\$ 8.60	\$ 7.73	\$ 0.87
Operating costs per barrel:			
Operating expenses	5.25	5.09	0.16
Depreciation and amortization expense	2.29	1.69	0.60
Total operating costs per barrel	7.54	6.78	0.76
Operating income per barrel	\$ 1.06	\$ 0.95	\$ 0.11
Operating income for regions above	\$ 3,516	\$ 1,905	\$ 1,611
Asset impairment loss applicable to refining	—	(2)	2
Total refining operating income	\$ 3,516	\$ 1,903	\$ 1,613

See note references on page 33.

**Average Market Reference Prices and Differentials (h)**  
(dollars per barrel, except as noted)

	Year Ended December 31,		
	2011	2010	Change
<b>Feedstocks:</b>			
LLS crude oil	\$ 111.47	\$ 81.62	\$ 29.85
LLS less WTI crude oil	16.42	2.21	14.21
LLS less Alaska North Slope (ANS) crude oil	1.93	2.55	(0.62)
LLS less Brent crude oil	0.54	2.09	(1.55)
LLS less Mars crude oil	4.00	3.62	0.38
LLS less Maya crude oil	12.72	11.34	1.38
WTI crude oil	95.05	79.41	15.64
WTI less Mars crude oil	(12.42)	1.41	(13.83)
WTI less Maya crude oil	(3.70)	9.13	(12.83)
<b>Products:</b>			
U.S. Gulf Coast:			
Conventional 87 gasoline less LLS	\$ 5.04	\$ 5.30	\$ (0.26)
Ultra-low-sulfur diesel less LLS	13.24	8.93	4.31
Propylene less LLS	7.69	5.71	1.98
Conventional 87 gasoline less WTI	21.46	7.51	13.95
Ultra-low-sulfur diesel less WTI	29.66	11.14	18.52
Propylene less WTI	24.11	7.92	16.19
U.S. Mid-Continent:			
Conventional 87 gasoline less WTI	22.37	8.20	14.17
Ultra-low-sulfur diesel less WTI	31.06	11.91	19.15
North Atlantic:			
Conventional 87 gasoline less Brent	6.24	8.38	(2.14)
Ultra-low-sulfur diesel less Brent	15.64	12.63	3.01
Conventional 87 gasoline less WTI	22.12	8.50	13.62
Ultra-low-sulfur diesel less WTI	31.52	12.76	18.76
U.S. West Coast:			
CARBOB 87 gasoline less ANS	11.48	14.21	(2.73)
CARB diesel less ANS	18.47	13.79	4.68
CARBOB 87 gasoline less WTI	25.97	13.88	12.09
CARB diesel less WTI	32.96	13.45	19.51
New York Harbor corn crush (dollars per gallon)	0.25	0.39	(0.14)

See note references on page 33.

**Operating Highlights (continued)**  
(millions of dollars, except per gallon amounts)

	Year Ended December 31,		
	2011	2010	Change
<b>Retail–U.S.:</b>			
Operating income	\$ 213	\$ 200	\$ 13
Company-operated fuel sites (average)	994	990	4
Fuel volumes (gallons per day per site)	5,060	5,086	(26)
Fuel margin per gallon	\$ 0.144	\$ 0.140	\$ 0.004
Merchandise sales	\$ 1,223	\$ 1,205	\$ 18
Merchandise margin (percentage of sales)	28.7%	28.3%	0.4 %
Margin on miscellaneous sales	\$ 88	\$ 86	\$ 2
Operating expenses	\$ 416	\$ 412	\$ 4
Depreciation and amortization expense	\$ 77	\$ 73	\$ 4
<b>Retail–Canada:</b>			
Operating income	\$ 168	\$ 146	\$ 22
Fuel volumes (thousand gallons per day)	3,195	3,168	27
Fuel margin per gallon	\$ 0.299	\$ 0.271	\$ 0.028
Merchandise sales	\$ 261	\$ 240	\$ 21
Merchandise margin (percentage of sales)	29.4%	30.1%	(0.7)%
Margin on miscellaneous sales	\$ 43	\$ 38	\$ 5
Operating expenses	\$ 262	\$ 242	\$ 20
Depreciation and amortization expense	\$ 38	\$ 35	\$ 3
<b>Ethanol (d):</b>			
Operating income	\$ 396	\$ 209	\$ 187
Ethanol production (thousand gallons per day)	3,352	3,021	331
Gross margin per gallon of ethanol production (e)	\$ 0.68	\$ 0.55	\$ 0.13
Operating costs per gallon of production:			
Operating expenses	0.33	0.33	—
Depreciation and amortization expense	0.03	0.03	—
Total operating costs per gallon of production	0.36	0.36	—
Operating income per gallon of production	\$ 0.32	\$ 0.19	\$ 0.13

See note references on page 33.

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The following notes relate to references on pages 28 through 32.

- (a) The financial highlights and operating highlights for the refining segment and U.S. Gulf Coast region include the results of operations of our Meraux Refinery, including related logistics assets, from the date of its acquisition on October 1, 2011 through December 31, 2011.
- (b) The financial highlights and operating highlights for the refining segment and North Atlantic region include the results of operations of our Pembroke Refinery, including the related market and logistics business from the date of its acquisition on August 1, 2011 through December 31, 2011.
- (c) In 2010, we sold our Paulsboro Refinery and our shutdown Delaware City refinery assets and associated terminal and pipeline assets. The results of operations of these refineries have been presented as discontinued operations for the year ended December 31, 2010. In addition, the operating highlights for the refining segment and North Atlantic region exclude these refineries for the year ended December 31, 2010.
- (d) We acquired three ethanol plants in the first quarter of 2010. The information presented includes the results of operations of these plants commencing on their respective acquisition dates. Ethanol production volumes are based on total production during each year divided by actual calendar days per year.
- (e) Throughput margin per barrel represents operating revenues less cost of sales of our refining segment divided by throughput volumes. Gross margin per gallon of production represents operating revenues less cost of sales of our ethanol segment divided by production volumes.
- (f) Other products primarily include petrochemicals, gas oils, No. 6 fuel oil, petroleum coke, and asphalt.
- (g) The regions reflected herein contain the following refineries: the U.S. Gulf Coast region includes the Corpus Christi East, Corpus Christi West, Texas City, Houston, Three Rivers, St. Charles, Aruba, Port Arthur, and Meraux Refineries; the U.S. Mid-Continent region includes the McKee, Ardmore, and Memphis Refineries; the North Atlantic (formerly known as Northeast) region includes the Pembroke and Quebec City Refineries; and the U.S. West Coast region includes the Benicia and Wilmington Refineries.
- (h) Average market reference prices for LLS crude oil, along with price differentials between the price of LLS crude oil and other types of crude oil, have been included in the table of Average Market Reference Prices and Differentials. The table also includes price differentials by region between the prices of certain products and the benchmark crude oil that provides the best indicator of product margins for each region. Prior to the first quarter of 2011, feedstock and product differentials were based on the price of WTI crude oil. However, the price of WTI crude oil no longer provides a reasonable benchmark price of crude oil for all regions. Beginning in late 2010, WTI crude oil began to price at a discount to benchmark sweet crude oils, such as LLS and Brent, because of increased WTI supplies resulting from greater U.S. production and increased deliveries of crude oil from Canada into the U.S. Mid-Continent region. Therefore, the use of the price of WTI crude oil as a benchmark price for regions that do not process WTI crude oil is no longer reasonable.

**General**

Operating revenues increased 53 percent (or \$43.8 billion) for the year ended December 31, 2011 compared to the year ended December 31, 2010 primarily as a result of higher average refined product prices and higher throughput volumes between the two years related to our refining segment operations. The higher throughput volumes resulted primarily from the incremental throughput of 33,000 BPD<sup>1</sup> (\$1.3 billion of revenue) from the Meraux Refinery, which was acquired on October 1, 2011, incremental throughput of 109,000 BPD<sup>1</sup> (\$7.5 billion of revenue) from the Pembroke Refinery, which was acquired on August 1, 2011, and incremental throughput of 145,000 BPD (\$4.9 billion of revenue) from the Aruba Refinery, which restarted operations in January 2011. Operating income increased \$1.8 billion and income from continuing operations before taxes also increased \$1.8 billion for the year ended December 31, 2011 compared to the amounts reported for the year ended December 31, 2010 primarily due to a \$1.6 billion increase in refining segment operating income discussed below.

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<sup>1</sup>Calculated based on throughput volumes of the Meraux Refinery and the Pembroke Refinery from the date of their respective acquisitions (October 1, 2011 and August 1, 2011), divided by the number of days during the year ended December 31, 2011.

### ***Refining***

Refining segment operating income nearly doubled from \$1.9 billion for the year ended December 31, 2010 to \$3.5 billion for the year ended December 31, 2011. The \$1.6 billion improvement in operating income was due to a \$2.2 billion increase in refining margin, partially offset by a \$462 million increase in operating expenses.

The \$2.2 billion increase in refining margin was primarily due to a 19 percent increase in throughput margin per barrel (a \$1.50 per barrel increase between the years). This increase in refining margin was largely driven by an improvement in the U.S. Mid-Continent region, which experienced an increase in its throughput margin per barrel of \$7.77. The U.S. Mid-Continent throughput margin per barrel of \$15.10 for the year ended December 31, 2011 was more than double the throughput margin per barrel of \$7.33 for the year ended December 31, 2010. This increase was due to the substantial discount in the price of WTI-type crude oil, the primary type of crude oil processed by our U.S. Mid-Continent refineries, versus the price of LLS and Brent crude oils. Historically, the price of WTI-type crude oil has closely approximated LLS and Brent crude oils, but due to the significant development of crude oil reserves within the U.S. Mid-Continent region and increased deliveries of crude oil from Canada into the U.S. Mid-Continent region, the increased supply of WTI-type crude oil resulted in WTI-type crude oil being priced at a significant discount to LLS and Brent crude oils during 2011. For example, the WTI-based benchmark reference margin for U.S. Mid-Continent conventional 87 gasoline was \$22.37 per barrel for the year ended December 31, 2011 compared to \$8.20 per barrel for the year ended December 31, 2010, representing a favorable increase of \$14.17 per barrel. In addition, the WTI-based benchmark reference margin for U.S. Mid-Continent ultra-low sulfur diesel (a type of distillate) was \$31.06 per barrel for the year ended December 31, 2011 compared to \$11.91 per barrel for the year ended December 31, 2010, representing a favorable increase of \$19.15 per barrel. We estimate that these increases in gasoline and distillate margins per barrel had a positive impact to our refining margin of approximately \$1.1 billion and \$1.0 billion, respectively, year over year.

The increase of \$462 million in operating expenses discussed above was partially due to \$42 million in operating expenses of the Meraux Refinery, which was acquired on October 1, 2011, and \$141 million in operating expenses of the Pembroke Refinery, which was acquired on August 1, 2011. The remaining increase of \$279 million was due to a \$107 million increase in chemicals and catalyst costs, an \$86 million increase in employee-related expenses, and a \$75 million increase in reliability expenses.

### ***Retail***

Retail operating income was \$381 million for the year ended December 31, 2011 compared to \$346 million for the year ended December 31, 2010. This 10 percent (or \$35 million) increase was primarily due to increases in fuel margins of \$43 million primarily from our Canadian operations, including a favorable impact from the strengthening of the Canadian dollar relative to the U.S. dollar, and an increase in merchandise margins of \$15 million, offset by increased operating expenses of \$24 million.

### ***Ethanol***

Ethanol segment operating income was \$396 million for the year ended December 31, 2011 compared to \$209 million for the year ended December 31, 2010. This increase of \$187 million was primarily due to a \$226 million increase in gross margin, partially offset by a \$36 million increase in operating expenses.

Gross margin increased from the year ended December 31, 2010 to the year ended December 31, 2011 due to an increase in ethanol production (a 331,000 gallon per day increase between the years) primarily resulting from the full operation of three additional plants acquired in the first quarter of 2010 and higher utilization rates and increased yields during 2011 combined with a \$0.13 per gallon increase in the ethanol gross margin.

The increase in operating expenses was primarily due to \$27 million of additional expenses related to the three ethanol plants acquired in the first quarter of 2010. We operated these plants for all of 2011 compared to part of 2010.

***Corporate Expenses and Other***

General and administrative expenses increased \$40 million for the year ended December 31, 2011 compared to the year ended December 31, 2010 due to a \$25 million increase in variable compensation expense, \$27 million in costs incurred in connection with the Pembroke Acquisition, and a favorable settlement with an insurance company for \$40 million recorded in 2010, which reduced general and administrative expenses in 2010. These increases in general and administrative expenses were partially offset by favorable legal settlements of \$47 million in 2011.

“Other income, net” for the year ended December 31, 2011 decreased \$63 million from the year ended December 31, 2010 due to a pre-tax gain of \$55 million related to the sale of our 50 percent interest in Cameron Highway Oil Pipeline Company (CHOPS) recognized in November 2010 and the \$16 million effect of earnings on our interest in CHOPS recognized in 2010.

“Interest and debt expense, net of capitalized interest” for the year ended December 31, 2011 decreased \$83 million from the year ended December 31, 2010. This decrease is primarily due to an increase of \$62 million in capitalized interest related to an increase in capital expenditures between the years and the resumption of construction activity on previously suspended projects combined with a \$19 million favorable impact from the decrease in average borrowings.

Income tax expense for the year ended December 31, 2011 increased \$651 million from the year ended December 31, 2010 mainly as a result of higher operating income in 2011 and a one-time \$20 million income tax benefit recognized in 2010 related to a tax settlement with the Government of Aruba (GOA).

The loss from discontinued operations of \$7 million for the year ended December 31, 2011 is primarily due to adjustments to the working capital settlement related to the sale of our Paulsboro Refinery in December 2010. The loss from discontinued operations of \$599 million for the year ended December 31, 2010 represents a \$47 million after-tax loss from the discontinued operations of the Delaware City and Paulsboro Refineries and a \$610 million after-tax loss on the sale of the Paulsboro Refinery, partially offset by a \$58 million after-tax gain on the sale of the shutdown refinery assets at Delaware City.

**2010 Compared to 2009**

**Financial Highlights (a) (b) (c)**  
(millions of dollars, except per share amounts)

	Year Ended December 31,		
	2010	2009	Change
Operating revenues	\$ 82,233	\$ 64,599	\$ 17,634
Costs and expenses:			
Cost of sales	74,458	58,686	15,772
Operating expenses:			
Refining	2,944	2,880	64
Retail	654	626	28
Ethanol	363	169	194
General and administrative expenses	531	572	(41)
Depreciation and amortization expense:			
Refining	1,210	1,194	16
Retail	108	101	7
Ethanol	36	18	18
Corporate	51	48	3
Asset impairment loss (d)	2	222	(220)
Total costs and expenses	<u>80,357</u>	<u>64,516</u>	<u>15,841</u>
Operating income	1,876	83	1,793
Other income, net	106	17	89
Interest and debt expense, net of capitalized interest	(484)	(416)	(68)
Income (loss) from continuing operations before income tax expense (benefit)	1,498	(316)	1,814
Income tax expense (benefit)	575	(43)	618
Income (loss) from continuing operations	923	(273)	1,196
Loss from discontinued operations, net of income taxes	(599)	(1,709)	1,110
Net income (loss)	324	(1,982)	2,306
Less: Net loss attributable to noncontrolling interests	—	—	—
Net income (loss) attributable to Valero stockholders	<u>\$ 324</u>	<u>\$ (1,982)</u>	<u>\$ 2,306</u>
Net income (loss) attributable to Valero stockholders:			
Continuing operations	\$ 923	\$ (273)	\$ 1,196
Discontinued operations	(599)	(1,709)	1,110
Total	<u>\$ 324</u>	<u>\$ (1,982)</u>	<u>\$ 2,306</u>
Earnings per common share – assuming dilution:			
Continuing operations	\$ 1.62	\$ (0.50)	\$ 2.12
Discontinued operations	(1.05)	(3.17)	2.12
Total	<u>\$ 0.57</u>	<u>\$ (3.67)</u>	<u>\$ 4.24</u>

See note references on page 41.

**Operating Highlights**  
(millions of dollars, except per barrel amounts)

	Year Ended December 31,		
	2010	2009	Change
<b>Refining (a) (b):</b>			
Operating income (d)	\$ 1,903	\$ 247	\$ 1,656
Throughput margin per barrel (e)	\$ 7.80	\$ 6.00	\$ 1.80
Operating costs per barrel (d):			
Operating expenses	3.79	3.71	0.08
Depreciation and amortization expense	1.56	1.55	0.01
Total operating costs per barrel	5.35	5.26	0.09
Operating income per barrel	\$ 2.45	\$ 0.74	\$ 1.71
<b>Throughput volumes (thousand BPD):</b>			
Feedstocks:			
Heavy sour crude	458	457	1
Medium/light sour crude	386	417	(31)
Acidic sweet crude	60	64	(4)
Sweet crude	668	616	52
Residuals	204	170	34
Other feedstocks	110	136	(26)
Total feedstocks	1,886	1,860	26
Blendstocks and other	243	264	(21)
Total throughput volumes	2,129	2,124	5
<b>Yields (thousand BPD):</b>			
Gasolines and blendstocks	1,048	1,040	8
Distillates	712	692	20
Other products (f)	395	402	(7)
Total yields	2,155	2,134	21

See note references on page 41.



**Refining Operating Highlights by Region (d) (g)**  
(millions of dollars, except per barrel amounts)

	Year Ended December 31,		
	2010	2009	Change
<b>U.S. Gulf Coast:</b>			
Operating income (loss)	\$ 1,349	\$ (56)	\$ 1,405
Throughput volumes (thousand BPD)	1,280	1,274	6
Throughput margin per barrel (e)	\$ 8.20	\$ 5.13	\$ 3.07
Operating costs per barrel:			
Operating expenses	3.71	3.71	—
Depreciation and amortization expense	1.60	1.54	0.06
Total operating costs per barrel	5.31	5.25	0.06
Operating income (loss) per barrel	\$ 2.89	\$ (0.12)	\$ 3.01
<b>U.S. Mid-Continent:</b>			
Operating income	\$ 339	\$ 189	\$ 150
Throughput volumes (thousand BPD)	398	387	11
Throughput margin per barrel (e)	\$ 7.33	\$ 6.52	\$ 0.81
Operating costs per barrel:			
Operating expenses	3.60	3.66	(0.06)
Depreciation and amortization expense	1.40	1.53	(0.13)
Total operating costs per barrel	5.00	5.19	(0.19)
Operating income per barrel	\$ 2.33	\$ 1.33	\$ 1.00
<b>North Atlantic (a) (b):</b>			
Operating income	\$ 129	\$ 196	\$ (67)
Throughput volumes (thousand BPD)	195	196	(1)
Throughput margin per barrel (e)	\$ 6.18	\$ 6.36	\$ (0.18)
Operating costs per barrel:			
Operating expenses	2.99	2.31	0.68
Depreciation and amortization expense	1.39	1.33	0.06
Total operating costs per barrel	4.38	3.64	0.74
Operating income per barrel	\$ 1.80	\$ 2.72	\$ (0.92)
<b>U.S. West Coast:</b>			
Operating income	\$ 88	\$ 252	\$ (164)
Throughput volumes (thousand BPD)	256	267	(11)
Throughput margin per barrel (e)	\$ 7.73	\$ 9.16	\$ (1.43)
Operating costs per barrel:			
Operating expenses	5.09	4.83	0.26
Depreciation and amortization expense	1.69	1.74	(0.05)
Total operating costs per barrel	6.78	6.57	0.21
Operating income per barrel	\$ 0.95	\$ 2.59	\$ (1.64)
Operating income for regions above	\$ 1,905	\$ 581	\$ 1,324
Asset impairment loss applicable to refining	(2)	(220)	218
Loss contingency accrual related to Aruba tax matter (h)	—	(114)	114
Total refining operating income	\$ 1,903	\$ 247	\$ 1,656

See note references on page 41.

**Average Market Reference Prices and Differentials**  
**(dollars per barrel, except as noted)**

	Year Ended December 31,		
	2010	2009	Change
<b>Feedstocks:</b>			
LLS crude oil	\$ 81.62	\$ 62.25	\$ 19.37
LLS less WTI crude oil	2.21	0.56	1.65
WTI crude oil	79.41	61.69	17.72
WTI less Mars crude oil	1.41	1.36	0.05
WTI less Maya crude oil	9.13	5.19	3.94
<b>Products:</b>			
U.S. Gulf Coast:			
Conventional 87 gasoline less WTI	\$ 7.51	\$ 7.61	\$ (0.10)
Ultra-low-sulfur diesel less WTI	11.14	8.02	3.12
Propylene less WTI	7.92	(1.31)	9.23
U.S. Mid-Continent:			
Conventional 87 gasoline less WTI	8.20	8.01	0.19
Ultra-low-sulfur diesel less WTI	11.91	8.26	3.65
North Atlantic:			
Conventional 87 gasoline less WTI	8.50	7.99	0.51
Ultra-low-sulfur diesel less WTI	12.76	9.55	3.21
U.S. West Coast:			
CARBOB 87 gasoline less WTI	13.88	15.75	(1.87)
CARB diesel less WTI	13.45	9.86	3.59
New York Harbor corn crush (dollars per gallon)	0.39	0.47	(0.08)

See note references on page 41.

**Operating Highlights**  
(millions of dollars, except per gallon amounts)

	Year Ended December 31,		
	2010	2009	Change
<b>Retail—U.S.:</b>			
Operating income	\$ 200	\$ 170	\$ 30
Company-operated fuel sites (average)	990	999	(9)
Fuel volumes (gallons per day per site)	5,086	4,983	103
Fuel margin per gallon	\$ 0.140	\$ 0.126	\$ 0.014
Merchandise sales	\$ 1,205	\$ 1,171	\$ 34
Merchandise margin (percentage of sales)	28.3%	28.1%	0.2%
Margin on miscellaneous sales	\$ 86	\$ 87	\$ (1)
Operating expenses	\$ 412	\$ 405	\$ 7
Depreciation and amortization expense	\$ 73	\$ 70	\$ 3
<b>Retail—Canada:</b>			
Operating income	\$ 146	\$ 123	\$ 23
Fuel volumes (thousand gallons per day)	3,168	3,159	9
Fuel margin per gallon	\$ 0.271	\$ 0.247	\$ 0.024
Merchandise sales	\$ 240	\$ 201	\$ 39
Merchandise margin (percentage of sales)	30.1%	28.3%	1.8%
Margin on miscellaneous sales	\$ 38	\$ 33	\$ 5
Operating expenses	\$ 242	\$ 221	\$ 21
Depreciation and amortization expense	\$ 35	\$ 31	\$ 4
<b>Ethanol (c):</b>			
Operating income	\$ 209	\$ 165	\$ 44
Ethanol production (thousand gallons per day)	3,021	1,479	1,542
Gross margin per gallon of ethanol production (e)	\$ 0.55	\$ 0.65	\$ (0.10)
Operating costs per gallon of ethanol production:			
Operating expenses	0.33	0.31	0.02
Depreciation and amortization expense	0.03	0.03	—
Total operating costs per gallon of production	0.36	0.34	0.02
Operating income per gallon of production	\$ 0.19	\$ 0.31	\$ (0.12)

See note references on page 41.

The following notes relate to references on pages 36 through 40.

- (a) In December 2010, we sold our Paulsboro Refinery to PBF Holding Company LLC for \$547 million of cash proceeds and a \$160 million one-year note, resulting in a pre-tax loss on the sale of \$980 million (\$610 million after taxes). The results of operations of the refinery, including the loss on the sale, have been presented as discontinued operations for both years presented. The refining segment and North Atlantic Region operating highlights exclude the Paulsboro Refinery for both years presented.
- (b) During the fourth quarter of 2009, we permanently shut down our Delaware City Refinery and wrote down the book value of the refinery assets to net realizable value, resulting in a pre-tax loss on the shutdown of \$1.9 billion (\$1.2 billion after taxes). In June 2010, we sold the shutdown refinery assets and associated terminal and pipeline assets to wholly owned subsidiaries of PBF Energy Partners LP for \$220 million of cash proceeds, resulting in a pre-tax gain on the sale of the refinery assets of \$92 million (\$58 million after taxes) and an insignificant gain on the sale of the terminal and pipeline assets. The results of operations of the shutdown refinery, including the gain on the sale in 2010 and the loss on the shutdown in 2009, have been presented as discontinued operations for both years presented. The refining segment and North Atlantic Region operating highlights exclude the Delaware City Refinery for both years presented. The terminal and pipeline assets associated with the refinery were not shut down in 2009 and continued to be operated until they were sold; the results of these operations are reflected in continuing operations for both years presented.
- (c) We acquired three ethanol plants in the first quarter of 2010 and seven ethanol plants in the second quarter of 2009. The information presented includes the results of operations of these plants commencing on their respective acquisition dates. Ethanol production volumes are based on total production during each year divided by actual calendar days per year.
- (d) The asset impairment loss relates primarily to the permanent cancellation of certain capital projects classified as “construction in progress” as a result of the unfavorable impact of the economic slowdown on refining industry fundamentals. The asset impairment loss amounts are included in the refining segment operating income but are excluded from the regional operating income amounts and the consolidated and regional operating costs per barrel.
- (e) Throughput margin per barrel represents operating revenues less cost of sales of our refining segment divided by throughput volumes. Gross margin per gallon of production represents operating revenues less cost of sales of our ethanol segment divided by production volumes.
- (f) Other products primarily include petrochemicals, gas oils, No. 6 fuel oil, petroleum coke, and asphalt.
- (g) The regions reflected herein contain the following refineries: the U.S. Gulf Coast region includes the Corpus Christi East, Corpus Christi West, Texas City, Houston, Three Rivers, St. Charles, Aruba, and Port Arthur Refineries; the U.S. Mid-Continent region includes the McKee, Ardmore, and Memphis Refineries; the North Atlantic region includes the Quebec City Refinery; and the U.S. West Coast region includes the Benicia and Wilmington Refineries.
- (h) A loss contingency accrual of \$140 million was recorded in the third quarter of 2009 related to our dispute with the GOA regarding a turnover tax on export sales as well as other tax matters. The portion of the loss contingency accrual that relates to the turnover tax was recorded in cost of sales for the year ended December 31, 2009, and therefore is included in refining operating income (loss) but has been excluded in determining throughput margin per barrel.

### **General**

Operating revenues increased 27 percent (or \$17.6 billion) for the year ended December 31, 2010 compared to the year ended December 31, 2009 primarily as a result of higher average refined product prices between the two years. Operating income increased \$1.8 billion and income from continuing operations before taxes also increased \$1.8 billion for the year ended December 31, 2010 compared to the amounts reported for the year ended December 31, 2009, primarily due to a \$1.7 billion increase in refining segment operating income discussed below.

### **Refining**

Operating income for our refining segment increased from \$247 million for the year ended December 31, 2009 to \$1.9 billion for the year ended December 31, 2010, primarily due to an overall improvement in operating results of \$1.3 billion (discussed below), reduced asset impairment loss of \$218 million, and the nonrecurrence of a \$114 million loss contingency accrual in 2009. The asset impairment loss recorded in 2009 related to our decision to permanently cancel certain construction projects in response to the economic slowdown that began in 2008. We continued to evaluate our ongoing construction projects during 2009 and 2010, but the number and significance of projects cancelled substantially declined in 2010. The loss contingency accrual recorded in 2009 related to our dispute of a turnover tax on export sales in Aruba.

The \$1.3 billion improvement in operating results was primarily due to a 30 percent increase in throughput margin per barrel (an overall \$1.80 per barrel increase between the comparable years). The increase in throughput margin per barrel was caused by a significant improvement in distillate margins and petrochemical (primarily propylene) margins, but these improvements were somewhat offset by a decline in gasoline margins in two of our refining regions. Throughput margin per barrel also benefited from wider sour crude oil differentials. The impact of these factors on our throughput margin per barrel is described below.

- Changes in the margin we receive for our products have a material impact on our results of operations. For example, the WTI-based benchmark reference margin for U.S. Gulf Coast ultra-low-sulfur diesel was \$11.14 per barrel for the year ended December 31, 2010 compared to \$8.02 per barrel for the year ended December 31, 2009, representing a favorable increase of \$3.12 per barrel. Similar increases in distillate margins were experienced in other regions. We estimate that the increase in margin for distillates had an \$820 million positive impact on our overall refining margin, year over year, as we produced 712,000 BPD of distillates during the year ended December 31, 2010. Similarly, the WTI-based benchmark reference margin for U.S. Gulf Coast propylene was \$7.92 per barrel for the year ended December 31, 2010 compared to a negative margin of \$1.31 for the year ended December 31, 2009, representing a favorable increase of \$9.23 per barrel. We estimate that the increase in margin for petrochemicals (primarily propylene) had a \$199 million positive impact on our refining margin, year over year. Distillate and propylene margins were higher in 2010 as compared to 2009 due to an increase in the industrial demand for these products resulting from the ongoing recovery of the U.S. and worldwide economies and exports.
- The WTI-based benchmark reference margin for U.S. Gulf Coast conventional 87 gasoline was \$7.51 per barrel for the year ended December 31, 2010 compared to \$7.61 per barrel for the year ended December 31, 2009, representing an unfavorable decrease of \$0.10 per barrel. The WTI-based CARBOB 87 gasoline benchmark reference margins decreased year over year to an even greater extent in the U.S. West Coast region (a \$1.87 per barrel unfavorable decrease). We estimate that the decrease in gasoline margins had a \$119 million negative impact to our overall refining margin, year over year, as we produced 1.05 million BPD of gasoline during the year ended December 31, 2010. Gasoline margins were lower in 2010 as compared to 2009 despite an increase in gasoline prices during 2010. We believe that the margins for gasoline were constrained due to continued weak consumer demand and high levels of inventory. In addition, our downstream customers increased the use of ethanol as a component in transportation fuels because its price was lower than the price of gasoline.
- For the year ended December 31, 2010, the differential applicable to the price of sour crude oil as compared to the price of sweet crude oil was wider than the differential for the year ended December 31, 2009. For example, Maya crude oil, which is a type of sour crude oil, sold at a discount of \$9.13 per barrel to WTI crude oil, a type of sweet crude oil, during the year ended December 31, 2010. This compared to a discount of \$5.19 per barrel during the year ended December 31, 2009, representing a favorable increase of \$3.94 per barrel. The benefit of this wider differential, however, was offset by a reduction of 30,000 BPD of sour crude oil that we processed during 2010 as compared to 2009. We estimate that the wider differentials for all types of sour crude oil that we process, offset by reduced throughput volumes, had a \$196 million positive impact to our overall refining margin for 2010 as we processed 844,000 BPD of sour crude oils.

### ***Retail***

Retail operating income was \$346 million for the year ended December 31, 2010 compared to \$293 million for the year ended December 31, 2009. This 18 percent (or \$53 million) increase was primarily due to increases in retail fuel margins of \$57 million and merchandise margin of \$27 million, partially offset by a \$28 million increase in operating expenses.

Retail fuel margins are affected by the blending of ethanol with the gasoline sold by our retail segment. For most of 2010, ethanol was a lower cost product than gasoline and this lower cost resulted in an increase in retail fuel margins. For example, the Chicago Board of Trade (CBOT) price for a gallon of ethanol was \$0.23 less than a gallon of U.S. Gulf Coast conventional 87 gasoline for the year ended December 31, 2010, but there was little difference between the prices of these products for the year ended December 31, 2009. We estimate that the lower cost of ethanol had a \$32 million positive impact to our U.S. retail fuel margins for 2010 as approximately 80 percent of the gasoline we sold during the year ended December 31, 2010 contained 10 percent ethanol. Retail fuel margins in our Canadian retail operations increased by \$27 million due to the favorable impact from the strengthening of the Canadian dollar relative to the U.S. dollar in 2010 compared to 2009. On average, Cdn\$1 was equal to \$0.96 during 2010 compared to \$0.88 in 2009, representing an increase in value of nine percent.

Retail merchandise margins increased due to increased product pricing combined with improved product mix, and a favorable impact from the stronger Canadian dollar relative to the U.S. dollar in 2010 compared to 2009, as described above.

The increase in operating expenses was also due to the stronger Canadian dollar relative to the U.S. dollar in 2010 compared to 2009. The stronger Canadian dollar had a \$21 million unfavorable impact on the 2010 operating expenses of our Canadian retail operations compared to 2009.

### ***Ethanol***

Ethanol operating income was \$209 million for the year ended December 31, 2010 compared to \$165 million for the year ended December 31, 2009. This increase of \$44 million was primarily due to a full year of operations of the seven ethanol plants acquired in the second quarter of 2009 and the addition of three ethanol plants acquired in the first quarter of 2010, as described in Note 2 of Notes to Consolidated Financial Statements.

### ***Corporate Expenses and Other***

General and administrative expenses decreased \$41 million for the year ended December 31, 2010 compared to the year ended December 31, 2009 primarily due to a favorable settlement with an insurance company for \$40 million recorded in 2010, which offset an increase in litigation costs of \$40 million recorded in 2009. After adjusting for these items, the \$40 million increase in general and administrative expenses year over year resulted from an increase of \$21 million for incentive compensation expenses and an increase of \$18 million for environmental remediation expenses.

“Other income, net” for the year ended December 31, 2010 increased \$89 million from the year ended December 31, 2009 due to a pre-tax gain of \$55 million related to the sale of our 50 percent interest in CHOPS in November 2010 and the effect of a \$42 million loss in 2009 on changes in the fair values of an earn-out agreement and associated derivative instruments that were entered into in connection with the sale of our Krotz Springs Refinery in 2008.

“Interest and debt expense, net of capitalized interest” increased \$68 million from the year ended December 31, 2009 to the year ended December 31, 2010. This increase is composed of a \$53 million increase

in interest incurred on \$1.25 billion of debt issued in February 2010 and \$1.0 billion of debt issued in March 2009 (see Note 11 of Notes to Consolidated Financial Statements) and a \$15 million decrease in capitalized interest due to a reduction in capital expenditures between the years and the temporary suspension of activity on certain construction projects. We do not capitalize interest with respect to suspended construction projects until significant construction activities resume.

Income tax expense increased \$618 million from a \$43 million benefit in 2009 to \$575 million of expense in 2010 mainly as a result of higher operating income in 2010.

“Loss from discontinued operations, net of income taxes” decreased \$1.1 billion from the year ended December 31, 2009 to the year ended December 31, 2010 due to the after-tax loss of \$1.2 billion related to the permanent shut down of our Delaware City Refinery in the fourth quarter of 2009. The results of operations for the Paulsboro and Delaware City Refineries, including the loss and gain, respectively, on their sales, are reflected in “Loss from discontinued operations, net of income taxes” as discussed in Note 3 of Notes to Consolidated Financial Statements.

## **LIQUIDITY AND CAPITAL RESOURCES**

### ***Cash Flows for the Year Ended December 31, 2011***

Net cash provided by operating activities for the year ended December 31, 2011 was \$4.0 billion compared to \$3.0 billion for the year ended December 31, 2010. The increase in cash generated from operating activities was primarily due to the \$1.8 billion increase in operating income discussed above under “RESULTS OF OPERATIONS.” Changes in cash provided by or used for working capital during the years ended December 31, 2011 and 2010 are shown in Note 19 of Notes to Consolidated Financial Statements. Both receivables and accounts payable increased in 2011 due to significant increases in prices for gasoline, distillate, and crude oil at the end of 2011 compared to such prices at the end of 2010.

The net cash generated from operating activities during the year ended December 31, 2011 combined with \$150 million of proceeds from the sale of receivables and \$2.3 billion from available cash on hand was used mainly to:

- fund \$3.0 billion of capital expenditures and deferred turnaround and catalyst costs;
- purchase the Pembroke Refinery and the related marketing and logistics business for \$1.7 billion;
- purchase the Meraux Refinery for \$547 million;
- redeem our Series 1997B 5.4% and Series 1997C 5.4% industrial revenue bonds for \$56 million;
- make scheduled long-term note repayments of \$418 million;
- acquire the Gulf Opportunity Zone Revenue Bonds Series 2010 (GO Zone Bonds) for \$300 million;
- purchase our common stock for \$349 million; and
- pay common stock dividends of \$169 million.

### ***Cash Flows for the Year Ended December 31, 2010***

Net cash provided by operating activities for the year ended December 31, 2010 was \$3.0 billion compared to \$1.8 billion for the year ended December 31, 2009. The increase in cash generated from operating activities was due primarily to the receipt of a \$923 million tax refund in 2010. Changes in cash provided by or used for working capital during the years ended December 31, 2010 and 2009 are shown in Note 19 of Notes to Consolidated Financial Statements. Both receivables and accounts payable increased in 2010 due to significant increases in prices for gasoline, distillate, and crude oil at the end of 2010 compared to such prices at the end of 2009.

The net cash generated from operating activities during the year ended December 31, 2010, combined with \$1.5 billion of proceeds from the issuance of \$400 million of 4.5% notes due in February 2015, \$850 million of 6.125% notes due in February 2020, and \$300 million of GO Zone Bonds as discussed in Note 11 of Notes to Consolidated Financial Statements, \$547 million of proceeds from the sale of the Paulsboro Refinery, \$220 million of proceeds from the sale of the shutdown Delaware City Refinery assets and associated terminal and pipeline assets, and \$330 million of proceeds from the sale of our 50 percent interest in CHOPS as discussed in Note 3 of Notes to Consolidated Financial Statements, were used mainly to:

- fund \$2.3 billion of capital expenditures and deferred turnaround and catalyst costs;
- redeem our 7.5% senior notes for \$294 million and our 6.75% senior notes for \$190 million;
- make scheduled long-term note repayments of \$33 million;
- make net repayments under our accounts receivable sales facility of \$100 million;
- pay common stock dividends of \$114 million;
- purchase additional ethanol facilities for \$260 million; and
- increase available cash on hand by \$2.5 billion.

Cash flows related to the discontinued operations of the Paulsboro and Delaware City Refineries have been combined with the cash flows from continuing operations within each category in the statements of cash flows for the years ended December 31, 2010 and 2009 and are summarized as follows (in millions):

	Year Ended December 31,		
	2011	2010	2009
<b>Cash provided by (used in) operating activities:</b>			
Paulsboro Refinery	\$ —	\$ 88	\$ 10
Delaware City Refinery	—	(26)	(126)
<b>Cash used in investing activities:</b>			
Paulsboro Refinery	—	(41)	(121)
Delaware City Refinery	—	—	(153)

### **Capital Investments**

Our operations, especially those of our refining segment, are highly capital intensive. Each of our refineries comprises a large base of property assets, consisting of a series of interconnected, highly integrated and interdependent crude oil processing facilities and supporting logistical infrastructure (Units), and these Units are continuously improved. Improvements consist of the addition of new Units and betterments of existing Units, and the cost of these improvements is significant. We have historically acquired our refineries at amounts significantly below their replacement costs, whereas our improvements are made at full replacement value. As such, the costs for improving our refinery assets increase over time and are significant in relation to the amounts we paid to acquire our refineries. We plan for these improvements by developing a multi-year capital program that is updated and revised based on changing internal and external factors.

We make improvements to our refineries in order to maintain and enhance their operating reliability, to meet environmental obligations with respect to reducing emissions and removing prohibited elements from the products we produce, or to enhance their profitability. Reliability and environmental improvements generally do not increase the throughput capacities of our refineries. Improvements that enhance refinery profitability may increase throughput capacity, but many of these improvements allow our refineries to process higher volumes of sour crude oil, which lowers our feedstock costs, and enables us to refine crude oil into products with higher market values. Therefore, many of our improvements do not increase throughput capacity.



significantly.

During the year ended December 31, 2011, we expended \$2.4 billion for capital expenditures and \$629 million for deferred turnaround and catalyst costs. Capital expenditures for the year ended December 31, 2011 included \$241 million of costs related to environmental projects.

For 2012, we expect to incur approximately \$3.4 billion for capital investments, including approximately \$2.8 billion for capital expenditures (approximately \$140 million of which is for environmental projects) and approximately \$560 million for deferred turnaround and catalyst costs. The capital expenditure estimate excludes expenditures related to future strategic acquisitions. We continuously evaluate our capital budget and make changes as conditions warrant.

### **Contractual Obligations**

Our contractual obligations as of December 31, 2011 are summarized below (in millions).

	Payments Due by Period						Total
	2012	2013	2014	2015	2016	Thereafter	
Debt and capital lease obligations (including interest on capital lease obligations)	\$ 1,015	\$ 494	\$ 209	\$ 483	\$ 8	\$ 5,615	\$ 7,824
Operating lease obligations	291	198	131	106	86	294	1,106
Purchase obligations	36,303	3,088	962	407	360	899	42,019
Other long-term liabilities	—	176	152	145	137	1,271	1,881
Total	\$ 37,609	\$ 3,956	\$ 1,454	\$ 1,141	\$ 591	\$ 8,079	\$ 52,830

### **Debt and Capital Lease Obligations**

During 2011, the following activity occurred related to our non-bank debt:

- in December 2011, we redeemed our Series 1997B 5.4% and Series 1997C 5.4% industrial revenue bonds for \$56 million, or 100% of their stated values;
- in May 2011, we made a scheduled debt repayment of \$200 million related to our 6.125% senior notes;
- in April 2011, we made scheduled debt repayments of \$8 million related to our Series 1997A 5.45%, Series 1997B 5.4%, and Series 1997C 5.4% industrial revenue bonds;
- in February 2011, we made a scheduled debt repayment of \$210 million related to our 6.75% senior notes; and
- in February 2011, we paid \$300 million to acquire the GO Zone Bonds, which were subject to mandatory tender.

We have an accounts receivable sales facility with a group of third-party entities and financial institutions to sell on a revolving basis up to \$1 billion of eligible trade receivables. We amended our agreement in June 2011 to extend the maturity date to June 2012. As of December 31, 2011, the amount of eligible receivables sold was \$250 million. During the year ended December 31, 2011, we sold \$150 million of eligible receivables under this program and made no repayments. All amounts outstanding under this facility are reflected as debt.

Our agreements do not have rating agency triggers that would automatically require us to post additional collateral. However, in the event of certain downgrades of our senior unsecured debt to below investment grade ratings by S&P, Moody's and Fitch, the cost of borrowings under some of our bank credit facilities and other arrangements would increase. As of December 31, 2011, all of our ratings on our senior unsecured debt are at or above investment grade level as follows:

<b>Rating Agency</b>	<b>Rating</b>
Standard & Poor's Ratings Services	BBB (stable outlook)
Moody's Investors Service	Baa2 (stable outlook)
Fitch Ratings	BBB (stable outlook)

We cannot provide assurance that these ratings will remain in effect for any given period of time or that one or more of these ratings will not be lowered or withdrawn entirely by a rating agency. We note that these credit ratings are not recommendations to buy, sell, or hold our securities and may be revised or withdrawn at any time by the rating agency. Each rating should be evaluated independently of any other rating. Any future reduction below investment grade or withdrawal of one or more of our credit ratings could have a material adverse impact on our ability to obtain short- and long-term financing and the cost of such financings.

#### **Operating Lease Obligations**

Our operating lease obligations include leases for land, office facilities and equipment, retail facilities and equipment, transportation equipment, time charters for ocean-going tankers and coastal vessels, dock facilities, and various facilities and equipment used in the storage, transportation, production, and sale of refinery feedstocks, refined products, and corn inventories. Operating lease obligations include all operating leases that have initial or remaining noncancelable terms in excess of one year, and are not reduced by minimum rentals to be received by us under subleases.

#### **Purchase Obligations**

A purchase obligation is an enforceable and legally binding agreement to purchase goods or services that specifies significant terms, including (i) fixed or minimum quantities to be purchased, (ii) fixed, minimum, or variable price provisions, and (iii) the approximate timing of the transaction. We have various purchase obligations including industrial gas and chemical supply arrangements (such as hydrogen supply arrangements), crude oil and other feedstock supply arrangements, and various throughput and terminalling agreements. We enter into these contracts to ensure an adequate supply of utilities and feedstock and adequate storage capacity to operate our refineries. Substantially all of our purchase obligations are based on market prices or adjustments based on market indices. Certain of these purchase obligations include fixed or minimum volume requirements, while others are based on our usage requirements. The purchase obligation amounts shown in the table above include both short- and long-term obligations and are based on (a) fixed or minimum quantities to be purchased and (b) fixed or estimated prices to be paid based on current market conditions. As of December 31, 2011, our short- and long-term purchase obligations increased by approximately \$6 billion from the amount reported as of December 31, 2010. The increase is primarily attributable to higher crude oil and other feedstock prices at December 31, 2011 compared to December 31, 2010.

#### **Other Long-term Liabilities**

Our other long-term liabilities are described in Note 10 of Notes to Consolidated Financial Statements. For purposes of reflecting amounts for other long-term liabilities in the table above, we have made our best estimate of expected payments for each type of liability based on information available as of December 31, 2011.

**Other Commercial Commitments**

As of December 31, 2011, our committed lines of credit were as follows (in millions):

	<b>Borrowing Capacity</b>	<b>Expiration</b>	<b>Outstanding Letters of Credit</b>
Letter of credit facilities	\$ 500	June 2012	\$ 300
U.S. revolving credit facility	\$ 3,000	December 2016	\$ 119
Canadian revolving credit facility	C\$ 115	December 2012	C\$ 20

As of December 31, 2011, we had no amounts borrowed under our revolving credit facilities. The letters of credit outstanding as of December 31, 2011 expire during 2012 and 2013.

**Other Matters Impacting Liquidity and Capital Resources****Stock Purchase Programs**

As of December 31, 2011, we have approvals under common stock purchase programs previously approved by our board of directors to purchase approximately \$3.5 billion of our common stock.

**Pension Plan Funded Status**

During 2011, we contributed \$204 million to our pension plans that have minimum funding requirements. As of December 31, 2011, the fair value of the assets of these plans was approximately 88 percent of the projected benefit obligations under these plans.

We have minimum required contributions of \$2 million to these pension plans during 2012; however, we plan to contribute approximately \$100 million to our pension plans during 2012.

**Environmental Matters**

Our operations are subject to extensive environmental regulations by governmental authorities relating to the discharge of materials into the environment, waste management, pollution prevention measures, greenhouse gas emissions, and characteristics and composition of gasolines and distillates. Because environmental laws and regulations are becoming more complex and stringent and new environmental laws and regulations are continuously being enacted or proposed, the level of future expenditures required for environmental matters could increase in the future. In addition, any major upgrades in any of our operating facilities could require material additional expenditures to comply with environmental laws and regulations. See Note 12 of Notes to Consolidated Financial Statements for a further discussion of our environmental matters.

**Tax Matters**

We are subject to extensive tax liabilities imposed by multiple jurisdictions, including income taxes, transactional taxes (excise/duty, sales/use, and value-added taxes), payroll taxes, franchise taxes, withholding taxes, and ad valorem taxes. New tax laws and regulations and changes in existing tax laws and regulations are continuously being enacted or proposed that could result in increased expenditures for tax liabilities in the future. Many of these liabilities are subject to periodic audits by the respective taxing authority. Subsequent changes to our tax liabilities as a result of these audits may subject us to interest and penalties. See Notes 12 and 16 of Notes to Consolidated Financial Statements for a further discussion of our tax matters.

As of December 31, 2011, the Internal Revenue Service (IRS) has ongoing tax audits related to our U.S. federal tax returns from 2002 through 2009, as discussed in Note 16 of Notes to Consolidated Financial Statements. We have received Revenue Agent Reports on our tax years for 2002 through 2007 and we are vigorously contesting many of the tax positions and assertions from the IRS. Although we believe our tax liabilities are fairly stated and properly reflected in our financial statements, should the IRS eventually prevail, it could result in a material amount of our deferred tax liabilities being reclassified to current liabilities which could have a material adverse effect on our liquidity.

#### **Cash Held by Our International Subsidiaries**

We operate in countries outside the U.S. through subsidiaries incorporated in these countries, and the earnings of these subsidiaries are taxed by the countries in which they are incorporated. We intend to reinvest these earnings indefinitely in our international operations even though we are not restricted from repatriating such earnings to the U.S. in the form of cash dividends. Should we decide to repatriate such earnings, we would incur and pay taxes on the amounts repatriated. In addition, such repatriation could cause us to record deferred tax expense that could significantly impact our results of operations, as further discussed in Note 16 of Notes to Consolidated Financial Statements. We believe, however, that a substantial portion of our international cash can be returned to the U.S. without significant tax consequences through means other than a repatriation of earnings. As of December 31, 2011, \$822 million of our cash and temporary cash investments was held by our international subsidiaries.

#### **Financial Regulatory Reform**

In July 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (Wall Street Reform Act). The Wall Street Reform Act, among many things, creates new regulations for companies that extend credit to consumers and requires most derivative instruments to be traded on exchanges and routed through clearinghouses. Rules to implement the Wall Street Reform Act are being finalized and therefore, the impact to our operations is not yet known. However, implementation could result in higher margin requirements, higher clearing costs, and more reporting requirements with respect to our derivative activities.

#### **Concentration of Customers**

Our refining and marketing operations have a concentration of customers in the refining industry and customers who are refined product wholesalers and retailers. These concentrations of customers may impact our overall exposure to credit risk, either positively or negatively, in that these customers may be similarly affected by changes in economic or other conditions. However, we believe that our portfolio of accounts receivable is sufficiently diversified to the extent necessary to minimize potential credit risk. Historically, we have not had any significant problems collecting our accounts receivable.

#### **Sources of Liquidity**

We believe that we have sufficient funds from operations and, to the extent necessary, from borrowings under our credit facilities, to fund our ongoing operating requirements. We expect that, to the extent necessary, we can raise additional funds from time to time through equity or debt financings in the public and private capital markets or the arrangement of additional credit facilities. However, there can be no assurances regarding the availability of any future financings or additional credit facilities or whether such financings or additional credit facilities can be made available on terms that are acceptable to us.

## **NEW ACCOUNTING PRONOUNCEMENTS**

As discussed in Note 1 of Notes to Consolidated Financial Statements, certain new financial accounting pronouncements have been issued that either have already been reflected in the accompanying financial statements, or will become effective for our financial statements at various dates in the future. The adoption of these pronouncements has not had, and is not expected to have, a material effect on our financial statements.

## **CRITICAL ACCOUNTING POLICIES INVOLVING CRITICAL ACCOUNTING ESTIMATES**

The preparation of financial statements in accordance with U.S. generally accepted accounting principles requires us to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates. The following summary provides further information about our critical accounting policies that involve critical accounting estimates, and should be read in conjunction with Note 1 of Notes to Consolidated Financial Statements, which summarizes our significant accounting policies. The following accounting policies involve estimates that are considered critical due to the level of sensitivity and judgment involved, as well as the impact on our financial position and results of operations. We believe that all of our estimates are reasonable.

### ***Property, Plant and Equipment***

The cost of property, plant and equipment (property assets) purchased or constructed, including betterments of property assets, are capitalized. The cost of repairs to and normal maintenance of property assets, however, is expensed as incurred. Betterments of property assets are those which either extend the useful life, increase the capacity or improve the operating efficiency of the asset, or improve the safety of our operations. The cost of property assets constructed includes interest and certain overhead costs allocable to the construction activities.

Our operations, especially those of our refining segment, are highly capital intensive. Each of our refineries comprises a large base of property assets, consisting of a series of interconnected, highly integrated and interdependent crude oil processing facilities and supporting logistical infrastructure (Units), and these Units are continuously improved. Improvements consist of the addition of new Units and betterments of existing Units. We plan for these improvements by developing a multi-year capital program that is updated and revised based on changing internal and external factors.

Depreciation of property assets used in our refining segment is recorded on a straight-line basis over the estimated useful lives of these assets primarily using the composite method of depreciation. We maintain a separate composite group of property assets for each of our refineries. We estimate the useful life of each group based on an evaluation of the property assets comprising the group, and such evaluations consist of, but are not limited to, the physical inspection of the assets to determine their condition, consideration of the manner in which the assets are maintained, assessment of the need to replace assets, and evaluation of the manner in which improvements impact the useful life of the group. The estimated useful lives of our composite groups range primarily from 25 to 30 years.

Under the composite method of depreciation, the cost of an improvement is added to the composite group to which it relates and is depreciated over that group's estimated useful life. We design improvements to our refineries in accordance with engineering specifications, design standards and practices accepted in our industry, and these improvements have design lives consistent with our estimated useful lives. Therefore, we believe the use of the group life to depreciate the cost of improvements made to the group is reasonable because the estimated useful life of each improvement is consistent with that of the group. It should be noted, however, that factors such as competition, regulation, or environmental matters could cause us to change our estimates, thus impacting depreciation expense in the future.

Also under the composite method of depreciation, the historical cost of a minor property asset (net of salvage value) that is retired or replaced is charged to accumulated depreciation and no gain or loss is recognized in income. However, a gain or loss is recognized in income for a major property asset that is retired, replaced or sold and for an abnormal disposition of a property asset (primarily involuntary conversions). Gains and losses are reflected in depreciation and amortization expense, unless such amounts are reported separately due to materiality.

### ***Impairment of Assets***

Long-lived assets, which include property, plant and equipment, intangible assets, and refinery turnaround and catalyst costs, are tested for recoverability whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable. An impairment loss should be recognized if the carrying amount of the asset exceeds its fair value.

In order to test for recoverability, we must make estimates of projected cash flows related to the asset being evaluated, which include, but are not limited to, assumptions about the use or disposition of the asset, its estimated remaining life, and future expenditures necessary to maintain its existing service potential. In order to determine fair value, management must make certain estimates and assumptions including, among other things, an assessment of market conditions, projected cash flows, investment rates, interest/equity rates, and growth rates, that could significantly impact the fair value of the asset being tested for impairment. Our impairment evaluations are based on assumptions that we deem to be reasonable. Providing sensitivity analyses if other assumptions were used in performing the impairment evaluations is not practicable due to the significant number of assumptions involved in the estimates. See Note 4 of Notes to Consolidated Financial Statements for a further discussion of our asset impairment analysis and certain losses resulting from those analyses.

We evaluate our equity method investments for impairment when there is evidence that we may not be able to recover the carrying amount of our investments or the investee is unable to sustain an earnings capacity that justifies the carrying amount. A loss in the value of an investment that is other than a temporary decline is recognized currently in earnings, and is based on the difference between the estimated current fair value of the investment and its carrying amount.

### ***Environmental Matters***

Our operations are subject to extensive environmental regulations by governmental authorities relating primarily to the discharge of materials into the environment, waste management, and pollution prevention measures. Future legislative action and regulatory initiatives, as discussed in Note 12 of Notes to Consolidated Financial Statements could result in changes to required operating permits, additional remedial actions, or increased capital expenditures and operating costs that cannot be assessed with certainty at this time.

Accruals for environmental liabilities are based on best estimates of probable undiscounted future costs over a 20-year time period using currently available technology and applying current regulations, as well as our own internal environmental policies. However, environmental liabilities are difficult to assess and estimate due to uncertainties related to the magnitude of possible remediation, the timing of such remediation, and the determination of our obligation in proportion to other parties. Such estimates are subject to change due to many factors, including the identification of new sites requiring remediation, changes in environmental laws and regulations and their interpretation, additional information related to the extent and nature of remediation efforts, and potential improvements in remediation technologies. An estimate of the sensitivity to earnings for changes in those factors is not practicable due to the number of contingencies that must be assessed, the number of underlying assumptions, and the wide range of possible outcomes.

The amount of and changes in our accruals for environmental matters as of and for the years ended December 31, 2011, 2010, and 2009 is included in Note 10 of Notes to Consolidated Financial Statements.

### ***Pension and Other Postretirement Benefit Obligations***

We have significant pension and other postretirement benefit liabilities and costs that are developed from actuarial valuations. Inherent in these valuations are key assumptions including discount rates, expected return on plan assets, future compensation increases, and health care cost trend rates. Changes in these assumptions are primarily influenced by factors outside our control. For example, the discount rate assumption represents a yield curve comprised of various long-term bonds that have an average rating of double-A when averaging all available ratings by the recognized rating agencies, while the expected return on plan assets is based on a compounded return calculated assuming an asset allocation that is representative of the asset mix in our pension plans. These assumptions can have a significant effect on the amounts reported in our financial statements. For example, a 0.25 percent decrease in the assumptions related to the discount rate or expected return on plan assets or a 0.25 percent increase in the assumptions related to the health care cost trend rate or rate of compensation increase would have the following effects on the projected benefit obligation as of December 31, 2011 and net periodic benefit cost for the year ending December 31, 2012 (in millions):

	<b>Pension Benefits</b>	<b>Other Postretirement Benefits</b>
<b>Increase in projected benefit obligation resulting from:</b>		
Discount rate decrease	\$ 85	\$ 13
Compensation rate increase	33	—
Health care cost trend rate increase	—	5
<b>Increase in expense resulting from:</b>		
Discount rate decrease	14	1
Expected return on plan assets decrease	4	—
Compensation rate increase	8	—
Health care cost trend rate increase	—	1

See Note 14 of Notes to Consolidated Financial Statements for a further discussion of our pension and other postretirement benefit obligations.

### ***Tax Matters***

We are subject to extensive tax liabilities imposed by multiple jurisdictions, including income taxes, transactional taxes (excise/duty, sales/use, and value-added taxes), payroll taxes, franchise taxes, withholding taxes, and ad valorem taxes. New tax laws and regulations and changes in existing tax laws and regulations are continuously being enacted or proposed that could result in increased expenditures for tax liabilities that cannot be predicted at this time. In addition, we have received claims from various jurisdictions related to certain tax matters. Tax liabilities include potential assessments of penalty and interest amounts.

We record tax liabilities based on our assessment of existing tax laws and regulations. A contingent loss related to a transactional tax claim is recorded if the loss is both probable and estimable. The recording of our tax liabilities requires significant judgments and estimates. Actual tax liabilities can vary from our

estimates for a variety of reasons, including different interpretations of tax laws and regulations and different assessments of the amount of tax due. In addition, in determining our income tax provision, we must assess the likelihood that our deferred tax assets, primarily consisting of net operating loss and tax credit carryforwards, will be recovered through future taxable income. Significant judgment is required in estimating the amount of valuation allowance, if any, that should be recorded against those deferred income tax assets. If our actual results of operations differ from such estimates or our estimates of future taxable income change, the valuation allowance may need to be revised. However, an estimate of the sensitivity to earnings that would result from changes in the assumptions and estimates used in determining our tax liabilities is not practicable due to the number of assumptions and tax laws involved, the various potential interpretations of the tax laws, and the wide range of possible outcomes. See Notes 12 and 16 of Notes to Consolidated Financial Statements for a further discussion of our tax liabilities.

***Legal Matters***

A variety of claims have been made against us in various lawsuits. We record a liability related to a loss contingency attributable to such legal matters if we determine the loss to be both probable and estimable. The recording of such liabilities requires judgments and estimates, the results of which can vary significantly from actual litigation results due to differing interpretations of relevant law and differing opinions regarding the degree of potential liability and the assessment of reasonable damages. However, an estimate of the sensitivity to earnings if other assumptions were used in recording our legal liabilities is not practicable due to the number of contingencies that must be assessed and the wide range of reasonably possible outcomes, both in terms of the probability of loss and the estimates of such loss.



**ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK****COMMODITY PRICE RISK**

We are exposed to market risks related to the volatility in the price of crude oil, refined products (primarily gasoline and distillate), grain (primarily corn), and natural gas used in our operations. To reduce the impact of price volatility on our results of operations and cash flows, we use commodity derivative instruments, including swaps, futures, and options to hedge:

- inventories and firm commitments to purchase inventories generally for amounts by which our current year inventory levels (determined on a last-in, first-out (LIFO) basis) differ from our previous year-end LIFO inventory levels and
- forecasted feedstock and refined product purchases, refined product sales, natural gas purchases, and corn purchases to lock in the price of these forecasted transactions at existing market prices that we deem favorable.

We use the futures markets for the available liquidity, which provides greater flexibility in transacting our hedging and trading operations. We use swaps primarily to manage our price exposure. We also enter into certain commodity derivative instruments for trading purposes to take advantage of existing market conditions related to future results of operations and cash flows.

Our positions in commodity derivative instruments are monitored and managed on a daily basis by a risk control group to ensure compliance with our stated risk management policy that has been approved by our board of directors.

The following sensitivity analysis includes all positions at the end of the reporting period with which we have market risk (in millions):

	Derivative Instruments Held For	
	Non-Trading Purposes	Trading Purposes
<b>December 31, 2011</b>		
Gain (loss) in fair value resulting from:		
10% increase in underlying commodity prices	\$ (156)	\$ 1
10% decrease in underlying commodity prices	156	2
<b>December 31, 2010</b>		
Gain (loss) in fair value resulting from:		
10% increase in underlying commodity prices	(199)	—
10% decrease in underlying commodity prices	189	(1)

See Note 21 of Notes to Consolidated Financial Statements for notional volumes associated with these derivative contracts as of December 31, 2011.

## COMPLIANCE PROGRAM PRICE RISK

We are exposed to market risks related to the volatility in the price of financial instruments associated with various governmental and regulatory compliance programs that we must purchase in the open market to comply with these programs. To reduce the impact of this risk on our results of operations and cash flows, we may enter into derivative instruments, such as futures. As of December 31, 2011, there was no significant gain or loss in the fair value of derivative instruments that would result from a 10 percent increase or decrease in the underlying price of the futures contracts. See Note 21 of Notes to Consolidated Financial Statements for a discussion about these compliance programs and notional volumes associated with these derivative contracts as of December 31, 2011.

## INTEREST RATE RISK

The following table provides information about our debt instruments, excluding capital lease obligations (dollars in millions), the fair values of which are sensitive to changes in interest rates. Principal cash flows and related weighted-average interest rates by expected maturity dates are presented. We had no interest rate derivative instruments outstanding as of December 31, 2011 and 2010.

	December 31, 2011							Total	Fair Value
	Expected Maturity Dates								
	2012	2013	2014	2015	2016	There-after			
<b>Debt:</b>									
Fixed rate	\$ 754	\$ 484	\$ 200	\$ 475	\$ —	\$ 5,578	\$ 7,491	\$ 9,048	
Average interest rate	6.9%	5.5%	4.8%	5.2%	—%	7.3%	6.9%		
Floating rate	\$ 250	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 250	\$ 250	
Average interest rate	0.6%	—%	—%	—%	—%	—%	0.6%		

	December 31, 2010						Total	Fair Value
	Expected Maturity Dates							
	2011	2012	2013	2014	2015	There-after		
<b>Debt:</b>								
Fixed rate	\$ 418	\$ 759	\$ 489	\$ 209	\$ 484	\$ 5,605	\$ 7,964	\$ 9,092
Average interest rate	6.4%	6.9%	5.5%	4.8%	5.2%	7.2%	6.9%	
Floating rate	\$ 400	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 400	\$ 400
Average interest rate	0.5%	—%	—%	—%	—%	—%	0.5%	

## FOREIGN CURRENCY RISK

As of December 31, 2011, we had commitments to purchase \$751 million of U.S. dollars. Our market risk was minimal on the contracts, as they matured on or before January 26, 2012, resulting in a \$3 million loss in the first quarter of 2012.

## ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

### MANAGEMENT’S REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING

Our management is responsible for establishing and maintaining adequate “internal control over financial reporting” (as defined in Rule 13a-15(f) under the Securities Exchange Act of 1934) for Valero. Our management evaluated the effectiveness of Valero’s internal control over financial reporting as of December 31, 2011. In its evaluation, management used the criteria established in *Internal Control – Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Management believes that as of December 31, 2011, our internal control over financial reporting was effective based on those criteria.

Management’s evaluation of and conclusion regarding the effectiveness of our internal control over financial reporting excludes the internal control over financial reporting of Valero Energy Ltd and its subsidiaries (VEL), which we acquired on August 1, 2011 and of Valero Refining-Meraux LLC (Meraux), the operations of which we acquired on October 1, 2011, (as described in Note 2 of Notes to Consolidated Financial Statements). The VEL and Meraux acquisitions contributed approximately 7 percent of our total operating revenues for the year ended December 31, 2011 and accounted for approximately 10 percent of our total assets as of December 31, 2011. We plan to fully integrate VEL and Meraux into our internal control over financial reporting in 2012.

Our independent registered public accounting firm has issued an attestation report on the effectiveness of our internal control over financial reporting, which begins on page 58 of this report.

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders  
of Valero Energy Corporation and subsidiaries:

We have audited the accompanying consolidated balance sheets of Valero Energy Corporation and subsidiaries (the Company) as of December 31, 2011 and 2010, and the related consolidated statements of income, equity, cash flows, and comprehensive income for each of the years in the three-year period ended December 31, 2011. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States) (the PCAOB). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Valero Energy Corporation and subsidiaries as of December 31, 2011 and 2010, and the results of their operations and their cash flows for each of the years in the three-year period ended December 31, 2011, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the PCAOB, the Company's internal control over financial reporting as of December 31, 2011, based on criteria established in *Internal Control – Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission, and our report dated February 24, 2012 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

/s/ KPMG LLP

San Antonio, Texas  
February 24, 2012

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders  
of Valero Energy Corporation and subsidiaries:

We have audited Valero Energy Corporation and subsidiaries' (the Company's) internal control over financial reporting as of December 31, 2011, based on criteria established in *Internal Control – Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States) (the PCAOB). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, Valero Energy Corporation and subsidiaries maintained, in all material respects, effective internal control over financial reporting as of December 31, 2011, based on criteria established in *Internal Control – Integrated Framework* issued by COSO.

The Company acquired Valero Energy Ltd and its subsidiaries (VEL) on August 1, 2011 and the operations of Valero Refining-Meraux LLC (Meraux) on October 1, 2011, and management excluded VEL's and Meraux's internal control over financial reporting from its assessment of the effectiveness of the Company's internal control over financial reporting as of December 31, 2011. The VEL and Meraux acquisitions

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contributed approximately 7 percent of the Company's total operating revenues for the year ended December 31, 2011 and accounted for approximately 10 percent of its total assets as of December 31, 2011. Our audit of internal control over financial reporting of the Company also excluded an evaluation of the internal control over financial reporting of VEL and Meraux.

We also have audited, in accordance with the standards of the PCAOB, the consolidated balance sheets of Valero Energy Corporation and subsidiaries as of December 31, 2011 and 2010, and the related consolidated statements of income, equity, cash flows, and comprehensive income for each of the years in the three-year period ended December 31, 2011, and our report dated February 24, 2012 expressed an unqualified opinion on those consolidated financial statements.

/s/ KPMG LLP

San Antonio, Texas  
February 24, 2012

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED BALANCE SHEETS**  
(Millions of Dollars, Except Par Value)

	December 31,	
	2011	2010
<b>ASSETS</b>		
Current assets:		
Cash and temporary cash investments	\$ 1,024	\$ 3,334
Receivables, net	8,706	4,583
Inventories	5,623	4,947
Income taxes receivable	212	343
Deferred income taxes	283	190
Prepaid expenses and other	124	121
Total current assets	15,972	13,518
Property, plant and equipment, at cost	32,253	28,921
Accumulated depreciation	(7,076)	(6,252)
Property, plant and equipment, net	25,177	22,669
Intangible assets, net	227	224
Deferred charges and other assets, net	1,407	1,210
Total assets	\$ 42,783	\$ 37,621
<b>LIABILITIES AND EQUITY</b>		
Current liabilities:		
Current portion of debt and capital lease obligations	\$ 1,009	\$ 822
Accounts payable	9,472	6,441
Accrued expenses	595	590
Taxes other than income taxes	1,264	671
Income taxes payable	119	3
Deferred income taxes	249	257
Total current liabilities	12,708	8,784
Debt and capital lease obligations, less current portion	6,732	7,515
Deferred income taxes	5,017	4,530
Other long-term liabilities	1,881	1,767
Commitments and contingencies		
Equity:		
Valero Energy Corporation stockholders' equity:		
Common stock, \$0.01 par value; 1,200,000,000 shares authorized; 673,501,593 and 673,501,593 shares issued	7	7
Additional paid-in capital	7,486	7,704
Treasury stock, at cost; 116,689,450 and 105,113,545 common shares	(6,475)	(6,462)
Retained earnings	15,309	13,388
Accumulated other comprehensive income	96	388
Total Valero Energy Corporation stockholders' equity	16,423	15,025
Noncontrolling interest	22	—
Total equity	16,445	15,025
Total liabilities and equity	\$ 42,783	\$ 37,621

See Notes to Consolidated Financial Statements.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF INCOME**  
(Millions of Dollars, Except per Share Amounts)

	Year Ended December 31,		
	2011	2010	2009
Operating revenues (a)	\$ 125,987	\$ 82,233	\$ 64,599
Costs and expenses:			
Cost of sales	115,719	74,458	58,686
Operating expenses:			
Refining	3,406	2,944	2,880
Retail	678	654	626
Ethanol	399	363	169
General and administrative expenses	571	531	572
Depreciation and amortization expense	1,534	1,405	1,361
Asset impairment loss	—	2	222
Total costs and expenses	122,307	80,357	64,516
Operating income	3,680	1,876	83
Other income, net	43	106	17
Interest and debt expense, net of capitalized interest	(401)	(484)	(416)
Income (loss) from continuing operations before income tax expense (benefit)	3,322	1,498	(316)
Income tax expense (benefit)	1,226	575	(43)
Income (loss) from continuing operations	2,096	923	(273)
Loss from discontinued operations, net of income taxes	(7)	(599)	(1,709)
Net income (loss)	2,089	324	(1,982)
Less: Net loss attributable to noncontrolling interests	(1)	—	—
Net income (loss) attributable to Valero Energy Corporation stockholders	\$ 2,090	\$ 324	\$ (1,982)
<b>Net income (loss) attributable to Valero Energy Corporation stockholders:</b>			
Continuing operations	\$ 2,097	\$ 923	\$ (273)
Discontinued operations	(7)	(599)	(1,709)
Total	\$ 2,090	\$ 324	\$ (1,982)
<b>Earnings per common share:</b>			
Continuing operations	\$ 3.70	\$ 1.63	\$ (0.50)
Discontinued operations	(0.01)	(1.06)	(3.17)
Total	\$ 3.69	\$ 0.57	\$ (3.67)
Weighted-average common shares outstanding (in millions)	563	563	541
<b>Earnings per common share – assuming dilution:</b>			
Continuing operations	\$ 3.69	\$ 1.62	\$ (0.50)
Discontinued operations	(0.01)	(1.05)	(3.17)
Total	\$ 3.68	\$ 0.57	\$ (3.67)
Weighted-average common shares outstanding – assuming dilution (in millions)	569	568	541
Dividends per common share	\$ 0.30	\$ 0.20	\$ 0.60
<b>Supplemental information:</b>			
(a) Includes excise taxes on sales by our U.S. retail system	\$ 892	\$ 891	\$ 873

See Notes to Consolidated Financial Statements.



**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF EQUITY**  
(Millions of Dollars)

Valero Energy Corporation Stockholders' Equity								
	Common Stock	Additional Paid-in Capital	Treasury Stock	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Total	Non-controlling Interest	Total Equity
<b>Balance as of December 31, 2008</b>	\$ 6	\$ 7,190	\$ (6,884)	\$ 15,484	\$ (176)	\$ 15,620	\$ —	\$ 15,620
Net loss	—	—	—	(1,982)	—	(1,982)	—	(1,982)
Dividends on common stock	—	—	—	(324)	—	(324)	—	(324)
Sale of common stock	1	798	—	—	—	799	—	799
Stock-based compensation expense	—	68	—	—	—	68	—	68
Tax deduction less than stock-based compensation expense	—	(4)	—	—	—	(4)	—	(4)
Transactions in connection with stock-based compensation plans:								
Stock issuances	—	(156)	167	—	—	11	—	11
Stock repurchases	—	—	(4)	—	—	(4)	—	(4)
Other comprehensive income	—	—	—	—	541	541	—	541
<b>Balance as of December 31, 2009</b>	<b>7</b>	<b>7,896</b>	<b>(6,721)</b>	<b>13,178</b>	<b>365</b>	<b>14,725</b>	<b>—</b>	<b>14,725</b>
Net income	—	—	—	324	—	324	—	324
Dividends on common stock	—	—	—	(114)	—	(114)	—	(114)
Stock-based compensation expense	—	54	—	—	—	54	—	54
Tax deduction in excess of stock-based compensation expense	—	6	—	—	—	6	—	6
Transactions in connection with stock-based compensation plans:								
Stock issuances	—	(252)	272	—	—	20	—	20
Stock repurchases	—	—	(13)	—	—	(13)	—	(13)
Other comprehensive income	—	—	—	—	23	23	—	23
<b>Balance as of December 31, 2010</b>	<b>7</b>	<b>7,704</b>	<b>(6,462)</b>	<b>13,388</b>	<b>388</b>	<b>15,025</b>	<b>—</b>	<b>15,025</b>
Net income	—	—	—	2,090	—	2,090	(1)	2,089
Dividends on common stock	—	—	—	(169)	—	(169)	—	(169)
Stock-based compensation expense	—	57	—	—	—	57	—	57
Tax deduction in excess of stock-based compensation expense	—	22	—	—	—	22	—	22
Transactions in connection with stock-based compensation plans:								
Stock issuances	—	(287)	336	—	—	49	—	49
Stock repurchases	—	(10)	(349)	—	—	(359)	—	(359)
Contributions from noncontrolling interest in DGD	—	—	—	—	—	—	23	23
Recognition of noncontrolling interests in MLP in connection with Pembroke Acquisition	—	—	—	—	—	—	5	5
Acquisition of noncontrolling interests in MLP	—	—	—	—	—	—	(5)	(5)
Other comprehensive loss	—	—	—	—	(292)	(292)	—	(292)
<b>Balance as of December 31, 2011</b>	<b>\$ 7</b>	<b>\$ 7,486</b>	<b>\$ (6,475)</b>	<b>\$ 15,309</b>	<b>\$ 96</b>	<b>\$ 16,423</b>	<b>\$ 22</b>	<b>\$ 16,445</b>

See Notes to Consolidated Financial Statements.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF CASH FLOWS**  
(Millions of Dollars)

	Year Ended December 31,		
	2011	2010	2009
<b>Cash flows from operating activities:</b>			
Net income (loss)	\$ 2,089	\$ 324	\$ (1,982)
<b>Adjustments to reconcile net income (loss) to net cash provided by operating activities:</b>			
Depreciation and amortization expense	1,534	1,473	1,527
Asset impairment loss	—	2	607
Loss on shutdown and sales of refinery assets, net	12	888	1,868
Gain on sale of investment in Cameron Highway Oil Pipeline Company	—	(55)	—
Stock-based compensation expense	58	54	66
Deferred income tax expense (benefit)	461	347	(343)
Changes in current assets and current liabilities	81	68	255
Changes in deferred charges and credits and other operating activities, net	(197)	(56)	(175)
Net cash provided by operating activities	<u>4,038</u>	<u>3,045</u>	<u>1,823</u>
<b>Cash flows from investing activities:</b>			
Capital expenditures	(2,355)	(1,730)	(2,306)
Deferred turnaround and catalyst costs	(629)	(535)	(415)
Acquisition of Pembroke Refinery, net of cash acquired	(1,691)	—	—
Acquisition of Meraux Refinery	(547)	—	—
Acquisitions of ethanol plants	—	(260)	(577)
Minor acquisitions	(37)	—	(29)
Proceeds from the sale of the Paulsboro Refinery	—	547	—
Proceeds from the sale of the Delaware City Refinery assets and associated terminal and pipeline assets	—	220	—
Proceeds from the sale of investment in Cameron Highway Oil Pipeline Company	—	330	—
Other investing activities, net	(39)	23	35
Net cash used in investing activities	<u>(5,298)</u>	<u>(1,405)</u>	<u>(3,292)</u>
<b>Cash flows from financing activities:</b>			
<b>Non-bank debt:</b>			
Borrowings	—	1,544	998
Repayments	(774)	(517)	(285)
<b>Bank credit agreements:</b>			
Borrowings	—	—	39
Repayments	(4)	—	(39)
<b>Accounts receivable sales facility:</b>			
Proceeds from the sale of receivables	150	1,225	950
Repayments	—	(1,325)	(850)
Proceeds from the sale of common stock, net of issuance costs	—	—	799
Proceeds from the exercise of stock options	49	20	11
Purchase of common stock for treasury	(349)	(13)	(4)
Common stock dividends	(169)	(114)	(324)
Contributions from noncontrolling interests	22	—	—
Other financing activities, net	9	(4)	(6)
Net cash provided by (used in) financing activities	<u>(1,066)</u>	<u>816</u>	<u>1,289</u>
Effect of foreign exchange rate changes on cash	16	53	65
<b>Net increase (decrease) in cash and temporary cash investments</b>	<b>(2,310)</b>	<b>2,509</b>	<b>(115)</b>
Cash and temporary cash investments at beginning of year	3,334	825	940
Cash and temporary cash investments at end of year	<u>\$ 1,024</u>	<u>\$ 3,334</u>	<u>\$ 825</u>

See Notes to Consolidated Financial Statements.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**  
(Millions of Dollars)

	Year Ended December 31,		
	2011	2010	2009
Net income (loss)	\$ 2,089	\$ 324	\$ (1,982)
Other comprehensive income (loss):			
Foreign currency translation adjustment, net of income tax expense of \$ -, \$ -, and \$ -	(122)	158	375
Pension and other postretirement benefits:			
Net gain (loss) arising during the year, net of income tax (expense) benefit of \$101, \$5, and \$(132)	(188)	(14)	219
Net (gain) loss reclassified into income, net of income tax expense (benefit) of \$2, \$3, and \$(2)	(1)	(4)	(1)
Net gain (loss) on pension and other postretirement benefits	(189)	(18)	218
Derivative instruments designated and qualifying as cash flow hedges:			
Net gain (loss) arising during the year, net of income tax (expense) benefit of \$(11), \$1, and \$(44)	21	(1)	81
Net (gain) loss reclassified into income, net of income tax expense (benefit) of \$1, \$62, and \$72	(2)	(116)	(133)
Net gain (loss) on cash flow hedges	19	(117)	(52)
Other comprehensive income (loss)	(292)	23	541
Comprehensive income (loss)	1,797	347	(1,441)
Less: Comprehensive loss attributable to noncontrolling interests	(1)	—	—
Comprehensive income (loss) attributable to Valero Energy Corporation stockholders	\$ 1,798	\$ 347	\$ (1,441)

See Notes to Consolidated Financial Statements.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES  
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**1. BASIS OF PRESENTATION AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

***Basis of Presentation***

**General**

As used in this report, the terms “Valero,” “we,” “us,” or “our” may refer to Valero Energy Corporation, one or more of its consolidated subsidiaries, or all of them taken as a whole. We are an independent petroleum refining and marketing company and own 16 refineries with a combined total throughput capacity of approximately 3.0 million barrels per day as of December 31, 2011. We market our refined products through an extensive bulk and rack marketing network and we sell refined products through a network of approximately 6,800 retail and wholesale branded outlets in the United States (U.S.), Canada, the United Kingdom (U.K.), Aruba, and Ireland under various brand names including Valero<sup>®</sup>, Diamond Shamrock<sup>®</sup>, Shamrock<sup>®</sup>, Ultramar<sup>®</sup>, Beacon<sup>®</sup>, and Texaco<sup>®</sup>. We also produce ethanol and operate ten ethanol plants in the U.S. with a combined nameplate production capacity of approximately 1.1 billion gallons per year as of December 31, 2011. Our operations are affected by:

- company-specific factors, primarily refinery utilization rates and refinery maintenance turnarounds;
- seasonal factors, such as the demand for refined products during the summer driving season and heating oil during the winter season; and
- industry factors, such as movements in and the level of crude oil prices including the effect of quality differentials between grades of crude oil, the demand for and prices of refined products, industry supply capacity, and competitor refinery maintenance turnarounds.

We have evaluated subsequent events that occurred after December 31, 2011 through the filing of this Form 10-K. Any material subsequent events that occurred during this time have been properly recognized or disclosed in these financial statements.

**Noncontrolling Interest**

On January 21, 2011, we entered into a joint venture agreement with Darling Green Energy LLC, a subsidiary of Darling International, Inc., to form Diamond Green Diesel Holdings LLC (DGD Holdings). DGD Holdings, through its wholly owned subsidiary, Diamond Green Diesel LLC (DGD), is constructing and will operate a biomass-based diesel plant having a design feed capacity of 10,000 barrels per day that will process animal fats, used cooking oils, and other vegetable oils into renewable green diesel. The plant will be located next to our St. Charles Refinery. The aggregate cost of this facility is estimated to be approximately \$368 million and the construction is expected to be completed in late 2012. The joint venture agreement requires that contributions be made to DGD Holdings based on the percentage of units held by each member, which is currently on a 50/50 basis. From the inception of DGD Holdings (January 21, 2011) through December 31, 2011, each member had contributed \$22 million of cash and \$1 million of noncash assets, consisting primarily of property, plant, and equipment, to DGD Holdings. In addition, on May 31, 2011, we agreed to lend DGD up to \$221 million in order to finance 60 percent of the construction costs of the plant.

Because of our controlling financial interest in DGD Holdings, we have included the financial statements of DGD Holdings in these consolidated financial statements and have separately disclosed the related noncontrolling interest.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

***Significant Accounting Policies***

**Reclassifications**

Certain amounts previously reported in our annual report on Form 10-K for the year ended December 31, 2010 have been reclassified to conform to the 2011 presentation.

**Principles of Consolidation**

These consolidated financial statements include the accounts of Valero and subsidiaries in which Valero has a controlling interest. Intercompany balances and transactions have been eliminated in consolidation. Investments in significant noncontrolled entities are accounted for using the equity method.

**Use of Estimates**

The preparation of financial statements in conformity with generally accepted accounting principles (GAAP) requires us to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. Actual results could differ from those estimates. On an ongoing basis, we review our estimates based on currently available information. Changes in facts and circumstances may result in revised estimates.

**Cash and Temporary Cash Investments**

Our temporary cash investments are highly liquid, low-risk debt instruments that have a maturity of three months or less when acquired.

**Receivables**

Trade receivables are carried at original invoice amount. We maintain an allowance for doubtful accounts which is adjusted based on management's assessment of our customers' historical collection experience, known credit risks, and industry and economic conditions.

**Inventories**

Inventories are carried at the lower of cost or market. The cost of refinery feedstocks purchased for processing, refined products, and grain and ethanol inventories are determined under the last-in, first-out (LIFO) method using the dollar-value LIFO method, with any increments valued based on average purchase prices during the year. The cost of feedstocks and products purchased for resale and the cost of materials, supplies, and convenience store merchandise are determined principally under the weighted-average cost method.

**Property, Plant and Equipment**

The cost of property, plant and equipment (property assets) purchased or constructed, including betterments of property assets, is capitalized. The cost of repairs to and normal maintenance of property assets, however, is expensed as incurred. Betterments of property assets are those which either extend the useful life, increase the capacity or improve the operating efficiency of the asset, or improve the safety of our operations. The cost of property assets constructed includes interest and certain overhead costs allocable to the construction activities.

Our operations, especially those of our refining segment, are highly capital intensive. Each of our refineries comprises a large base of property assets, consisting of a series of interconnected, highly integrated and interdependent crude oil processing facilities and supporting logistical infrastructure (Units), and these Units are continuously improved. Improvements consist of the addition of new Units and betterments of existing Units. We plan for these improvements by developing a multi-year capital program that is updated and revised

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

based on changing internal and external factors.

Depreciation of property assets used in our refining segment is recorded on a straight-line basis over the estimated useful lives of these assets primarily using the composite method of depreciation. We maintain a separate composite group of property assets for each of our refineries. We estimate the useful life of each group based on an evaluation of the property assets comprising the group, and such evaluations consist of, but are not limited to, the physical inspection of the assets to determine their condition, consideration of the manner in which the assets are maintained, assessment of the need to replace assets, and evaluation of the manner in which improvements impact the useful life of the group. The estimated useful lives of our composite groups range primarily from 25 to 30 years.

Under the composite method of depreciation, the cost of an improvement is added to the composite group to which it relates and is depreciated over that group's estimated useful life. We design improvements to our refineries in accordance with engineering specifications, design standards and practices accepted in our industry, and these improvements have design lives consistent with our estimated useful lives. Therefore, we believe the use of the group life to depreciate the cost of improvements made to the group is reasonable because the estimated useful life of each improvement is consistent with that of the group. It should be noted, however, that factors such as competition, regulation, or environmental matters could cause us to change our estimates, thus impacting depreciation expense in the future.

Also under the composite method of depreciation, the historical cost of a minor property asset (net of salvage value) that is retired or replaced is charged to accumulated depreciation and no gain or loss is recognized in income. However, a gain or loss is recognized in income for a major property asset that is retired, replaced or sold and for an abnormal disposition of a property asset (primarily involuntary conversions). Gains and losses are reflected in depreciation and amortization expense, unless such amounts are reported separately due to materiality.

Depreciation of property assets used in our retail segment is also recorded on a straight-line basis over the estimated useful lives of the related facilities primarily using the composite method of depreciation. However, depreciation of property assets used in our ethanol segment is recorded on a straight-line basis over the estimated useful lives of each individual asset. Leasehold improvements and assets acquired under capital leases are amortized using the straight-line method over the shorter of the lease term or the estimated useful life of the related asset.

**Deferred Charges and Other Assets**

“Deferred charges and other assets, net” include the following:

- turnaround costs, which are incurred in connection with planned major maintenance activities at our refineries and ethanol plants and which are deferred when incurred and amortized on a straight-line basis over the period of time estimated to lapse until the next turnaround occurs;
- fixed-bed catalyst costs, representing the cost of catalyst that is changed out at periodic intervals when the quality of the catalyst has deteriorated beyond its prescribed function, which are deferred when incurred and amortized on a straight-line basis over the estimated useful life of the specific catalyst;
- investments in entities that we do not control; and
- other noncurrent assets such as convenience store dealer incentive programs, investments of certain benefit plans, debt issuance costs, and various other costs.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**Impairment of Assets**

Long-lived assets, which include property, plant and equipment, intangible assets, and refinery turnaround and catalysts costs, are tested for recoverability whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable. A long-lived asset is not recoverable if its carrying amount exceeds the sum of the undiscounted cash flows expected to result from its use and eventual disposition. If a long-lived asset is not recoverable, an impairment loss is recognized for the amount by which the carrying amount of the long-lived asset exceeds its fair value, with fair value determined based on discounted estimated net cash flows or other appropriate methods. See Note 4 for our impairment analysis of our long-lived assets.

We evaluate our equity method investments for impairment when there is evidence that we may not be able to recover the carrying amount of our investments or the investee is unable to sustain an earnings capacity that justifies the carrying amount. A loss in the value of an investment that is other than a temporary decline is recognized currently in income, and is based on the difference between the estimated current fair value of the investment and its carrying amount.

**Environmental Matters**

Liabilities for future remediation costs are recorded when environmental assessments from governmental regulatory agencies and/or remedial efforts are probable and the costs can be reasonably estimated. Other than for assessments, the timing and magnitude of these accruals generally are based on the completion of investigations or other studies or a commitment to a formal plan of action. Environmental liabilities are based on best estimates of probable undiscounted future costs over a 20-year time period using currently available technology and applying current regulations, as well as our own internal environmental policies, without establishing a range of loss for these liabilities. Environmental liabilities are difficult to assess and estimate due to uncertainties related to the magnitude of possible remediation, the timing of such remediation, and the determination of our obligation in proportion to other parties. Such estimates are subject to change due to many factors, including the identification of new sites requiring remediation, changes in environmental laws and regulations and their interpretation, additional information related to the extent and nature of remediation efforts, and potential improvements in remediation technologies. Amounts recorded for environmental liabilities have not been reduced by possible recoveries from third parties.

**Asset Retirement Obligations**

We record a liability, which is referred to as an asset retirement obligation, at fair value for the estimated cost to retire a tangible long-lived asset at the time we incur that liability, which is generally when the asset is purchased, constructed, or leased. We record the liability when we have a legal obligation to incur costs to retire the asset and when a reasonable estimate of the fair value of the liability can be made. If a reasonable estimate cannot be made at the time the liability is incurred, we record the liability when sufficient information is available to estimate the liability's fair value.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**Foreign Currency Translation**

The functional currency of each of our international operations is generally the respective local currency, which includes the Canadian dollar, the Aruban florin, the pound sterling, and the euro. Balance sheet accounts are translated into U.S. dollars using exchange rates in effect as of the balance sheet date. Revenue and expense accounts are translated using the weighted-average exchange rates during the year presented. Foreign currency translation adjustments are recorded as a component of accumulated other comprehensive income.

**Revenue Recognition**

Revenues for products sold by the refining, retail, and ethanol segments are recorded upon delivery of the products to our customers, which is the point at which title to the products is transferred, and when payment has either been received or collection is reasonably assured.

We present excise taxes on sales by our U.S. retail system on a gross basis with supplemental information regarding the amount of such taxes included in revenues provided in a footnote on the face of the statements of income. All other excise taxes are presented on a net basis.

We enter into certain purchase and sale arrangements with the same counterparty that are deemed to be made in contemplation of one another. We combine these transactions and, as a result, revenues and cost of sales are not recognized in connection with these arrangements. We also enter into refined product exchange transactions to fulfill sales contracts with our customers by accessing refined products in markets where we do not operate our own refineries. These refined product exchanges are accounted for as exchanges of non-monetary assets, and no revenues are recorded on these transactions.

**Product Shipping and Handling Costs**

Costs incurred for shipping and handling of products are included in cost of sales.

**Stock-Based Compensation**

Compensation expense for our share-based compensation plans is based on the fair value of the awards granted and is recognized in income on a straight-line basis over the requisite service period of each award. For new grants that have retirement-eligibility provisions, we use the non-substantive vesting period approach, under which compensation cost is recognized immediately for awards granted to retirement-eligible employees or over the period from the grant date to the date retirement eligibility is achieved if that date is expected to occur during the nominal vesting period.

**Income Taxes**

Income taxes are accounted for under the asset and liability method. Under this method, deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred amounts are measured using enacted tax rates expected to apply to taxable income in the year those temporary differences are expected to be recovered or settled.

We have elected to classify any interest expense and penalties related to the underpayment of income taxes in income tax expense.



**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**Earnings per Common Share**

Earnings per common share is computed by dividing net income by the weighted-average number of common shares outstanding for the year. Participating share-based payment awards, including shares of restricted stock granted under certain of our stock-based compensation plans, are included in the computation of basic earnings per share using the two-class method. Earnings per common share – assuming dilution reflects the potential dilution arising from our outstanding stock options and nonvested shares granted to employees in connection with our stock-based compensation plans. Potentially dilutive securities are excluded from the computation of earnings per common share – assuming dilution when the effect of including such shares would be antidilutive.

**Financial Instruments**

Our financial instruments include cash and temporary cash investments, receivables, payables, debt, capital lease obligations, commodity derivative contracts, and foreign currency derivative contracts. The estimated fair values of these financial instruments approximate their carrying amounts, except for certain debt as discussed in Note 20.

**Derivatives and Hedging**

All derivative instruments are recorded in the balance sheet as either assets or liabilities measured at their fair values. When we enter into a derivative instrument, it is designated as a fair value hedge, a cash flow hedge, an economic hedge, or a trading derivative. The gain or loss on a derivative instrument designated and qualifying as a fair value hedge, as well as the offsetting loss or gain on the hedged item attributable to the hedged risk, are recognized currently in income in the same period. The effective portion of the gain or loss on a derivative instrument designated and qualifying as a cash flow hedge is initially reported as a component of other comprehensive income and is then recorded in income in the period or periods during which the hedged forecasted transaction affects income. The ineffective portion of the gain or loss on the cash flow derivative instrument, if any, is recognized in income as incurred. For our economic hedging relationships (derivative instruments not designated as fair value or cash flow hedges) and for derivative instruments entered into for trading purposes, the derivative instrument is recorded at fair value and changes in the fair value of the derivative instrument are recognized currently in income. The cash flow effects of all of our derivative instruments are reflected in operating activities in the statements of cash flows.

**Business Combinations**

In December 2010, the provisions of ASC Topic 805, “Business Combinations,” were modified to specify that if a public entity presents comparative financial statements, then the entity should disclose pro forma revenues and earnings of the combined entity as though the business combination that occurred during the current year had occurred as of the beginning of the comparable prior annual reporting period only. In addition, the supplemental pro forma disclosures were expanded to include a description of the nature and amount of material, nonrecurring pro forma adjustments directly attributable to the business combination included in the reported pro forma revenue and earnings. This guidance is effective prospectively for business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after December 15, 2010 with early adoption permitted. The adoption of this guidance effective January 1, 2011 did not affect our financial position or results of operations because these requirements only affect disclosures.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

***New Accounting Pronouncements***

In December 2011, the provisions of ASC Topic 210, “Balance Sheet,” were amended to require an entity to disclose information about offsetting and related arrangements to enable users of its financial statements to understand the effect of these arrangements on its financial position. The guidance requires entities to disclose both gross information and net information about both instruments and transactions eligible for offset in the balance sheet and instruments and transactions subject to an agreement similar to a master netting arrangement. These provisions are effective for interim and annual reporting periods beginning on January 1, 2013. The adoption of this guidance effective January 1, 2013 will not affect our financial position or results of operations, but may result in additional disclosures.

In December 2011, the provisions of ASC Topic 220, “Comprehensive Income,” were amended to allow an entity the option to present the total of comprehensive income, the components of net income, and the components of other comprehensive income either in a single continuous statement or in two separate but consecutive financial statements. These provisions to ASC Topic 220 are effective for the first interim or annual period beginning after December 15, 2011 and are to be applied retrospectively, with early adoption permitted. The adoption of this guidance effective January 1, 2012 will not affect our financial position or results of operations because these requirements only affect presentation.

In May 2011, the provisions of ASC Topic 820, “Fair Value Measurement,” were amended to clarify the application of existing fair value measurement requirements and to change certain fair value measurement and disclosure requirements. Amendments that change measurement and disclosure requirements relate to (i) fair value measurement of financial instruments that are managed within a portfolio, (ii) application of premiums and discounts in a fair value measurement, and (iii) additional disclosures about fair value measurements categorized within Level 3 of the fair value hierarchy. These provisions are effective for the first interim or annual period beginning after December 15, 2011. The adoption of this guidance effective January 1, 2012 will not affect our financial position or results of operations, but may result in additional disclosures.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

## 2. ACQUISITIONS

### *Acquisitions of Refineries*

The acquired refining and marketing businesses as discussed below involve the production and marketing of refined petroleum products. These acquisitions are consistent with our general business strategy and complement our existing refining and marketing network.

#### **Meraux Acquisition**

On October 1, 2011, we acquired the Meraux Refinery and related logistics assets from Murphy Oil Corporation for an initial payment of \$586 million, which was funded from available cash. This acquisition is referred to as the Meraux Acquisition. The Meraux Refinery has a total throughput capacity of 135,000 barrels per day and is located in Meraux, Louisiana.

In the fourth quarter of 2011, we recorded an adjustment related to inventories acquired that reduced the purchase price to \$547 million. The assets acquired and liabilities assumed in the Meraux Acquisition were recognized at their acquisition-date estimated fair values, pending the completion of an independent appraisal and other evaluations, and are as follows (in millions):

Inventories	\$	219
Property, plant and equipment		320
Deferred charges and other assets, net		9
Other long-term liabilities		(1)
Purchase price	\$	<u>547</u>

#### **Pembroke Acquisition**

On August 1, 2011, we acquired 100 percent of the outstanding shares of Chevron Limited from a subsidiary of Chevron Corporation (Chevron), and we subsequently changed the name of Chevron Limited to Valero Energy Ltd. Valero Energy Ltd owns and operates the Pembroke Refinery, which has a total throughput capacity of 270,000 barrels per day and is located in Wales, U.K. Valero Energy Ltd also owns, directly and through various subsidiaries, an extensive network of marketing and logistics assets throughout the U.K. and Ireland. On the acquisition date, we initially paid \$1.8 billion from available cash, of which \$1.1 billion was for working capital. Subsequent to the acquisition date, we recorded an adjustment to working capital (primarily inventory), resulting in an adjusted purchase price of \$1.7 billion, as outlined below. This acquisition is referred to as the Pembroke Acquisition.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

The assets acquired and liabilities assumed in the Pembroke Acquisition were recognized at their acquisition-date estimated fair values, pending the completion of an independent appraisal and other evaluations, and are as follows (in millions):

Current assets, net of cash acquired	\$	2,214
Property, plant and equipment		804
Deferred charges and other assets, net		32
Intangible assets		23
Current liabilities, less current portion of debt and capital lease obligations		(1,287)
Debt and capital leases assumed, including current portion		(12)
Other long-term liabilities		(78)
Noncontrolling interests		(5)
Purchase price, net of cash acquired	<u>\$</u>	<u>1,691</u>

The acquired intangible assets are subject to amortization and have weighted-average useful lives of 10 years. These acquired intangible assets have been assigned to the intangible asset classes of trade names and supply agreements. These acquired intangible assets have no residual value.

In connection with the Pembroke Acquisition, we acquired an 85 percent interest in Mainline Pipelines Limited (MLP). MLP owns a pipeline that distributes refined products from the Pembroke Refinery to terminals in the U.K. In the fourth quarter of 2011, we acquired the remaining 15 percent interest in MLP.

**Other Disclosures**

In conjunction with the Meraux and Pembroke Acquisitions, neither goodwill nor a gain from a bargain purchase was recognized, and no significant contingent assets or liabilities were acquired or assumed.

The statement of income includes the results of operations of each of the acquisitions from the dates of their acquisition. Actual operating revenues, income from continuing operations, and acquisition-related costs associated with the Meraux and Pembroke Acquisitions included in our statement of income for the year ended December 31, 2011 were as follows (in millions):

	<u>Meraux Acquisition</u>	<u>Pembroke Acquisition</u>
Operating revenues	\$ 1,343	\$ 7,522
Loss from continuing operations	(74)	(10)
Acquisition-related costs (included in general and administrative expenses)	2	27

The acquisition-related costs shown above are not included in the loss from continuing operations of the respective acquisitions.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

The following unaudited pro forma financial information (in millions, except per share amounts) presents our results assuming the Meraux and Pembroke Acquisitions occurred on January 1, 2010. The pro forma financial information is not necessarily indicative of the results of future operations.

	<b>Year Ended December 31,</b>	
	<b>2011</b>	<b>2010</b>
Operating revenues	\$ 142,109	\$ 99,824
Income from continuing operations attributable to Valero stockholders	2,071	953
Earnings per common share from continuing operations – basic	3.66	1.68
Earnings per common share from continuing operations – assuming dilution	3.64	1.68

***Acquisitions of Ethanol Plants***

The acquired ethanol businesses as discussed below involve the production and marketing of ethanol and its co-products, including distillers grains. The operations of our ethanol business complement our existing clean motor fuels business.

**ASA and Renew Assets**

In December 2009, we signed an agreement with ASA Ethanol Holdings, LLC to buy two ethanol plants located in Linden, Indiana and Bloomingburg, Ohio and made a \$20 million advance payment towards the acquisition of these plants. In January 2010, we completed the acquisition of these plants, including certain inventories, for total consideration of \$202 million.

Also in December 2009, we received approval from a bankruptcy court to acquire one ethanol plant located near Jefferson, Wisconsin from Renew Energy LLC and made a \$1 million advance payment towards the acquisition of this plant. We completed the acquisition of this plant, including certain receivables and inventories, in February 2010 for total consideration of \$79 million.

**VeraSun Assets**

In the second quarter of 2009, we acquired seven ethanol plants and one site under development from VeraSun Energy Corporation for \$556 million. The ethanol plants are located in Charles City, Fort Dodge, Hartley, and Albert City, Iowa; Aurora, South Dakota; Welcome, Minnesota; Albion, Nebraska; and the site under development is located in Reynolds, Indiana.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

### 3. SALES OF ASSETS

#### *Paulsboro Refinery*

In December 2010, we sold our Paulsboro Refinery to PBF Holding Company LLC (PBF Holding). Working capital, consisting primarily of inventory, was included as part of this transaction. The results of operations of the Paulsboro Refinery, including the loss on the sale discussed below, have been presented as discontinued operations for all years presented.

We received total proceeds of \$707 million, including \$361 million from the sale of working capital, resulting in a pre-tax loss of \$980 million (\$610 million after taxes). The loss includes a \$50 million charge related to a LIFO inventory liquidation that resulted from the sale of inventory to PBF Holding and the effect of a \$40 million accrual to settle differences between estimated and actual inventory volumes sold. The sale proceeds consisted of \$547 million of cash and a \$160 million note secured by the Paulsboro Refinery. In February 2012, we received full payment on this note.

Selected results of operations of the Paulsboro Refinery prior to its sale, excluding the loss on the sale in 2010, are shown below (in millions).

	Year Ended December 31,		
	2011	2010	2009
Operating revenues	\$ —	\$ 4,692	\$ 3,545
Loss before income taxes	(9)	(53)	(133)

#### *Delaware City Refinery Assets and Associated Terminal and Pipeline Assets*

In November 2009, we announced the permanent shutdown of our Delaware City Refinery, and we recorded a pre-tax loss of \$1.9 billion, of which \$1.4 billion represented the write-down of the book value of the refinery assets to net realizable value. The results of operations of the Delaware City Refinery have been presented as discontinued operations for all years presented.

In June 2010, we sold the shutdown refinery assets and the terminal and pipeline assets to wholly owned subsidiaries of PBF Energy Partners LP for \$220 million of cash proceeds. The sale resulted in a gain of \$92 million (\$58 million after taxes) related to the shutdown refinery assets and a gain of \$3 million related to the terminal and pipeline assets. The gain on the sale of the shutdown refinery assets primarily resulted from receiving proceeds related to the scrap value of the assets and the reversal of certain liabilities recorded in the fourth quarter of 2009 associated with the shutdown of the refinery, which we will not incur because of the sale. This gain is presented in discontinued operations for the year ended December 31, 2010.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

Selected results of operations of the Delaware City Refinery prior to its sale, excluding the gain on the sale in 2010 and the loss on the shut down of the refinery in 2009, are shown below (in millions).

	Year Ended December 31,		
	2011	2010	2009
Operating revenues	\$ —	\$ —	\$ 2,764
Loss before income taxes	(3)	(29)	(769)

***Investment in Cameron Highway Oil Pipeline Company (CHOPS)***

In November 2010, we sold our 50 percent interest in CHOPS to Genesis Energy, L.P. for total cash proceeds of \$330 million. The sale resulted in a pre-tax gain of \$55 million (\$36 million after taxes), which is included in "other income, net" for the year ended December 31, 2010. CHOPS is a general partnership that operates a 390-mile pipeline, which delivers up to 500,000 barrels per day of crude oil from the Gulf of Mexico to major refining areas of Port Arthur and Texas City, Texas.

**4. IMPAIRMENT ANALYSIS**

In late 2008, the U.S. and worldwide economies experienced severe disruptions in their capital and commodities markets resulting in a significant economic slowdown that negatively impacted refining industry fundamentals and the demand and price for our refined products. Because of this negative impact, we decided to shut down our Aruba Refinery temporarily in July 2009. We also decided to shut down our Delaware City Refinery permanently in late 2009 and ultimately sold that refinery in June 2010, and we sold our Paulsboro Refinery in December 2010, as discussed in Note 3. In addition, we temporarily suspended construction activity on various capital projects and permanently cancelled other projects. These permanent cancellations resulted in asset impairment losses of \$2 million and \$222 million for the years ended December 31, 2010 and 2009, respectively.

The U.S. and worldwide economies and refining industry fundamentals improved throughout 2010 and most of 2011, resulting in a significant improvement in the operating results of all of our refining segment assets. These improvements led to our decision to restart our Aruba Refinery and resume construction activities on the majority of the previously suspended capital projects. However, we analyzed our Aruba Refinery for potential impairment as of December 31, 2011 because of its recent temporary shutdown, its inability to generate positive cash flows on a sustained basis subsequent to its restart, and the sensitivity of its profitability to sour crude oil differentials, which narrowed significantly in the fourth quarter of 2011. In addition, we are exploring strategic alternatives for the refinery, including alternative feedstocks, configuration changes, and a temporary or permanent shutdown of the refinery facilities.

We considered all of these matters in our impairment analysis and concluded that our Aruba Refinery was not impaired as of December 31, 2011. Our future cash flow estimates for the refinery are based on our expectation that refining industry fundamentals will continue to improve in connection with an increase in the demand for refined products. However, should refining industry fundamentals fail to continue to improve, our future cash flow estimates will be negatively impacted. In addition, as discussed above, we are exploring strategic alternatives for the refinery and expect to conclude our evaluation of these strategic alternatives in the first quarter of 2012. A decision to temporarily or permanently shut down the refinery or a revision to

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

the future operating plans for the refinery that results in a decrease in future expected cash flows could result in the refinery being impaired. The Aruba Refinery had a net book value of \$958 million as of December 31, 2011; therefore, an impairment loss would be material to our results of operations.

**5. RECEIVABLES**

Receivables consisted of the following (in millions):

	<b>December 31,</b>	
	<b>2011</b>	<b>2010</b>
Accounts receivable	\$ 8,366	\$ 4,299
Commodity derivative receivables	174	144
Notes receivable and other	214	182
	<u>8,754</u>	<u>4,625</u>
Allowance for doubtful accounts	(48)	(42)
Receivables, net	<u>\$ 8,706</u>	<u>\$ 4,583</u>

Notes receivable primarily represent amounts due from PBF Holding related to the sale of the Paulsboro Refinery, the full payment of which was received in February 2012.

Changes in the allowance for doubtful accounts consisted of the following (in millions):

	<b>Year Ended December 31,</b>		
	<b>2011</b>	<b>2010</b>	<b>2009</b>
Balance as of beginning of year	\$ 42	\$ 45	\$ 58
Increase in allowance charged to expense	21	14	28
Accounts charged against the allowance, net of recoveries	(14)	(17)	(42)
Foreign currency translation	(1)	—	1
Balance as of end of year	<u>\$ 48</u>	<u>\$ 42</u>	<u>\$ 45</u>



**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**6. INVENTORIES**

Inventories consisted of the following (in millions):

	<b>December 31,</b>	
	<b>2011</b>	<b>2010</b>
Refinery feedstocks	\$ 2,474	\$ 2,225
Refined products and blendstocks	2,633	2,233
Ethanol feedstocks and products	195	201
Convenience store merchandise	103	101
Materials and supplies	218	187
Inventories	<u>\$ 5,623</u>	<u>\$ 4,947</u>

During the years ended December 31, 2011, 2010, and 2009, we had net liquidations of LIFO inventory layers that were established in prior years, which decreased cost of sales in 2011 and 2010 by \$247 million and \$16 million, respectively, and increased cost of sales in 2009 by \$66 million. The effect of the liquidation in 2010 excludes the impact from the sale of inventory in connection with the sale of our Paulsboro Refinery to PBF Holding. The effect of the 2010 liquidation attributable to the sale of that inventory increased the loss on the sale of the Paulsboro Refinery by \$50 million (\$31 million after taxes) as discussed in Note 3 and is reflected in discontinued operations.

As of December 31, 2011 and 2010, the replacement cost (market value) of LIFO inventories exceeded their LIFO carrying amounts by approximately \$6.8 billion and \$6.1 billion, respectively.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**7. PROPERTY, PLANT AND EQUIPMENT**

Major classes of property, plant and equipment, which include capital lease assets, consisted of the following (in millions):

	<b>December 31,</b>	
	<b>2011</b>	<b>2010</b>
Land	\$ 722	\$ 624
Crude oil processing facilities	23,322	21,421
Pipeline and terminal facilities	856	709
Grain processing equipment	673	656
Retail facilities	1,346	1,277
Administrative buildings	712	705
Other	1,290	1,226
Construction in progress	3,332	2,303
Property, plant and equipment, at cost	32,253	28,921
Accumulated depreciation	(7,076)	(6,252)
Property, plant and equipment, net	<u>\$ 25,177</u>	<u>\$ 22,669</u>

We had crude oil processing facilities, pipeline and terminal facilities, and certain buildings and other equipment under capital leases totaling \$77 million and \$59 million as of December 31, 2011 and 2010, respectively. Accumulated amortization on assets under capital leases was \$26 million and \$22 million, respectively, as of December 31, 2011 and 2010.

Depreciation expense for the years ended December 31, 2011, 2010, and 2009 was \$1.1 billion, \$985 million, and \$919 million, respectively.

**8. INTANGIBLE ASSETS**

Intangible assets include trade names, customer lists, air emission credits, and various other agreements. All of our intangible assets are subject to amortization. Intangible assets with finite useful lives are amortized on a straight-line basis. Amortization expense for intangible assets was \$18 million, \$22 million, and \$25 million for the years ended December 31, 2011, 2010, and 2009, respectively. The estimated aggregate amortization expense is expected to be \$20 million for each of the next five years.

**9. DEFERRED CHARGES AND OTHER ASSETS**

“Deferred charges and other assets, net” primarily includes turnaround and catalyst costs, which are deferred and amortized as discussed in Note 1. Amortization expense for deferred refinery turnaround and catalyst costs was \$444 million, \$383 million, and \$404 million for the years ended December 31, 2011, 2010, and 2009, respectively.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**10. ACCRUED EXPENSES AND OTHER LONG-TERM LIABILITIES**

Accrued expenses and other long-term liabilities consisted of the following as of December 31 (in millions):

	Accrued Expenses		Other Long-Term Liabilities	
	2011	2010	2011	2010
Defined benefit plan liabilities (see Note 14)	\$ 37	\$ 54	\$ 796	\$ 636
Wage and other employee-related liabilities	259	172	79	85
Uncertain income tax position liabilities (see Note 16)	—	—	337	343
Other tax liabilities	—	—	103	106
Environmental liabilities	39	40	235	228
Accrued interest expense	108	116	—	—
Derivative liabilities	25	39	—	—
Insurance liabilities	13	13	79	80
Asset retirement obligations	6	20	81	81
Other	108	136	171	208
Accrued expenses and other long-term liabilities	\$ 595	\$ 590	\$ 1,881	\$ 1,767

***Environmental Liabilities***

Changes in our environmental liabilities were as follows (in millions):

	Year Ended December 31,		
	2011	2010	2009
Balance as of beginning of year	\$ 268	\$ 279	\$ 297
Pembroke Acquisition	30	—	—
Additions to liability	18	50	21
Reductions to liability	(5)	(21)	(5)
Payments, net of third-party recoveries	(35)	(42)	(40)
Foreign currency translation	(2)	2	6
Balance as of end of year	\$ 274	\$ 268	\$ 279

In connection with our various acquisitions, we assumed certain environmental liabilities including, but not limited to, certain remediation obligations, site restoration costs, and certain liabilities relating to soil and groundwater remediation. There were no significant environmental liabilities assumed in connection with the Meraux Acquisition.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

***Asset Retirement Obligations***

We have asset retirement obligations with respect to certain of our refinery assets due to various legal obligations to clean and/or dispose of various component parts of each refinery at the time they are retired. However, these component parts can be used for extended and indeterminate periods of time as long as they are properly maintained and/or upgraded. It is our practice and current intent to maintain our refinery assets and continue making improvements to those assets based on technological advances. As a result, we believe that our refineries have indeterminate lives for purposes of estimating asset retirement obligations because dates or ranges of dates upon which we would retire refinery assets cannot reasonably be estimated at this time. When a date or range of dates can reasonably be estimated for the retirement of any component part of a refinery, we estimate the cost of performing the retirement activities and record a liability for the fair value of that cost using established present value techniques.

We also have asset retirement obligations for the removal of underground storage tanks (USTs) for refined products at owned and leased retail locations. There is no legal obligation to remove USTs while they remain in service. However, environmental laws require that unused USTs be removed within certain periods of time after the USTs no longer remain in service, usually one to two years depending on the jurisdiction in which the USTs are located. We have estimated that USTs at our owned retail locations will not remain in service after 25 years of use and that we will have an obligation to remove those USTs at that time. For our leased retail locations, our lease agreements generally require that we remove certain improvements, primarily USTs and signage, upon termination of the lease. While our lease agreements typically contain options for multiple renewal periods, we have not assumed that such leases will be renewed for purposes of estimating our obligation to remove USTs and signage.

Changes in our asset retirement obligations were as follows (in millions).

	<b>Year Ended December 31,</b>		
	<b>2011</b>	<b>2010</b>	<b>2009</b>
Balance as of beginning of year	\$ 101	\$ 179	\$ 72
Additions to accrual	4	3	98
Reductions to accrual	—	(34)	—
Accretion expense	4	7	14
Settlements	(22)	(54)	(5)
Balance as of end of year	<u>\$ 87</u>	<u>\$ 101</u>	<u>\$ 179</u>

There are no assets that are legally restricted for purposes of settling our asset retirement obligations.

***Other***

Other tax liabilities relate primarily to contingent liabilities for transactional tax claims that are both probable and reasonably estimable.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**11. DEBT AND CAPITAL LEASE OBLIGATIONS**

Debt, at stated values, and capital lease obligations consisted of the following (in millions):

	<b>Final Maturity</b>	<b>December 31,</b>	
		<b>2011</b>	<b>2010</b>
Bank credit facilities	Various	\$ —	\$ —
Industrial revenue bonds:			
Tax-exempt Revenue Refunding Bonds:			
Series 1997A, 5.45%	2027	18	21
Series 1997B, 5.4%	2018	—	30
Series 1997C, 5.4%	2018	—	30
Tax-exempt Waste Disposal Revenue Bonds:			
Series 1997, 5.6%	2031	25	25
Series 1998, 5.6%	2032	25	25
Series 1999, 5.7%	2032	25	25
Series 2001, 6.65%	2032	19	19
4.5% notes	2015	400	400
4.75% notes	2013	300	300
4.75% notes	2014	200	200
6.125% notes	2017	750	750
6.125% notes	2020	850	850
6.625% notes	2037	1,500	1,500
6.875% notes	2012	750	750
7.5% notes	2032	750	750
8.75% notes	2030	200	200
Debentures:			
7.65%	2026	100	100
8.75%	2015	75	75
Senior Notes:			
6.125%	2011	—	200
6.7%	2013	180	180
6.75%	2011	—	210
6.75%	2037	24	24
7.2%	2017	200	200
7.45%	2097	100	100
9.375%	2019	750	750
10.5%	2039	250	250
Gulf Opportunity Zone Revenue Bonds, Series 2010, variable rate	2040	—	300
Accounts receivable sales facility	2012	250	100
Net unamortized discount, including fair value adjustments		(51)	(64)
Total debt		7,690	8,300
Capital lease obligations, including unamortized fair value adjustments		51	37
Total debt and capital lease obligations		7,741	8,337
Less current portion		(1,009)	(822)
Debt and capital lease obligations, less current portion		\$ 6,732	\$ 7,515

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

***Bank Debt and Credit Facilities***

In December 2011, we entered into a \$3 billion revolving credit facility (the Revolver) that has an initial maturity date of December 2016, which replaced our maturing \$2.4 billion revolving credit facility. Borrowings under the Revolver bear interest at LIBOR plus a margin, or an alternate base rate as defined under the agreement, plus a margin. We are also charged various fees and expenses in connection with the Revolver, including facility fees and letter of credit fees. The interest rate and fees under the Revolver are subject to adjustment based upon the credit ratings assigned to our non-bank debt. The Revolver has certain restrictive covenants, including a maximum debt-to-capitalization ratio of 60 percent. As of December 31, 2011 and 2010, our debt-to-capitalization ratios, calculated in accordance with the terms of the Revolver, were 29 percent and 25 percent, respectively. We believe that we will remain in compliance with this covenant.

In addition to the Revolver, one of our Canadian subsidiaries has a committed revolving credit facility under which it may borrow and obtain letters of credit up to C\$115 million.

During the years ended December 31, 2011 and 2010, we had no borrowings or repayments under the Revolver or the Canadian revolving credit facility. During the year ended December 31, 2009, we borrowed and repaid \$39 million under the Revolver and had no borrowings or repayments under the Canadian revolving credit facility.

We had outstanding letters of credit under our committed lines of credit as follows (in millions):

	Borrowing Capacity	Expiration	Amounts Outstanding	
			December 31, 2011	December 31, 2010
Letter of credit facilities	\$ 500	June 2012	\$ 300	\$ 100
Revolver	\$ 3,000	December 2016	\$ 119	\$ 399
Canadian revolving credit facility	C\$ 115	December 2012	C\$ 20	C\$ 20

We also have various other uncommitted short-term bank credit facilities. As of December 31, 2011 and 2010, we had no borrowings outstanding under our uncommitted short-term bank credit facilities; however, there were letters of credit outstanding under such facilities of \$391 million and \$176 million, respectively, for which we are charged letter of credit issuance fees. The uncommitted credit facilities have no commitment fees or compensating balance requirements.

In connection with the Pembroke Acquisition, we assumed a €2.8 million short-term demand loan, which bore interest at EURIBOR plus a margin. We repaid this loan in full in November 2011.

***Non-Bank Debt***

During the year ended December 31, 2011, the following activity occurred:

- in December 2011, we redeemed our Series 1997B 5.4% and Series 1997C 5.4% industrial revenue bonds for \$56 million, or 100% of their stated values;
- in May 2011, we made a scheduled debt repayment of \$200 million related to our 6.125% senior notes;
- in April 2011, we made scheduled debt repayments of \$8 million related to our Series 1997A 5.45%, Series 1997B 5.4%, and Series 1997C 5.4% industrial revenue bonds;
- in February 2011, we made a scheduled debt repayment of \$210 million related to our 6.75% senior

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

notes; and

- in February 2011, we paid \$300 million to acquire the Gulf Opportunity Zone Revenue Bonds Series 2010 (GO Zone Bonds), which were subject to mandatory tender. We expect to hold the GO Zone Bonds for our own account until conditions permit the remarketing of these bonds at an interest rate acceptable to us.

During the year ended December 31, 2010, the following activity occurred:

- in December 2010, the Parish of St. Charles, State of Louisiana (Issuer) issued GO Zone Bonds totaling \$300 million, with a maturity date of December 1, 2040. The GO Zone Bonds initially bore interest at a weekly rate with interest payable monthly, commencing January 5, 2011. Pursuant to a financing agreement, the Issuer lent the proceeds of the sale of the GO Zone Bonds to us to finance a portion of the construction costs of a hydrocracker project at our St. Charles Refinery. We received proceeds of \$300 million. Under the financing agreement, we were obligated to pay the Issuer amounts sufficient for the Issuer to pay principal and interest on the GO Zone Bonds;
- in June 2010, we made a scheduled debt repayment of \$25 million related to our 7.25% debentures;
- in May 2010, we redeemed our 6.75% senior notes with a maturity date of May 1, 2014 for \$190 million, or 102.25% of stated value;
- in April 2010, we made scheduled debt repayments of \$8 million related to our Series 1997A 5.45%, Series 1997B 5.4%, and Series 1997C 5.4% industrial revenue bonds;
- in March 2010, we redeemed our 7.5% senior notes with a maturity date of June 15, 2015 for \$294 million, or 102.5% of stated value, and
- in February 2010, we issued \$400 million of 4.5% notes due February 1, 2015 and \$850 million of 6.125% notes due in February 1, 2020 for total net proceeds of \$1.2 billion.

During the year ended December 31, 2009, the following activity occurred:

- in October 2009, we redeemed \$76 million of our 6.75% senior notes with a maturity date of October 15, 2037 at 100% of stated value;
- in April 2009, we made scheduled debt repayments of \$200 million related to our 3.5% notes and \$9 million related to our 5.125% Series 1997D industrial revenue bonds; and
- in March 2009, we issued \$750 million of 9.375% notes due March 15, 2019 and \$250 million of 10.5% notes due March 15, 2039. Proceeds from the issuance of these notes totaled \$998 million.

***Accounts Receivable Sales Facility***

We have an accounts receivable sales facility with a group of third-party entities and financial institutions to sell on a revolving basis up to \$1 billion of eligible trade receivables. We amended our agreement in June 2011 to extend the maturity date to June 2012. Under this program, one of our marketing subsidiaries (Valero Marketing) sells eligible receivables, without recourse, to another of our subsidiaries (Valero Capital), whereupon the receivables are no longer owned by Valero Marketing. Valero Capital, in turn, sells an undivided percentage ownership interest in the eligible receivables, without recourse, to the third-party entities and financial institutions. To the extent that Valero Capital retains an ownership interest in the receivables it has purchased from Valero Marketing, such interest is included in our financial statements solely as a result of the consolidation of the financial statements of Valero Capital with those of Valero Energy Corporation; the receivables are not available to satisfy the claims of the creditors of Valero Marketing or Valero Energy Corporation.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

As of December 31, 2011 and 2010, \$3.3 billion and \$2.2 billion, respectively, of our accounts receivable composed the designated pool of accounts receivable included in the program. All amounts outstanding under the accounts receivable sales facility are reflected as debt on our balance sheets and proceeds and repayments are reflected as cash flows from financing activities on the statements of cash flows. Changes in the amounts outstanding under our accounts receivable sales facility were as follows (in millions):

	Year Ended December 31,		
	2011	2010	2009
Balance as of beginning of year	\$ 100	\$ 200	\$ 100
Proceeds from the sale of receivables	150	1,225	950
Repayments	—	(1,325)	(850)
Balance as of end of year	<u>\$ 250</u>	<u>\$ 100</u>	<u>\$ 200</u>

**Capitalized Interest**

For the years ended December 31, 2011, 2010, and 2009, capitalized interest was \$152 million, \$90 million, and \$105 million, respectively.

**Other Disclosures**

In addition to the maximum debt-to-capitalization ratio applicable to the Revolver discussed above under “*Bank Credit Facilities*,” our bank credit facilities and other debt arrangements contain various customary restrictive covenants, including cross-default and cross-acceleration clauses.

Principal payments on our debt obligations and future minimum rentals on capital lease obligations as of December 31, 2011 were as follows (in millions):

	Debt	Capital Lease Obligations
2012	\$ 1,004	\$ 11
2013	484	10
2014	200	9
2015	475	8
2016	—	8
Thereafter	5,578	37
Net unamortized discount and fair value adjustments	(51)	—
Less interest expense	—	(32)
Total	<u>\$ 7,690</u>	<u>\$ 51</u>



**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**12. COMMITMENTS AND CONTINGENCIES**

***Operating Leases***

We have long-term operating lease commitments for land, office facilities, retail facilities and related equipment, transportation equipment, time charters for ocean-going tankers and coastal vessels, dock facilities, and various facilities and equipment used in the storage, transportation, production, and sale of refinery feedstocks, refined product and corn inventories.

Certain leases for processing equipment and feedstock and refined product storage facilities provide for various contingent payments based on, among other things, throughput volumes in excess of a base amount. Certain leases for vessels contain renewal options and escalation clauses, which vary by charter, and provisions for the payment of chartering fees, which either vary based on usage or provide for payments, in addition to established minimums, that are contingent on usage. Leases for convenience stores may also include provisions for contingent rental payments based on sales volumes. In most cases, we expect that in the normal course of business, our leases will be renewed or replaced by other leases.

As of December 31, 2011, our future minimum rentals and minimum rentals to be received under subleases for leases having initial or remaining noncancelable lease terms in excess of one year were as follows (in millions):

2012	\$	291
2013		198
2014		131
2015		106
2016		86
Thereafter		294
Total minimum rental payments		1,106
Less minimum rentals to be received under subleases		(41)
Net minimum rental payments	\$	1,065

Rental expense was as follows (in millions):

	Year Ended December 31,		
	2011	2010	2009
Minimum rental expense	\$ 523	\$ 485	\$ 519
Contingent rental expense	23	23	21
Total rental expense	546	508	540
Less sublease rental income	(2)	(3)	(4)
Net rental expense	\$ 544	\$ 505	\$ 536

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

***Other Commitments***

We have various purchase obligations under certain industrial gas and chemical supply arrangements (such as hydrogen supply arrangements), crude oil and other feedstock supply arrangements, and various throughput and terminalling agreements. We enter into these contracts to ensure an adequate supply of utilities and feedstock and adequate storage capacity to operate our refineries. Substantially all of our purchase obligations are based on market prices or adjustments based on market indices. Certain of these purchase obligations include fixed or minimum volume requirements, while others are based on our usage requirements. None of these obligations are associated with suppliers' financing arrangements. These purchase obligations are not reflected as liabilities.

***Environmental Matters***

The U.S. Environmental Protection Agency (EPA) began regulating greenhouse gases on January 2, 2011, under the Clean Air Act Amendments of 1990 (Clean Air Act). Any new construction or material expansions will require that, among other things, a greenhouse gas permit be issued at either or both the state or federal level in accordance with the Clean Air Act and regulations, and we will be required to undertake a technology review to determine appropriate controls to be implemented with the project in order to reduce greenhouse gas emissions. The determination would be on a case by case basis, and the EPA has provided only general guidance on which controls will be required.

Furthermore, the EPA is currently developing refinery-specific greenhouse gas regulations and performance standards that are expected to impose, on new and existing operations, greenhouse gas emission limits and/or technology requirements. These control requirements may affect a wide range of refinery operations but have not yet been delineated. Any such controls, however, could result in material increased compliance costs, additional operating restrictions for our business, and an increase in the cost of the products we produce, which could have a material adverse effect on our financial position, results of operations, and liquidity.

Certain states and foreign governments have pursued regulation of greenhouse gases independent of the EPA. For example, the California Global Warming Solutions Act, also known as AB 32, directs the California Air Resources Board (CARB) to develop and issue regulations to reduce greenhouse gas emissions in California to 1990 levels by 2020. The CARB has issued a variety of regulations aimed at reaching this goal, including a Low Carbon Fuel Standard (LCFS) as well as a statewide cap-and-trade program.

- The LCFS was scheduled to become effective in 2011, but recent rulings by the U.S. District Court have stayed enforcement of the LCFS until certain legal challenges to the LCFS have been resolved. Most notably, the court determined that the LCFS violates the Commerce Clause of the U.S. Constitution to the extent that the standard discriminates against out-of-state crude oils and corn ethanol. CARB has appealed the lower court's ruling to the U.S. Court of Appeals for the Ninth Circuit.
  - As initially designed, the LCFS called for initially small reductions in the carbon intensity of transportation fuels sold in California. The mandated reductions in carbon intensity were thereafter scheduled to increase through 2020, after which another step-change in reductions is anticipated.
  - CARB designed the LCFS to encourage substitution of traditional petroleum fuels, and, over time, lead to greater use of electric cars and alternative fuels, such as E85, as companies seek to generate more credits to offset petroleum fuels.
- A California statewide cap-and-trade program will begin in 2013. Initially, the program will apply only to stationary sources of greenhouse gases (e.g., refinery and power plant greenhouse gas)

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

emissions). Greenhouse gas emissions from fuels that we sell in California will be covered by the program beginning in 2015. We anticipate that free allocations of credits will be available in the early years of the program, but we expect that compliance costs will increase significantly beginning in 2015, when transportation fuels are included in the program.

- Complying with AB 32, including the LCFS and the cap-and-trade program, could result in material increased compliance costs for us, increased capital expenditures, increased operating costs, and additional operating restrictions for our business, resulting in an increase in the cost of, and decreases in the demand for, the products we produce. To the degree we are unable to recover these increased costs, these matters could have a material adverse effect on our financial position, results of operations, and liquidity.

In January 2012, CARB adopted amendments to its Clean Fuels Outlet (CFO) Regulation. CARB states that the CFO Regulation is intended to provide outlets of clean fuel to meet the needs of alternative fuel vehicles. The regulation would require major refiners and importers of gasoline, including Valero, to install clean fuel outlets at five percent of California's retail stations for hydrogen fueling and electric vehicle charging. We expect this regulation to be challenged, but we could be required to make significant capital expenditures if the regulation is implemented as presently adopted.

The EPA has disapproved certain permitting programs of the Texas Commission on Environmental Quality (TCEQ) that historically have streamlined the environmental permitting process in Texas. For example, the EPA has disapproved the TCEQ pollution control standard permit, thus requiring conventional permitting for future pollution control equipment. Litigation is pending from industry groups and others against the EPA for each of these actions. The EPA has also objected to numerous Title V permits in Texas and other states, including permits at our Port Arthur, Corpus Christi East, and McKee Refineries. Environmental activist groups have filed a notice of intent to sue the EPA, seeking to require the EPA to assume control of these permits from the TCEQ. All of these developments have created substantial uncertainty regarding existing and future permitting. Because of this uncertainty, we are unable to determine the costs or effects of the EPA's actions on our permitting activity. But the EPA's disruption of the Texas permitting system could result in material increased compliance costs for us, increased capital expenditures, increased operating costs, and additional operating restrictions for our business, resulting in an increase in the cost of, and decreases in the demand for, the products we produce, which could have a material adverse effect on our financial position, results of operations, and liquidity.

***Tax Matters***

We are subject to extensive tax liabilities imposed by multiple jurisdictions, including income taxes, transactional taxes (excise/duty, sales/use, and value-added taxes), payroll taxes, franchise taxes, withholding taxes, and ad valorem taxes. New tax laws and regulations and changes in existing tax laws and regulations are continuously being enacted or proposed that could result in increased expenditures for tax liabilities in the future. Many of these liabilities are subject to periodic audits by the respective taxing authority. Subsequent changes to our tax liabilities as a result of these audits may subject us to interest and penalties.

As of December 31, 2011, the Internal Revenue Service (IRS) has ongoing tax audits related to our U.S. federal tax returns from 2002 through 2009, as discussed in Note 16. We have received Revenue Agent Reports on our tax years for 2002 through 2007 and we are vigorously contesting many of the tax positions and assertions from the IRS. Although we believe our tax liabilities are fairly stated and properly reflected

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

in our financial statements, should the IRS eventually prevail, it could result in a material amount of our deferred tax liabilities being reclassified to current liabilities which could have a material adverse effect on our liquidity.

Effective June 1, 2010, the Government of Aruba (GOA) enacted a new tax regime applicable to refinery and terminal operations in Aruba. Under the new tax regime, we are subject to a profit tax rate of 7 percent and a dividend withholding tax rate of zero percent. In addition, all imports and exports are exempt from turnover tax and throughput fees. Beginning June 1, 2012, we will also make a minimum annual tax payment of \$10 million (payable in equal quarterly installments), with the ability to carry forward any excess tax prepayments to future tax years.

The new tax regime was the result of a settlement agreement entered into on February 24, 2010 between the GOA and us that set the parties' proposed terms for settlement of a lengthy and complicated tax dispute between the parties. On May 30, 2010, the Aruban Parliament adopted several laws that implemented the provisions of the settlement agreement, which became effective June 1, 2010. Pursuant to the terms of the settlement agreement, we relinquished certain provisions of a previous tax holiday regime. On June 4, 2010, we made a payment to the GOA of \$118 million (primarily from restricted cash held in escrow) in consideration of a full release of all tax claims prior to June 1, 2010. This settlement resulted in an after-tax gain of \$30 million recognized primarily as a reduction to interest expense of \$8 million and an income tax benefit of \$20 million for the year ended December 31, 2010.

***Health Care Reform***

In March 2010, a comprehensive health care reform package composed of the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (Health Care Reform) was enacted into law. Provisions of the Health Care Reform are expected to affect the future costs of our U.S. health care plans. We sponsor U.S. health care plans that are grandfathered under Health Care Reform and have made only those changes required by Health Care Reform to our plans. Legislative challenges have been made to several of the Health Care Reform provisions and are currently under review by the U.S. Supreme Court. We expect to receive more guidance on the Health Care Reform provisions which are required in 2014 and will then be able to evaluate the potential impact of the Health Care Reform on our financial position and results of operations.

***Litigation Matters***

We are party to claims and legal proceedings arising in the ordinary course of business. We have not recorded a loss contingency liability with respect to some of these matters because we have determined that it is remote that a loss has been incurred. For other matters, we have recorded a loss contingency liability where we have determined that it is probable that a loss has been incurred and that the loss is reasonably estimable. These loss contingency liabilities are not material to our financial position. We re-evaluate and update our loss contingency liabilities as matters progress over time, and we believe that any changes to the recorded liabilities will not be material to our financial position or results of operations.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**13. EQUITY*****Share Activity***

For the years ended December 31, 2011, 2010, and 2009, activity in the number of shares of common stock and treasury stock was as follows (in millions):

	<b>Common Stock</b>	<b>Treasury Stock</b>
Balance as of December 31, 2008	627	(111)
Sale of common stock	46	—
Transactions in connection with stock-based compensation plans:		
Stock issuances	—	2
Balance as of December 31, 2009	673	(109)
Transactions in connection with stock-based compensation plans:		
Stock issuances	—	5
Stock repurchases	—	(1)
Balance as of December 31, 2010	673	(105)
Transactions in connection with stock-based compensation plans:		
Stock issuances	—	5
Stock repurchases	—	(17)
Balance as of December 31, 2011	673	(117)

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**Common Stock Offering**

In June 2009, we sold in a public offering 46 million shares of our common stock, which included 6 million shares related to an overallotment option exercised by the underwriters, at a price of \$18.00 per share and received proceeds of \$799 million, net of underwriting discounts and commissions and other issuance costs.

**Preferred Stock**

We have 20 million shares of preferred stock authorized with a par value of \$0.01 per share. No shares of preferred stock were outstanding as of December 31, 2011 and 2010.

**Treasury Stock**

We purchase shares of our common stock in open market transactions to meet our obligations under employee stock-based compensation plans. We also purchase shares of our common stock from our employees and non-employee directors in connection with the exercise of stock options, the vesting of restricted stock, and other stock compensation transactions.

On February 28, 2008, our board of directors approved a \$3 billion common stock purchase program, which is in addition to the remaining amount under a \$6 billion program previously authorized. This additional \$3 billion program has no expiration date. As of December 31, 2011, we had made no purchases of our common stock under this \$3 billion program. As of December 31, 2011, we have approvals under these stock purchase programs to purchase approximately \$3.5 billion of our common stock.

**Common Stock Dividends**

On January 24, 2012, our board of directors declared a quarterly cash dividend of \$0.15 per common share payable March 14, 2012 to holders of record at the close of business on February 15, 2012.

**Accumulated Other Comprehensive Income**

Changes in the balances of each component of accumulated other comprehensive income (loss) were as follows (in millions):

	Foreign Currency Translation Adjustment	Pension/ OPEB Liability Adjustment	Net Gain (Loss) On Cash Flow Hedges	Accumulated Other Comprehensive Income (Loss)
Balance as of December 31, 2008	\$ 90	\$ (435)	\$ 169	\$ (176)
Other comprehensive income (loss)	375	218	(52)	541
Balance as of December 31, 2009	465	(217)	117	365
Other comprehensive income (loss)	158	(18)	(117)	23
Balance as of December 31, 2010	623	(235)	—	388
Other comprehensive income (loss)	(122)	(189)	19	(292)
Balance as of December 31, 2011	<u>\$ 501</u>	<u>\$ (424)</u>	<u>\$ 19</u>	<u>\$ 96</u>

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**14. EMPLOYEE BENEFIT PLANS**

***Defined Benefit Plans***

We have defined benefit pension plans, some of which are subject to collective bargaining agreements, that cover most of our employees. These plans provide eligible employees with retirement income based on years of service and compensation during specific periods. We fund our pension plans as required by local regulations. In the U.S., all qualified pension plans are subject to the Employee Retirement Income Security Act (ERISA) minimum funding standard. We typically do not fund or fully fund U.S. nonqualified and certain international pension plans that are not subject to funding requirements because contributions to these pension plans may be less economic and investment returns may be less attractive than our other investment alternatives.

We also provide health care and life insurance benefits for certain retired employees through our postretirement benefit plans. Most of our employees become eligible for these benefits if, while still working for us, they reach normal retirement age or take early retirement. These plans are unfunded, and retired employees share the cost with us. Individuals who became our employees as a result of an acquisition became eligible for other postretirement benefits under our plans as determined by the terms of the relevant acquisition agreement.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

The changes in benefit obligation, the changes in fair value of plan assets, and the funded status of our pension plans and other postretirement benefit plans as of and for the years ended December 31, 2011 and 2010 were as follows (in millions):

	<b>Pension Plans</b>		<b>Other Postretirement Benefit Plans</b>	
	<b>2011</b>	<b>2010</b>	<b>2011</b>	<b>2010</b>
<b>Change in benefit obligation:</b>				
Benefit obligation at beginning of year	\$ 1,626	\$ 1,454	\$ 426	\$ 466
Service cost	104	88	11	10
Interest cost	85	83	22	26
Acquisitions	—	—	4	—
Participant contributions	—	—	12	12
Plan amendments	4	—	—	(31)
Special termination benefits	—	4	—	—
Medicare subsidy for prescription drugs	—	—	3	1
Benefits paid	(117)	(109)	(30)	(31)
Actuarial (gain) loss	179	106	(9)	(28)
Foreign currency exchange rate changes	—	—	(1)	1
Benefit obligation at end of year	<u>\$ 1,881</u>	<u>\$ 1,626</u>	<u>\$ 438</u>	<u>\$ 426</u>
<b>Change in plan assets:</b>				
Fair value of plan assets at beginning of year	\$ 1,362	\$ 1,251	\$ —	\$ —
Actual return on plan assets	(2)	149	—	—
Valero contributions	244	71	15	18
Participant contributions	—	—	12	12
Medicare subsidy for prescription drugs	—	—	3	1
Benefits paid	(117)	(109)	(30)	(31)
Fair value of plan assets at end of year	<u>\$ 1,487</u>	<u>\$ 1,362</u>	<u>\$ —</u>	<u>\$ —</u>
<b>Reconciliation of funded status:</b>				
Fair value of plan assets at end of year	\$ 1,487	\$ 1,362	\$ —	\$ —
Less benefit obligation at end of year	1,881	1,626	438	426
Funded status at end of year	<u>\$ (394)</u>	<u>\$ (264)</u>	<u>\$ (438)</u>	<u>\$ (426)</u>



**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

The accumulated benefit obligations for certain of our pension plans exceed the fair values of the assets of those plans. For those plans, the table below presents the total projected benefit obligation, accumulated benefit obligation, and fair value of the plan assets (in millions).

	<b>December 31,</b>	
	<b>2011</b>	<b>2010</b>
Projected benefit obligation	\$ 244	\$ 231
Accumulated benefit obligation	189	192
Fair value of plan assets	40	44

Benefit payments that we expect to pay, including amounts related to expected future services, and the anticipated Medicare subsidies that we expect to receive are as follows for the years ending December 31 (in millions):

	<b>Pension Benefits</b>	<b>Other Postretirement Benefits</b>	<b>Medicare Subsidy</b>
2012	\$ 84	\$ 23	\$ (2)
2013	99	24	n/a
2014	101	26	n/a
2015	107	28	n/a
2016	117	29	n/a
2017-2021	766	159	n/a

We have minimum required contributions of \$2 million to our pension plans during 2012 under ERISA and other local regulations; however, we plan to contribute approximately \$100 million to our pension plans during 2012.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

The components of net periodic benefit cost were as follows for the years ended December 31, 2011, 2010, and 2009 (in millions):

	Pension Plans			Other Postretirement Benefit Plans		
	2011	2010	2009	2011	2010	2009
<b>Components of net periodic benefit cost:</b>						
Service cost	\$ 104	\$ 88	\$ 104	\$ 11	\$ 10	\$ 12
Interest cost	85	83	79	22	26	25
Expected return on plan assets	(112)	(112)	(108)	—	—	—
Amortization of:						
Prior service cost (credit)	2	3	3	(23)	(20)	(19)
Net loss	12	2	10	2	4	6
Net periodic benefit cost before special charges	91	64	88	12	20	24
Special charges	4	8	7	4	—	1
Net periodic benefit cost	<u>\$ 95</u>	<u>\$ 72</u>	<u>\$ 95</u>	<u>\$ 16</u>	<u>\$ 20</u>	<u>\$ 25</u>

Amortization of prior service cost (credit) shown in the above table was based on the average remaining service period of employees expected to receive benefits under each respective plan. Special charges in 2011 relate to purchase accounting for the Meraux Acquisition and settlements related to lump sum payments in excess of thresholds. Special charges in 2010 and 2009 related to early retirement programs for corporate employees and employees at our Delaware City and Paulsboro Refineries.

Pre-tax amounts recognized in other comprehensive income for the years ended December 31, 2011, 2010, and 2009 were as follows (in millions):

	Pension Plans			Other Postretirement Benefit Plans		
	2011	2010	2009	2011	2010	2009
<b>Net loss (gain) arising during the year:</b>						
Net actuarial loss (gain)	\$ 294	\$ 68	\$ (273)	\$ (9)	\$ (28)	\$ (27)
Prior service credit	4	—	—	—	(31)	(51)
<b>Net gain (loss) reclassified into income:</b>						
Net actuarial loss	(12)	(2)	(10)	(2)	(4)	(6)
Prior service (cost) credit	(2)	(3)	(3)	23	20	19
Curtailment and settlement	(4)	(4)	(1)	—	—	—
Total changes in other comprehensive (income) loss	<u>\$ 280</u>	<u>\$ 59</u>	<u>\$ (287)</u>	<u>\$ 12</u>	<u>\$ (43)</u>	<u>\$ (65)</u>

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

The pre-tax amounts in accumulated other comprehensive income as of December 31, 2011 and 2010 that have not yet been recognized as components of net periodic benefit cost were as follows (in millions):

	Pension Plans		Other Postretirement Benefit Plans	
	2011	2010	2011	2010
	Prior service cost (credit)	\$ 16	\$ 14	\$ (103)
Net actuarial loss	681	403	50	61
Total	\$ 697	\$ 417	\$ (53)	\$ (65)

The following pre-tax amounts included in accumulated other comprehensive income as of December 31, 2011 are expected to be recognized as components of net periodic benefit cost during the year ending December 31, 2012 (in millions):

	Pension Plans		Other Postretirement Benefit Plans	
	2011	2010	2011	2010
Amortization of prior service cost (credit)	\$ 3	\$ (23)		
Amortization of net actuarial loss	33	1		
Total	\$ 36	\$ (22)		

The weighted-average assumptions used to determine the benefit obligations as of December 31, 2011 and 2010 were as follows:

	Pension Plans		Other Postretirement Benefit Plans	
	2011	2010	2011	2010
	Discount rate	5.08%	5.40%	4.97%
Rate of compensation increase	3.68%	3.56%	—%	—%

The discount rate assumption used to determine the benefit obligations as of December 31, 2011 for the pension plans and other postretirement benefit plans was based on the Aon Hewitt AA Only Above Median yield curve and considered the timing of the projected cash outflows under our plans. This curve was designed by Aon Hewitt to provide a means for plan sponsors to value the liabilities of their pension plans or postretirement benefit plans. It is a hypothetical double-A yield curve represented by a series of annualized individual discount rates with maturities from one-half year to 99 years. Each bond issue underlying the curve is required to have an average rating of double-A when averaging all available ratings by Moody's Investor Services (Moody's), Standard and Poor's Ratings Service (S&P), and Fitch Ratings. Only the bonds representing the 50 percent highest yielding issuance among these with average ratings of double-A are included in this yield curve.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

The discount rate assumption used to determine the benefit obligations as of December 31, 2010 for the pension plans and other postretirement benefit plans was based on the Hewitt Above Median yield curve and considered the timing of the projected cash outflows under our plans. This curve was also designed by Aon Hewitt to provide a means for plan sponsors to value the liabilities of their pension plans or other postretirement benefit plans. This curve was a hypothetical double yield curve represented by a series of annualized individual discount rates with maturities from one-half year to more than 30 years. Each bond issue underlying the curve was required to have a rating of Aa or better by Moody's or a rating of AA or better by S&P.

We based our December 31, 2011 discount rate assumption on the Aon Hewitt AA Only Above Median yield curve because we believe it is representative of the types of bonds we would use to settle our pension and other postretirement benefit plan liabilities as of that date. We believe that the market volatility of the last two to three years has largely subsided and that the yields associated with the bonds used to develop this yield curve reflect the current level of interest rates. In 2010 and 2009, we based our discount rate assumption on the Hewitt Above Median yield curve because it included a larger number of bonds which lessened the effect of outlier bonds whose yields were influenced by the volatility in the market at that time.

The weighted-average assumptions used to determine the net periodic benefit cost for the years ended December 31, 2011, 2010, and 2009 were as follows:

	Pension Plans			Other Postretirement Benefit Plans		
	2011	2010	2009	2011	2010	2009
Discount rate	5.40%	5.80%	5.40%	5.22%	5.68%	5.39%
Expected long-term rate of return on plan assets	7.69%	7.71%	7.72%	—%	—%	—%
Rate of compensation increase	3.56%	4.18%	4.18%	—%	—%	—%

The assumed health care cost trend rates as of December 31, 2011 and 2010 were as follows:

	2011	2010
Health care cost trend rate assumed for the next year	7.43%	7.46%
Rate to which the cost trend rate was assumed to decline (the ultimate trend rate)	5.00%	5.00%
Year that the rate reaches the ultimate trend rate	2018	2018

Assumed health care cost trend rates have an impact on the amounts reported for retiree health care plans. A one percentage-point change in assumed health care cost trend rates would have the following effects on other postretirement benefits (in millions):

	1% Increase	1% Decrease
Effect on total of service and interest cost components	\$ 1	\$ (1)
Effect on accumulated postretirement benefit obligation	18	(16)

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

The tables below present the fair values of the assets of our pension plans (in millions) as of December 31, 2011 and 2010 by level of the fair value hierarchy. Assets categorized in Level 1 of the hierarchy are measured at fair value using a market approach based on quotations from national securities exchanges. Assets categorized in Level 2 of the hierarchy are measured at net asset value as a practical expedient for fair value. As previously noted, we do not fund or fully fund U.S. nonqualified and certain international pension plans that are not subject to funding requirements, and we do not fund our other postretirement benefit plans. Plan assets for certain U.S. nonqualified pension plans are disclosed in Note 20 and are not included in the plan assets reflected below because they are not protected from our creditors and therefore cannot be reflected as a reduction from our obligations under the pension plans.

	<b>Fair Value Measurements Using</b>			<b>Total as of December 31, 2011</b>
	<b>Quoted Prices in Active Markets (Level 1)</b>	<b>Significant Other Observable Inputs (Level 2)</b>	<b>Significant Unobservable Inputs (Level 3)</b>	
<b>Equity securities:</b>				
Valero Energy Corporation common stock	\$ 5	\$ —	\$ —	\$ 5
Other U.S. companies (a)	375	—	—	375
International companies	120	—	—	120
Preferred stock	2	—	—	2
<b>Mutual funds:</b>				
International growth	102	—	—	102
Index funds (b)	63	—	—	63
Corporate debt instruments	246	—	—	246
<b>Government securities:</b>				
U.S. Treasury securities	67	—	—	67
Mortgage-backed securities	3	—	—	3
Other government securities	81	—	—	81
Common collective trusts	—	247	—	247
Insurance contracts	—	17	—	17
Interest and dividends receivable	5	—	—	5
Cash and cash equivalents	154	—	—	154
<b>Total</b>	<b>\$ 1,223</b>	<b>\$ 264</b>	<b>\$ —</b>	<b>\$ 1,487</b>

See notes on page 99.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

	Fair Value Measurements Using			Total as of December 31, 2010
	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	
Equity securities:				
Valero Energy Corporation common stock	\$ 5	\$ —	\$ —	\$ 5
Other U.S. companies (a)	369	—	—	369
International companies	107	—	—	107
Preferred stock	1	—	—	1
Mutual funds:				
International growth	117	—	—	117
Index funds (b)	64	—	—	64
Corporate debt instruments	274	—	—	274
Government securities:				
U.S. Treasury securities	30	—	—	30
Mortgage-backed securities	3	—	—	3
Other government securities	93	—	—	93
Common collective trusts	—	231	—	231
Insurance contracts	—	18	—	18
Interest and dividends receivable	5	—	—	5
Cash and cash equivalents	45	—	—	45
Total	<u>\$ 1,113</u>	<u>\$ 249</u>	<u>\$ —</u>	<u>\$ 1,362</u>

- (a) Equity securities are held in a wide range of industrial sectors, including consumer goods, information technology, healthcare, industrials, and financial services.
- (b) This class include primarily investments in approximately 60 percent equities and 40 percent bonds.

The investment policies and strategies for the assets of our pension plans incorporate a diversified approach that is expected to earn long-term returns from capital appreciation and a growing stream of current income. This approach recognizes that assets are exposed to risk and the market value of the pension plans' assets may fluctuate from year to year. Risk tolerance is determined based on our financial ability to withstand risk within the investment program and the willingness to accept return volatility. In line with the investment return objective and risk parameters, the pension plans' mix of assets includes a diversified portfolio of equity and fixed-income investments. As of December 31, 2011, the target allocations for plan assets are 70 percent equity securities and 30 percent fixed income investments. Equity securities include international stocks and a blend of U.S. growth and value stocks of various sizes of capitalization. Fixed income securities include bonds and notes issued by the U.S. government and its agencies, corporate bonds, and mortgage-backed securities. The aggregate asset allocation is reviewed on an annual basis.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

The overall expected long-term rate of return on plan assets for the pension plans is estimated using models of asset returns. Model assumptions are derived using historical data given the assumption that capital markets are informationally efficient. Three methods are used to derive the long-term expected returns for each asset class. Because each method has distinct advantages and disadvantages and differing results, an equal weighted average of the methods' results is used.

***Defined Contribution Plans***

**Valero Energy Corporation Thrift Plan**

The Valero Energy Corporation Thrift Plan covers substantially all U.S. employees except for those employees covered by the plans discussed below. Employees are immediately eligible to participate in the plan and receive employer matching contributions.

Through December 31, 2009, participants could make basic contributions up to 8 percent of their total annual salary, which included overtime and cash bonuses. In addition, participants who made a basic contribution of 8 percent could also make a supplemental contribution of up to 22 percent of their total eligible annual salary. We matched 75 percent of each participant's total basic contributions up to 8 percent based on the participant's total annual salary, excluding cash bonuses. Commencing January 1, 2010, we match 100 percent of basic contributions up to 6 percent of each participant's total annual salary, excluding cash bonuses.

**Valero Savings Plan**

The Valero Savings Plan covers our U.S. retail store employees, certain other employees supporting the retail organization, and employees at our ethanol plants. Under this plan, participants can contribute from 1 percent to 30 percent of their eligible compensation. We contribute \$0.60 for every \$1.00 of the participant's contribution up to 6 percent of eligible compensation. At our discretion, we may also make profit-sharing contributions, which can range from 3.5 to 5 percent of eligible compensation, to the Plan to be allocated to the participants.

**Premcor Retirement Savings Plan**

The Premcor Retirement Savings Plan covers certain union employees. Under this plan, participants can contribute from 1 percent to 50 percent of their eligible compensation. We contribute 200 percent of the first 3 percent of a participant's eligible compensation. In addition, we contribute 100 percent of the next 3 percent of a participant's eligible compensation for certain union participants who contribute to the plan.

**Ultramar Ltd. Savings Plan**

The Ultramar Ltd. Savings Plan covers all Canadian employees. Permanent employees are eligible after three months of service, temporary employees are eligible after one year of service, and seasonal employees are eligible after 220 days of service during 36 consecutive months. We contribute 9 percent of the employee's base salary plus 50 percent of the employee's voluntary contribution, which is limited to 6 percent of the base salary. Our contribution does not exceed 12 percent of the base salary.

**Valero Refining Company – Aruba N.V. Thrift Plan**

The Valero Refining Company – Aruba N.V. Thrift Plan covers all Aruban employees. Employees are eligible to participate after completing one year of service and can contribute a maximum of 8 percent of salary. We match 100 percent of employee contributions up to a maximum of 8 percent based on years of service.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

Our contributions to these defined contribution plans were as follows (in millions):

	Year Ended December 31,		
	2011	2010	2009
Valero Energy Corporation Thrift Plan	\$ 35	\$ 36	\$ 37
Valero Savings Plan	8	6	5
Premcor Retirement Savings Plan	5	5	6
Ultramar Ltd. Savings Plan	10	9	8
Valero Refining Company – Aruba N.V. Thrift Plan	1	1	1

**Other Plans**

We have several defined contribution plans in the U.K. and Ireland that cover employees of those countries. Employer contributions to these plans were immaterial for the year ended December 31, 2011.

We also have two defined contribution plans in the U.S., the assets and liabilities of which are measured and recorded at fair value on a recurring basis as disclosed in Note 20. No employer contributions were made to these defined contribution plans for the years ended December 31, 2011, 2010, and 2009.

**15. STOCK-BASED COMPENSATION**

We have various fixed and performance-based stock compensation plans under which awards have been granted, which are summarized as follows:

- The 2011 Omnibus Stock Incentive Plan (the OSIP) authorizes the grant of various stock and stock-based awards to our employees and our non-employee directors. Awards available under the OSIP include options to purchase shares of common stock, performance awards that vest upon the achievement of an objective performance goal, stock appreciation rights, and restricted stock that vests over a period determined by our compensation committee. The OSIP was approved by our stockholders on April 28, 2011. As of December 31, 2011, 18,498,630 shares of our common stock remained available to be awarded under the OSIP.
- Prior to the approval of the OSIP by our stockholders, most of the equity awards granted to our employees and non-employee directors were made under our 2005 Omnibus Stock Incentive Plan. Prior awards granted under this plan included options to purchase shares of common stock, performance awards that vest upon the achievement of an objective performance goal, and restricted stock that vests over a period determined by our compensation committee. No additional grants may be awarded under this plan.
- The Restricted Stock Plan for Non-Employee Directors authorizes an annual grant of our common stock valued at \$160,000 to each non-employee director. Vesting generally will occur based on the number of grants received as follows: (i) initial grants will vest in three equal annual installments, (ii) second grants will vest one-third on the first anniversary of the grant date and the remaining two-thirds on the second anniversary of the grant date, and (iii) all grants thereafter will vest 100 percent on the first anniversary of the grant date. As of December 31, 2011, 8,289 shares of our common stock remained available to be awarded under this plan.



**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

- The 2003 Employee Stock Incentive Plan authorizes the grant of various stock and stock-related awards to employees and prospective employees. Awards include options to purchase shares of common stock, performance awards that vest upon the achievement of an objective performance goal, stock appreciation rights, and restricted stock that vests over a period determined by our compensation committee. As of December 31, 2011, 536,141 shares of our common stock remained available to be awarded under this plan.
- In addition, we maintained other stock option and incentive plans under which previously granted equity awards remain outstanding. No additional grants may be awarded under these plans.

Each of our stock-based compensation arrangements is discussed below.

The following table reflects activity related to our stock-based compensation arrangements (in millions):

	Year Ended December 31,		
	2011	2010	2009
Stock-based compensation expense	\$ 58	\$ 54	\$ 68
Tax benefit recognized on stock-based compensation expense	20	19	24
Tax benefit realized for tax deductions resulting from exercises and vestings	35	23	9
Effect of tax deductions in excess of recognized stock-based compensation expense reported as a financing cash flow	23	11	5

***Stock Options***

Under the terms of our various stock-based compensation plans, the exercise price of options granted is not less than the fair market value of our common stock on the date of grant. Stock options become exercisable pursuant to the individual written agreements between the participants and us, usually in three or five equal annual installments beginning one year after the date of grant, with unexercised options generally expiring seven or ten years from the date of grant.

The fair value of each stock option grant was estimated on the grant date using the Black-Scholes option-pricing model. The expected life of options granted is the period of time from the grant date to the date of expected exercise or other expected settlement. The expected life for each of the years in the table below was calculated using the safe harbor provisions of SEC Staff Accounting Bulletin No. 107 and No. 110 related to share-based payments. Because the vesting period for all of the stock options granted during the years ended December 31, 2011, 2010, and 2009 was three years rather than five years as in prior years, historical exercise patterns did not provide a reasonable basis for estimating the expected life. Expected volatility is based on closing prices of our common stock for periods corresponding to the expected life of options granted. Expected dividend yield is based on annualized dividends at the date of grant. The risk-free interest rate used is the implied yield currently available from the U.S. Treasury zero-coupon issues with a remaining term equal to the expected life of the options at the grant date.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

A summary of the weighted-average assumptions used in our fair value measurements is presented in the table below.

	Year Ended December 31,		
	2011	2010	2009
Expected life in years	6.0	6.0	6.0
Expected volatility	49.30%	48.21%	47.8%
Expected dividend yield	2.28%	1.05%	3.1%
Risk-free interest rate	1.44%	1.83%	2.8%

A summary of the status of our stock option awards is presented in the table below.

	Number of Stock Options	Weighted- Average Exercise Price Per Share	Weighted- Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in millions)
Outstanding as of January 1, 2011	24,379,558	\$ 24.83		
Granted	370,025	26.30		
Exercised	(4,345,678)	11.56		
Forfeited	(497,319)	50.29		
Outstanding as of December 31, 2011	19,906,586	27.11	3.5	\$ 67
Exercisable as of December 31, 2011	17,864,926	27.05	3.0	64

The weighted-average grant-date fair value of stock options granted during the years ended December 31, 2011, 2010, and 2009 was \$10.10, \$8.17, and \$6.91 per stock option, respectively. The total intrinsic value of stock options exercised during the years ended December 31, 2011, 2010, and 2009 was \$63 million, \$25 million, and \$12 million, respectively. Cash received from stock option exercises for the years ended December 31, 2011, 2010, and 2009 was \$49 million, \$20 million, and \$11 million, respectively.

As of December 31, 2011, there was \$9 million of unrecognized compensation cost related to outstanding unvested stock option awards, which is expected to be recognized over a weighted-average period of approximately one year.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**Restricted Stock**

Restricted stock is granted to employees and non-employee directors. Restricted stock granted to employees vests in accordance with individual written agreements between the participants and us, usually in equal annual installments over a period of three to five years beginning one year after the date of grant. Restricted stock granted to our non-employee directors vests from one to three years following the date of grant. A summary of the status of our restricted stock awards is presented in the table below.

	Number of Shares	Weighted- Average Grant-Date Fair Value Per Share
Nonvested shares as of January 1, 2011	3,360,213	\$ 21.05
Granted	1,297,464	26.32
Vested	(1,350,658)	23.17
Forfeited	(57,929)	20.66
Nonvested shares as of December 31, 2011	<u>3,249,090</u>	22.28

As of December 31, 2011, there was \$44 million of unrecognized compensation cost related to outstanding unvested restricted stock awards, which is expected to be recognized over a weighted-average period of approximately two years. The total fair value of restricted stock that vested during the years ended December 31, 2011, 2010, and 2009 was \$32 million, \$25 million, and \$12 million, respectively.

**Performance Awards**

Performance awards are issued to certain of our key employees and represent rights to receive shares of our common stock upon the achievement by us of an objective performance measure. The objective performance measure is our total shareholder return, which is ranked among the total shareholder returns of a defined peer group of companies. Our ranking determines the rate at which the performance awards convert into our common shares. Conversion rates can range from zero to 200 percent.

Performance awards vest in equal one-third increments (tranches) on an annual basis. Our compensation committee establishes the peer group of companies for each tranche of awards at the beginning of the one-year vesting period for that tranche. Therefore, performance awards are not considered to be granted for accounting purposes until our compensation committee establishes the peer group of companies for each tranche of awards. The fair value of each tranche of awards is determined at the time the awards are considered to be granted and is based on the expected conversion rate for those awards and the fair value per share. Fair value per share is equal to the market price of our common stock on the grant date reduced by expected dividends over that tranche's vesting period.

For performance awards awarded in 2010, if a tranche of these awards fails to meet the minimum performance measure at the end of its vesting period as established by our compensation committee, that tranche of awards remains outstanding for an additional year and may convert into our common shares that following year. If such tranche of awards does not convert to our common shares the following year, those awards are forfeited. Performance awards awarded in 2011 do not have carry-forward features.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

A summary of the status of our performance awards considered granted is presented below.

	<b>Nonvested Awards</b>	<b>Vested Awards</b>
Awards outstanding as of January 1, 2011	253,611	24,219
Granted	468,941	—
Vested	(31,361)	31,361
Converted	—	—
Forfeited	—	(30,945)
Awards outstanding as of December 31, 2011	<u>691,191</u>	<u>24,635</u>

There were two grants of performance awards during the year ended December 31, 2011 as follows (dollars in millions). The first grant shown below represents the second tranche of vesting awards from the performance awards authorized by our compensation committee in 2010. The second grant shown represents the first tranche of vesting awards from the performance awards authorized by our compensation committee in 2011.

	<b>Awards Granted</b>	<b>Expected Conversion Rate</b>	<b>Fair Value Per Share</b>
First grant	222,250	50%	\$ 25.70
Second grant	246,691	—%	25.70
Total	<u>468,941</u>		

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**16. INCOME TAXES**

Income (loss) from continuing operations before income tax expense (benefit) from U.S. and international operations was as follows (in millions):

	<b>Year Ended December 31,</b>		
	<b>2011</b>	<b>2010</b>	<b>2009</b>
U.S. operations	\$ 3,190	\$ 1,436	\$ (371)
International operations	132	62	55
Income (loss) from continuing operations before income tax expense (benefit)	<u>\$ 3,322</u>	<u>\$ 1,498</u>	<u>\$ (316)</u>

The following is a reconciliation of income tax expense (benefit) related to continuing operations to income taxes computed by applying the U.S. statutory federal income tax rate (35 percent for all years presented) to income (loss) from continuing operations before income tax expense (benefit) (in millions):

	<b>Year Ended December 31,</b>		
	<b>2011</b>	<b>2010</b>	<b>2009</b>
Federal income tax expense (benefit) at the U.S. statutory rate	\$ 1,163	\$ 524	\$ (111)
U.S. state income tax expense (benefit), net of U.S. federal income tax effect	29	(21)	(2)
U.S. manufacturing deduction	(28)	5	7
International operations	46	27	75
Permanent differences	8	8	(7)
Change in tax law	—	16	—
Other, net	8	16	(5)
Income tax expense (benefit)	<u>\$ 1,226</u>	<u>\$ 575</u>	<u>\$ (43)</u>

The Aruba Refinery's profits through June 1, 2010 were non-taxable in Aruba due to a tax holiday granted by the GOA. The tax holiday, which expired on June 1, 2010, had an immaterial effect on our results of operations for the years ended December 31, 2010 and 2009.

The income tax benefit related to discontinued operations for the years ended December 31, 2011, 2010, and 2009 was \$4 million, \$370 million, and \$1.1 billion, respectively.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

Components of income tax expense (benefit) related to continuing operations were as follows (in millions):

	<b>Year Ended December 31,</b>		
	<b>2011</b>	<b>2010</b>	<b>2009</b>
<b>Current:</b>			
U.S. federal	\$ 562	\$ (75)	\$ (309)
U.S. state	13	(13)	(16)
International	186	22	142
Total current	<u>761</u>	<u>(66)</u>	<u>(183)</u>
<b>Deferred:</b>			
U.S. federal	527	634	181
U.S. state	32	(19)	12
International	(94)	26	(53)
Total deferred	<u>465</u>	<u>641</u>	<u>140</u>
Income tax expense (benefit)	<u>\$ 1,226</u>	<u>\$ 575</u>	<u>\$ (43)</u>

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

The tax effects of significant temporary differences representing deferred income tax assets and liabilities were as follows (in millions):

	<b>December 31,</b>	
	<b>2011</b>	<b>2010</b>
<b>Deferred income tax assets:</b>		
Tax credit carryforwards	\$ 158	\$ 99
Net operating losses (NOL)	300	265
Compensation and employee benefit liabilities	324	286
Environmental liabilities	78	85
Inventories	273	170
Property, plant and equipment	14	—
Other	160	184
Total deferred income tax assets	1,307	1,089
Less: Valuation allowance	(295)	(270)
Net deferred income tax assets	1,012	819
<b>Deferred income tax liabilities:</b>		
Turnarounds	(310)	(256)
Property, plant and equipment	(5,292)	(4,835)
Inventories	(274)	(260)
Other	(119)	(65)
Total deferred income tax liabilities	(5,995)	(5,416)
Net deferred income tax liabilities	\$ (4,983)	\$ (4,597)

We had the following income tax credit and loss carryforwards as of December 31, 2011 (in millions):

	<b>Amount</b>	<b>Expiration</b>
U.S. state income tax credits	\$ 63	2013 through 2027
U.S. state income tax credits	42	Unlimited
U.S. foreign tax credits	30	2012
U.S. state NOL (gross amount)	5,431	2012 through 2031
International NOL	249	Unlimited
U.S. alternative minimum tax credit	59	Unlimited

We have recorded a valuation allowance as of December 31, 2011 and 2010 due to uncertainties related to our ability to utilize some of our deferred income tax assets, primarily consisting of certain U.S. state NOLs and income tax credits, international NOLs, and U.S. foreign tax credits, before they expire. The valuation allowance is based on our estimates of taxable income in the various jurisdictions in which we operate and the period over which deferred income tax assets will be recoverable. The realization of net deferred income

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

tax assets recorded as of December 31, 2011 is primarily dependent upon our ability to generate future taxable income in certain U.S. states and international jurisdictions and foreign source income in the U.S.

Subsequently recognized tax benefits related to the valuation allowance for deferred income tax assets as of December 31, 2011 will be allocated as follows (in millions):

Income tax benefit	\$ 286
Additional paid-in capital	9
<b>Total</b>	<b>\$ 295</b>

Deferred income taxes have not been provided on the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and the respective tax bases of our international subsidiaries based on the determination that such differences are essentially permanent in duration in that the earnings of these subsidiaries are expected to be indefinitely reinvested in the international operations. As of December 31, 2011, the cumulative undistributed earnings of these subsidiaries were approximately \$4.9 billion. If those earnings were not considered indefinitely reinvested, deferred income taxes would have been recorded after consideration of U.S. foreign tax credits. In addition, as a result of our Pembroke Acquisition, certain U.S. tax elections may be available to us. The decision by us to forego these elections could significantly increase our taxable earnings and profits. It is not practicable to estimate the amount of additional tax that might be payable on those earnings, if distributed.

The following is a reconciliation of the change in unrecognized tax benefits, excluding the effect of related penalties and interest and the U.S. federal tax effect of U.S. state unrecognized tax benefits (in millions):

	<b>Year Ended December 31,</b>		
	<b>2011</b>	<b>2010</b>	<b>2009</b>
Balance as of beginning of year	\$ 330	\$ 484	\$ 238
Additions based on tax positions related to the current year	14	4	158
Additions for tax positions related to prior years	55	49	106
Reductions for tax positions related to prior years	(66)	(203)	(6)
Reductions for tax positions related to the lapse of applicable statute of limitations	(3)	(4)	(1)
Settlements	(4)	—	(11)
<b>Balance as of end of year</b>	<b>\$ 326</b>	<b>\$ 330</b>	<b>\$ 484</b>

As of December 31, 2011, 2010, and 2009, there were \$135 million, \$153 million, and \$155 million respectively, of unrecognized tax benefits that if recognized would affect our annual effective tax rate. We do not expect our unrecognized tax benefits to change significantly over the next 12 months.

During the years ended December 31, 2011, 2010, and 2009, we recognized approximately \$1 million, \$19 million, and \$22 million in interest and penalties, which is reflected within income tax expense (benefit). We had accrued approximately \$110 million and \$109 million for the payment of interest and penalties as of December 31, 2011 and 2010, respectively.



**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

Our tax years for 2002 through 2009 and Premcor Inc.'s separate tax years for 2004 and 2005 are currently under examination by the IRS. Premcor Inc. was merged into Valero effective September 1, 2005. The IRS proposed adjustments to our taxable income for certain open years, including adjustments related to depreciation methods and how we accounted for line fill, which is the volume of hydrocarbon materials present within our Units and pipelines necessary to maintain pressure and provide uninterrupted flow. We are protesting the proposed adjustments and do not expect that the ultimate disposition of these adjustments will result in a material change to our financial position or results of operations. Thus, we believe that adequate provisions for income taxes have been reflected in the financial statements.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**17. EARNINGS PER COMMON SHARE**

Earnings per common share from continuing operations were computed as follows (dollars and shares in millions, except per share amounts):

	Year Ended December 31,					
	2011		2010		2009	
	Restricted Stock	Common Stock	Restricted Stock	Common Stock	Restricted Stock	Common Stock
<b>Earnings per common share from continuing operations:</b>						
Net income (loss) attributable to Valero stockholders from continuing operations		\$ 2,097		\$ 923		\$ (273)
Less dividends paid:						
Common stock		168		113		323
Nonvested restricted stock		1		1		1
Undistributed earnings (loss)		\$ 1,928		\$ 809		\$ (597)
Weighted-average common shares outstanding	3	563	3	563	2	541
Earnings per common share from continuing operations:						
Distributed earnings	\$ 0.30	\$ 0.30	\$ 0.20	\$ 0.20	\$ 0.60	\$ 0.60
Undistributed earnings (loss)	3.40	3.40	1.43	1.43	—	(1.10)
Total earnings per common share from continuing operations	\$ 3.70	\$ 3.70	\$ 1.63	\$ 1.63	\$ 0.60	\$ (0.50)
<b>Earnings per common share from continuing operations – assuming dilution:</b>						
Net income (loss) attributable to Valero stockholders from continuing operations		\$ 2,097		\$ 923		\$ (273)
Weighted-average common shares outstanding		563		563		541
Common equivalent shares:						
Stock options		4		3		—
Performance awards and unvested restricted stock		2		2		—
Weighted-average common shares outstanding – assuming dilution		569		568		541
Earnings per common share from continuing operations – assuming dilution		\$ 3.69		\$ 1.62		\$ (0.50)

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

The following table reflects potentially dilutive securities (in millions) that were excluded from the calculation of “earnings per common share from continuing operations – assuming dilution” as the effect of including such securities would have been antidilutive. These potentially dilutive securities included common equivalent shares (primarily stock options), which were excluded due to the loss from continuing operations for 2009, and stock options for which the exercise prices were greater than the average market price of our common shares during each respective reporting period.

	<b>Year Ended December 31,</b>		
	<b>2011</b>	<b>2010</b>	<b>2009</b>
Common equivalent shares	—	—	4
Stock options	6	14	12

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**18. SEGMENT INFORMATION**

We have three reportable segments, refining, retail, and ethanol. Our refining segment includes refining operations, wholesale marketing, product supply and distribution, and transportation operations. The retail segment includes company-operated convenience stores, Canadian dealers/jobbers and truckstop facilities, cardlock facilities, and home heating oil operations. Our ethanol segment includes primarily sales of internally-produced ethanol and distillers grains. Operations that are not included in any of the three reportable segments are included in the corporate category.

The reportable segments are strategic business units that offer different products and services. They are managed separately as each business requires unique technology and marketing strategies. Performance is evaluated based on operating income. Intersegment sales are generally derived from transactions made at prevailing market rates.

The following table reflects activity related to continuing operations (in millions):

	<u>Refining</u>	<u>Retail</u>	<u>Ethanol</u>	<u>Corporate</u>	<u>Total</u>
<b>Year ended December 31, 2011:</b>					
Operating revenues from external customers	\$ 109,138	\$ 11,699	\$ 5,150	\$ —	\$ 125,987
Intersegment revenues	8,665	—	145	—	8,810
Depreciation and amortization expense	1,338	115	39	42	1,534
Operating income (loss)	3,516	381	396	(613)	3,680
Total expenditures for long-lived assets	2,556	134	32	265	2,987
<b>Year ended December 31, 2010:</b>					
Operating revenues from external customers	69,854	9,339	3,040	—	82,233
Intersegment revenues	6,416	—	245	—	6,661
Depreciation and amortization expense	1,210	108	36	51	1,405
Operating income (loss)	1,903	346	209	(582)	1,876
Total expenditures for long-lived assets	2,084	102	—	48	2,234
<b>Year ended December 31, 2009:</b>					
Operating revenues from external customers	55,516	7,885	1,198	—	64,599
Intersegment revenues	5,137	—	137	—	5,274
Depreciation and amortization expense	1,194	101	18	48	1,361
Operating income (loss)	247	293	165	(622)	83
Total expenditures for long-lived assets	2,338	66	5	39	2,448

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

Our principal products include conventional and CARB gasolines, RBOB (reformulated gasoline blendstock for oxygenate blending), ultra-low-sulfur diesel, and gasoline blendstocks. We also produce a substantial slate of middle distillates, jet fuel, and petrochemicals, in addition to lube oils and asphalt. Other product revenues include such products as gas oils, No. 6 fuel oil, and petroleum coke. Operating revenues from external customers for our principal products were as follows (in millions):

	Year Ended December 31,		
	2011	2010	2009
<b>Refining:</b>			
Gasolines and blendstocks	\$ 49,019	\$ 33,491	\$ 27,322
Distillates	43,713	26,402	20,526
Petrochemicals	4,253	3,161	2,177
Lubes and asphalts	1,948	1,315	1,126
Other product revenues	10,205	5,485	4,365
Total refining operating revenues	109,138	69,854	55,516
<b>Retail:</b>			
Fuel sales (gasoline and diesel)	9,730	7,498	6,148
Merchandise sales and other	1,635	1,581	1,505
Home heating oil	334	260	232
Total retail operating revenues	11,699	9,339	7,885
<b>Ethanol:</b>			
Ethanol	4,436	2,647	1,032
Distillers grains	714	393	166
Total ethanol operating revenues	5,150	3,040	1,198
Consolidated operating revenues	\$ 125,987	\$ 82,233	\$ 64,599

Operating revenues by geographic area are shown in the table below (in millions). The geographic area is based on location of customer and no customer accounted for more than 10 percent of our consolidated operating revenues.

	Year Ended December 31,		
	2011	2010	2009
U.S.	\$ 98,806	\$ 67,392	\$ 55,247
Canada	10,110	6,945	6,048
U.K.	4,297	149	—
Other countries	12,774	7,747	3,304
Consolidated operating revenues	\$ 125,987	\$ 82,233	\$ 64,599

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

Long-lived assets include property, plant and equipment, intangible assets, and certain long-lived assets included in “deferred charges and other assets, net.” Geographic information by country for long-lived assets consisted of the following (in millions):

	<b>December 31,</b>	
	<b>2011</b>	<b>2010</b>
U.S.	\$ 22,317	\$ 20,488
Canada	2,362	2,308
U.K.	848	—
Aruba	958	981
Total long-lived assets	<u>\$ 26,485</u>	<u>\$ 23,777</u>

Total assets by reportable segment were as follows (in millions):

	<b>December 31,</b>	
	<b>2011</b>	<b>2010</b>
Refining	\$ 38,164	\$ 30,363
Retail	1,999	1,925
Ethanol	943	953
Corporate	1,677	4,380
Total assets	<u>\$ 42,783</u>	<u>\$ 37,621</u>

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**19. SUPPLEMENTAL CASH FLOW INFORMATION**

In order to determine net cash provided by operating activities, net income (loss) is adjusted by, among other things, changes in current assets and current liabilities as follows (in millions):

	<b>Year Ended December 31,</b>		
	<b>2011</b>	<b>2010</b>	<b>2009</b>
<b>Decrease (increase) in current assets:</b>			
Receivables, net	\$ (3,110)	\$ (679)	\$ (806)
Inventories	643	(407)	(77)
Income taxes receivable	128	545	(668)
Prepaid expenses and other	(2)	107	56
<b>Increase (decrease) in current liabilities:</b>			
Accounts payable	2,004	670	1,475
Accrued expenses	(18)	(99)	73
Taxes other than income taxes	312	(66)	107
Income taxes payable	124	(3)	95
<b>Changes in current assets and current liabilities</b>	<b>\$ 81</b>	<b>\$ 68</b>	<b>\$ 255</b>

The above changes in current assets and current liabilities differ from changes between amounts reflected in the applicable balance sheets for the respective periods for the following reasons:

- the amounts shown above exclude changes in cash and temporary cash investments, deferred income taxes, and current portion of debt and capital lease obligations, as well as the effect of certain noncash investing and financing activities discussed below;
- the amounts shown above exclude the current assets and current liabilities acquired in connection with the Meraux Acquisition in October 2011, the Pembroke Acquisition in August 2011, and the acquisitions of ethanol plants in 2010 and 2009;
- amounts accrued for capital expenditures and deferred turnaround and catalyst costs are reflected in investing activities when such amounts are paid;
- amounts accrued for common stock purchases in the open market that are not settled as of the balance sheet date are reflected in financing activities when the purchases are settled and paid;
- changes in assets held for sale and liabilities related to assets held for sale pertaining to the operations of the Paulsboro and Delaware City Refineries prior to their sale are reflected in the line items to which the changes relate in the table above; and
- certain differences between balance sheet changes and the changes reflected above result from translating foreign currency denominated amounts at the applicable exchange rates as of each balance sheet date.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

Noncash investing activities for the year ended December 31, 2010 consist of the \$160 million note receivable from PBF Holding related to the sale of the Paulsboro Refinery discussed in Note 3. There were no significant noncash investing activities for the years ended December 31, 2011 and 2009.

There were no significant noncash financing activities for the years ended December 31, 2011, 2010, and 2009.

Cash flows related to interest and income taxes were as follows (in millions):

	<b>Year Ended December 31,</b>		
	<b>2011</b>	<b>2010</b>	<b>2009</b>
Interest paid in excess of amount capitalized	\$ (397)	\$ (457)	\$ (390)
Income taxes received (paid), net	(486)	690	(165)

Cash flows related to the discontinued operations of the Paulsboro and Delaware City Refineries have been combined with the cash flows from continuing operations within each category in the statements of cash flows for all years presented and are summarized as follows (in millions):

	<b>Year Ended December 31,</b>		
	<b>2011</b>	<b>2010</b>	<b>2009</b>
<b>Cash provided by (used in) operating activities:</b>			
Paulsboro Refinery	\$ —	\$ 88	\$ 10
Delaware City Refinery	—	(26)	(126)
<b>Cash used in investing activities:</b>			
Paulsboro Refinery	—	(41)	(121)
Delaware City Refinery	—	—	(153)



**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**20. FAIR VALUE MEASUREMENTS**

***General***

GAAP requires that certain financial instruments, such as derivative instruments, be recognized at their fair values in our balance sheets. However, other financial instruments, such as debt obligations, are not required to be recognized at their fair values, but GAAP provides an option to elect fair value accounting for these instruments. GAAP requires the disclosure of the fair values of all financial instruments, regardless of whether they are recognized at their fair values or carrying amounts in our balance sheets. For financial instruments recognized at fair value, GAAP requires the disclosure of their fair values by type of instrument, along with other information, including changes in the fair values of certain financial instruments recognized in income or other comprehensive income, and this information is provided below under “*Recurring Fair Value Measurements.*” For financial instruments not recognized at fair value, the disclosure of their fair values is provided below under “*Other Financial Instruments.*”

Nonfinancial assets, such as property, plant and equipment, and nonfinancial liabilities are recognized at their carrying amounts in our balance sheets. GAAP does not permit nonfinancial assets and liabilities to be remeasured at their fair values. However, GAAP requires the remeasurement of such assets and liabilities to their fair values upon the occurrence of certain events, such as the impairment of property, plant and equipment. In addition, if such an event occurs, GAAP requires the disclosure of the fair value of the asset or liability along with other information, including the gain or loss recognized in income in the period the remeasurement occurred. This information is provided below under “*Nonrecurring Fair Value Measurements.*”

GAAP provides a framework for measuring fair value and establishes a three-level fair value hierarchy that prioritizes inputs to valuation techniques based on the degree to which objective prices in external active markets are available to measure fair value. Following is a description of each of the levels of the fair value hierarchy.

- *Level 1* - Observable inputs, such as unadjusted quoted prices in active markets for identical assets or liabilities.
- *Level 2* - Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly. These include quoted prices for similar assets or liabilities in active markets and quoted prices for identical or similar assets or liabilities in markets that are not active.
- *Level 3* - Unobservable inputs for the asset or liability for which there is little, if any, market activity at the measurement date. Unobservable inputs reflect our own assumptions about what market participants would use to price the asset or liability. The inputs are developed based on the best information available in the circumstances, which might include occasional market quotes or sales of similar instruments or our own financial data such as internally developed pricing models, discounted cash flow methodologies, as well as instruments for which the fair value determination requires significant judgment.

The financial instruments and nonfinancial assets and liabilities included in our disclosure of recurring and nonrecurring fair value measurements are categorized according to the fair value hierarchy based on the inputs used to measure their fair values.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

***Recurring Fair Value Measurements***

The tables below present information (in millions) about our financial instruments recognized at their fair values in our balance sheets categorized according to the fair value hierarchy of the inputs utilized by us to determine the fair values as of December 31, 2011 and 2010.

Cash collateral deposits of \$136 million and \$403 million with brokers under master netting arrangements are included in the fair value of the commodity derivatives reflected in Level 1 as of December 31, 2011 and December 31, 2010, respectively. Certain of our commodity derivative contracts under master netting arrangements include both asset and liability positions. We have elected to offset the fair value amounts recognized for multiple similar derivative instruments executed with the same counterparty, including any related cash collateral asset or obligation under the column “Netting Adjustments” below; however, fair value amounts by hierarchy level are presented on a gross basis in the tables below.

	<b>Fair Value Measurements Using</b>				<b>Netting Adjustments</b>	<b>Total as of December 31, 2011</b>
	<b>Quoted Prices in Active Markets (Level 1)</b>	<b>Significant Other Observable Inputs (Level 2)</b>	<b>Significant Unobservable Inputs (Level 3)</b>			
<b>Assets:</b>						
Commodity derivative contracts	\$ 2,038	\$ 78	\$ —	\$ (1,940)		\$ 176
Physical purchase contracts	—	(2)	—	—		(2)
Investments of certain benefit plans	84	—	11	—		95
Other investments	—	—	—	—		—
<b>Liabilities:</b>						
Commodity derivative contracts	1,864	101	—	(1,940)		25
Obligations of certain benefit plans	34	—	—	—		34

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

	<u>Fair Value Measurements Using</u>				Total as of December 31, 2010
	Quoted Prices in Active Markets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	Netting Adjustments	
<b>Assets:</b>					
Commodity derivative contracts	\$ 3,240	\$ 489	\$ —	\$ (3,560)	\$ 169
Physical purchase contracts	—	17	—	—	17
Investments of certain benefit plans	104	—	10	—	114
Other investments	—	—	—	—	—
<b>Liabilities:</b>					
Commodity derivative contracts	3,097	502	—	(3,560)	39
Biofuels blending obligation	51	—	—	—	51
Obligations of certain benefit plans	36	—	—	—	36

A description of our financial instruments and the valuation methods used to measure those instruments at fair value are as follows:

- Commodity derivative contracts consist primarily of exchange-traded futures and swaps, and as disclosed in Note 21, some of these contracts are designated as hedging instruments. These contracts are measured at fair value using the market approach. Exchange-traded futures are valued based on quoted prices from the exchange and are categorized in Level 1 of the fair value hierarchy. Swaps are priced using third-party broker quotes, industry pricing services, and exchange-traded curves, with appropriate consideration of counterparty credit risk, but because they have contractual terms that are not identical to exchange-traded futures instruments with a comparable market price, these financial instruments are categorized in Level 2 of the fair value hierarchy.
- Physical purchase contracts to purchase inventories represent the fair value of firm commitments to purchase crude oil feedstocks and the fair value of fixed-price corn purchase contracts, and as disclosed in Note 21, some of these contracts are designated as hedging instruments. The fair values of these firm commitments and purchase contracts are measured using a market approach based on quoted prices from the commodity exchange, but because these commitments have contractual terms that are not identical to exchange-traded futures instruments with a comparable market price, they are categorized in Level 2 of the fair value hierarchy.
- Investments of certain benefit plan assets consist of investment securities held by trusts for the purpose of satisfying a portion of our obligations under certain U.S. nonqualified benefit plans. The assets categorized in Level 1 of the fair value hierarchy are measured at fair value using a market approach based on quotations from national securities exchanges. The assets categorized in Level 3 of the fair value hierarchy represent insurance contracts, the fair value of which is provided by the insurer. Obligations of certain benefit plans relate to certain U.S. nonqualified defined contribution plans under which our obligations to eligible employees are equal to the fair value of the assets held by those plans.
- Other investments consist of (i) equity securities of private companies over which we do not exercise significant influence nor whose financial statements are consolidated into our financial statements

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

and (ii) debt securities of a private company whose financial statements are not consolidated into our financial statements. We have elected to account for these investments at their fair values. These investments are categorized in Level 3 of the fair value hierarchy as the fair values of these investments are determined using the income approach based on internally developed analyses.

- Our biofuels blending obligation represents a liability for the purchase of RINs and RTFCs, as defined and described in Note 21 under “*Compliance Program Price Risk*,” to satisfy our obligation to blend biofuels into the products we produce. Our obligation is based on our deficiency in RINs and RTFCs and the price of these instruments as of the balance sheet date. Our obligation is categorized in Level 1 of the fair value hierarchy and is measured at fair value using the market approach based on quoted prices from an independent pricing service.

The following is a reconciliation of the beginning and ending balances (in millions) for fair value measurements developed using significant unobservable inputs (Level 3).

	Investments of Certain Benefit Plans			Other Investments			Earn-Out Agreement		
	2011	2010	2009	2011	2010	2009	2011	2010	2009
Balance as of beginning of year	\$ 10	\$ 10	\$ —	\$ —	\$ —	\$ —	\$ —	\$ —	\$ 13
Purchases	1	—	—	21	1	—	—	—	—
Settlements	—	—	—	—	—	—	—	—	(33)
Total losses included in income	—	—	—	(21)	(1)	—	—	—	20
Transfers in and/or out of Level 3	—	—	10	—	—	—	—	—	—
Balance as of end of year	<u>\$ 11</u>	<u>\$ 10</u>	<u>\$ 10</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>
The amount of total losses included in income attributable to the change in unrealized losses relating to assets still held at end of period	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ (21)</u>	<u>\$ (1)</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>

For the year ended December 31, 2009, the amount reflected in “total losses included in income” in the table above related to the earn-out agreement are reported in “other income, net.” We entered into an earn-out agreement with Alon Refining Krotz Springs, Inc. in connection with the sale of our Krotz Springs Refinery in 2008. We also entered into commodity derivative instruments to hedge the risk of changes in the fair value of the earn-out agreement. The gains (losses) associated with these instruments are also reported in “other income, net.”

***Nonrecurring Fair Value Measurements***

As of December 31, 2011 and 2010, there were no assets or liabilities that were measured at fair value on a nonrecurring basis.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

***Other Financial Instruments***

Financial instruments that we recognize in our balance sheets at their carrying amounts include cash and temporary cash investments, receivables, payables, debt and capital lease obligations. The fair values of these financial instruments approximate their carrying amounts, except for debt as shown in the table below (in millions):

	December 31,			
	2011		2010	
Carrying amount	\$	7,690	\$	8,300
Fair value		9,298		9,492

The fair value of our debt is determined using the market approach based on quoted prices in active markets (Level 1).

**21. PRICE RISK MANAGEMENT ACTIVITIES**

We are exposed to market risks related to the volatility in the price of commodities, the price of financial instruments associated with governmental and regulatory compliance programs, interest rates, and foreign currency exchange rates, and we enter into derivative instruments to manage some of these risks. We also enter into derivative instruments to manage the price risk on other contractual derivatives into which we have entered. The only types of derivative instruments we enter into are those related to the various commodities we purchase or produce, financial instruments we must purchase to maintain compliance with various governmental and regulatory programs, interest rate swaps, and foreign currency exchange and purchase contracts, as described below. All derivative instruments are recorded as either assets or liabilities measured at their fair values (see Note 20).

When we enter into a derivative instrument, it is designated as a fair value hedge, a cash flow hedge, an economic hedge, or a trading derivative. The gain or loss on a derivative instrument designated and qualifying as a fair value hedge, as well as the offsetting loss or gain on the hedged item attributable to the hedged risk, is recognized currently in income in the same period. The effective portion of the gain or loss on a derivative instrument designated and qualifying as a cash flow hedge is initially reported as a component of other comprehensive income and is then recorded in income in the period or periods during which the hedged forecasted transaction affects income. The ineffective portion of the gain or loss on the cash flow derivative instrument, if any, is recognized in income as incurred. For our economic hedges (derivative instruments not designated as fair value or cash flow hedges) and for derivative instruments entered into by us for trading purposes, the derivative instrument is recorded at fair value and changes in the fair value of the derivative instrument are recognized currently in income. The cash flow effects of all of our derivative instruments are reflected in operating activities in our statements of cash flows for all periods presented.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**Commodity Price Risk**

We are exposed to market risks related to the volatility in the price of crude oil, refined products (primarily gasoline and distillate), grain (primarily corn), and natural gas used in our operations. To reduce the impact of price volatility on our results of operations and cash flows, we use commodity derivative instruments, including futures, swaps, and options. We use the futures markets for the available liquidity, which provides greater flexibility in transacting our hedging and trading operations. We use swaps primarily to manage our price exposure. Our positions in commodity derivative instruments are monitored and managed on a daily basis by a risk control group to ensure compliance with our stated risk management policy that has been approved by our board of directors.

For risk management purposes, we use fair value hedges, cash flow hedges, and economic hedges. In addition to the use of derivative instruments to manage commodity price risk, we also enter into certain commodity derivative instruments for trading purposes. Our objective for entering into each type of hedge or trading derivative is described below.

**Fair Value Hedges**

Fair value hedges are used to hedge price volatility in certain refining inventories and firm commitments to purchase inventories. The level of activity for our fair value hedges is based on the level of our operating inventories, and generally represents the amount by which our inventories differ from our previous year-end LIFO inventory levels.

As of December 31, 2011, we had the following outstanding commodity derivative instruments that were entered into to hedge crude oil and refined product inventories and commodity derivative instruments related to the physical purchase of crude oil and refined products at a fixed price. The information presents the notional volume of outstanding contracts by type of instrument and year of maturity (volumes in thousands of barrels).

<b>Derivative Instrument</b>	<b>Notional Contract Volumes by Year of Maturity</b>
	<b>2012</b>
Crude oil and refined products:	
Futures – long	15,398
Futures – short	35,708
Physical contracts – long	20,310

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**Cash Flow Hedges**

Cash flow hedges are used to hedge price volatility in certain forecasted feedstock and refined product purchases, refined product sales, and natural gas purchases. The objective of our cash flow hedges is to lock in the price of forecasted feedstock, product or natural gas purchases or refined product sales at existing market prices that we deem favorable.

As of December 31, 2011, we had the following outstanding commodity derivative instruments that were entered into to hedge forecasted purchases or sales of crude oil and refined products. The information presents the notional volume of outstanding contracts by type of instrument and year of maturity (volumes in thousands of barrels).

<b>Derivative Instrument</b>	<b>Notional Contract Volumes by Year of Maturity</b>
	<b>2012</b>
Crude oil and refined products:	
Swaps – long	5,961
Swaps – short	5,961
Futures – long	38,201
Futures – short	36,637
Physical contracts – short	1,564

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**Economic Hedges**

Economic hedges represent commodity derivative instruments that are not designated as fair value or cash flow hedges and are used to manage price volatility in certain (i) refinery feedstock, refined product, and corn inventories, (ii) forecasted refinery feedstock, refined product, and corn purchases, and refined product sales, and (iii) fixed-price corn purchase contracts. Our objective for entering into economic hedges is consistent with the objectives discussed above for fair value hedges and cash flow hedges. However, the economic hedges are not designated as a fair value hedge or a cash flow hedge for accounting purposes, usually due to the difficulty of establishing the required documentation at the date that the derivative instrument is entered into that would allow us to achieve “hedge deferral accounting.”

As of December 31, 2011, we had the following outstanding commodity derivative instruments that were entered into as economic hedges and commodity derivative instruments related to the physical purchase of corn at a fixed price. The information presents the notional volume of outstanding contracts by type of instrument and year of maturity (volumes in thousands of barrels, except those identified as corn contracts that are presented in thousands of bushels).

<b>Derivative Instrument</b>	<b>Notional Contract Volumes by</b>	
	<b>Year of Maturity</b>	
	<b>2012</b>	<b>2013</b>
<b>Crude oil and refined products:</b>		
Swaps – long	67,862	—
Swaps – short	67,040	—
Futures – long	70,211	—
Futures – short	65,339	—
Options – long	10	—
<b>Corn:</b>		
Futures – long	18,530	—
Futures – short	49,565	780
Physical contracts – long	20,377	833



**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**Trading Derivatives**

Our objective for entering into commodity derivative instruments for trading purposes is to take advantage of existing market conditions related to future results of operations and cash flows.

As of December 31, 2011, we had the following outstanding commodity derivative instruments that were entered into for trading purposes. The information presents the notional volume of outstanding contracts by type of instrument and year of maturity (volumes represent thousands of barrels, except those identified as natural gas contracts that are presented in billions of British thermal units and corn contracts that are presented in thousands of bushels).

Derivative Instrument	Notional Contract Volumes by Year of Maturity	
	2012	2013
Crude oil and refined products:		
Swaps – long	15,128	2,000
Swaps – short	14,968	2,000
Futures – long	50,126	825
Futures – short	50,133	825
Options – long	300	—
Options – short	600	—
Natural gas:		
Futures – long	400	—
Futures – short	400	—
Options – long	2,000	—
Corn:		
Swaps – long	1,050	—
Swaps – short	3,355	—
Futures – long	2,510	—
Futures – short	2,310	—

**Compliance Program Price Risk**

We are exposed to market risks related to the volatility in the price of financial instruments associated with various governmental and regulatory compliance programs that we must purchase in the open market to comply with these programs. These programs are described below.

**Obligation to Blend Biofuels**

We are obligated to blend biofuels into the products we produce in most of the countries in which we operate, and those countries set annual quotas for the percentage of biofuels that must be blended into the motor fuels consumed in these countries. As a producer of motor fuels from petroleum, we are obligated to blend biofuels into the products we produce at a rate that is at least equal to the applicable quota. To the degree we are unable to blend at the applicable rate in the U.S. and the U.K., we must purchase Renewable Identification Numbers (RINs) in the U.S. and Renewable Transport Fuel Obligation certificates (RTFCs) in the U.K., and

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

as such, we are exposed to the volatility in the market price of these financial instruments. We have not entered into derivative instruments to manage this risk, but we purchase RINs and RTFCs when the price of these instruments is deemed favorable. For the years ended December 31, 2011, 2010, and 2009, the cost of meeting our obligations under these compliance programs was \$231 million, \$66 million, and \$96 million, respectively, and these amounts are reflected in cost of sales.

**Maintaining Minimum Inventory Quantities**

In the U.K., we are required to maintain a minimum quantity of refined products as a reserve against shortages or interruptions in the supply of these products. To the degree we decide not to physically hold the minimum quantity of these products, we must purchase Compulsory Stock Obligation (CSO) tickets from other suppliers of refined products in the U.K. or other European Union (EU) member countries, and we make economic decisions as to the cost of maintaining certain quantities of refined products versus the cost of purchasing CSO tickets. We have not entered into derivative instruments to manage the price volatility of CSO tickets. For the year ended December 31, 2011, the cost of purchasing CSO tickets to help meet our obligations under this compliance program was \$4 million, and this amount was reflected in cost of sales. We had no obligations under this compliance program prior to completing the Pembroke Acquisition in 2011.

**Emission Allowances**

Our Pembroke Refinery is subject to a maximum amount of carbon dioxide that it can emit each year under the EU Emissions Trading Scheme. Under this cap-and-trade program, we purchase emission allowances on the open market for the difference between the amount of carbon dioxide emitted and the maximum amount allowed under the program. Therefore, we are exposed to the volatility in the market price of these allowances. For the year ended December 31, 2011, the cost of meeting our obligation under this compliance program was \$2 million, and this amount is reflected in refining operating expenses. We had no obligations under this compliance program prior to completing the Pembroke Acquisition in 2011.

We enter into derivative instruments (futures) to reduce the impact of this risk on our results of operations and cash flows. Our positions in these derivative instruments are monitored and managed on a daily basis by a risk control group to ensure compliance with our stated risk management policy that has been approved by our board of directors. As of December 31, 2011, we had purchased futures contracts – long for 68,000 metric tons of EU emission allowances that were entered into as economic hedges. As of December 31, 2011, the fair value of these futures contracts was immaterial and therefore not separately presented in the table below under *“Fair Values of Derivative Instruments.”* For the year ended December 31, 2011, the loss recognized in income on these derivative instruments designated as economic hedges was also immaterial and therefore not separately presented in the table below under *“Effect of Derivative Instruments on Statements of Income and Other Comprehensive Income.”*

**Interest Rate Risk**

Our primary market risk exposure for changes in interest rates relates to our debt obligations. We manage our exposure to changing interest rates through the use of a combination of fixed-rate and floating-rate debt. In addition, at times we have used interest rate swap agreements to manage our fixed to floating interest rate position by converting certain fixed-rate debt to floating-rate debt.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**Foreign Currency Risk**

We are exposed to exchange rate fluctuations on transactions entered into by our international operations that are denominated in currencies other than the local (functional) currencies of these operations. To manage our exposure to these exchange rate fluctuations, we use foreign currency exchange and purchase contracts. These contracts are not designated as hedging instruments for accounting purposes, and therefore they are classified as economic hedges. As of December 31, 2011, we had commitments to purchase \$751 million of U.S. dollars. These commitments matured on or before January 26, 2012.

**Fair Values of Derivative Instruments**

The following tables provide information about the fair values of our derivative instruments as of December 31, 2011 and 2010 (in millions) and the line items in the balance sheets in which the fair values are reflected. See Note 20 for additional information related to the fair values of our derivative instruments.

As indicated in Note 20, we net fair value amounts recognized for multiple similar derivative instruments executed with the same counterparty under master netting arrangements. The tables below, however, are presented on a gross asset and gross liability basis, which results in the reflection of certain assets in liability accounts and certain liabilities in asset accounts. In addition, in Note 20, we included cash collateral on deposit with or received from brokers in the fair value of the commodity derivatives; these cash amounts are not reflected in the tables below.

	Balance Sheet Location	December 31, 2011	
		Asset Derivatives	Liability Derivatives
<b>Derivatives designated as hedging instruments</b>			
Commodity contracts:			
Futures	Receivables, net	\$ 264	\$ 240
Swaps	Accrued expenses	36	46
<b>Total</b>		<b>\$ 300</b>	<b>\$ 286</b>
<b>Derivatives not designated as hedging instruments</b>			
Commodity contracts:			
Futures	Receivables, net	\$ 1,636	\$ 1,624
Swaps	Prepaid expenses and other	4	2
Swaps	Accrued expenses	38	51
Options	Receivables, net	2	—
Options	Accrued expenses	—	2
Physical purchase contracts	Inventories	—	2
<b>Total</b>		<b>\$ 1,680</b>	<b>\$ 1,681</b>
<b>Total derivatives</b>		<b>\$ 1,980</b>	<b>\$ 1,967</b>

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

	Balance Sheet Location	December 31, 2010	
		Asset Derivatives	Liability Derivatives
<b>Derivatives designated as hedging instruments</b>			
Commodity contracts:			
Futures	Receivables, net	\$ 120	\$ 183
Swaps	Prepaid expenses and other	55	39
Swaps	Accrued expenses	31	32
Total		<u>\$ 206</u>	<u>\$ 254</u>
<b>Derivatives not designated as hedging instruments</b>			
Commodity contracts:			
Futures	Receivables, net	\$ 2,717	\$ 2,914
Swaps	Prepaid expenses and other	287	277
Swaps	Accrued expenses	116	148
Options	Accrued expenses	—	6
Physical purchase contracts	Inventories	17	—
Total		<u>\$ 3,137</u>	<u>\$ 3,345</u>
Total derivatives		<u>\$ 3,343</u>	<u>\$ 3,599</u>

**Market and Counterparty Risk**

Our price risk management activities involve the receipt or payment of fixed price commitments into the future. These transactions give rise to market risk, which is the risk that future changes in market conditions may make an instrument less valuable. We closely monitor and manage our exposure to market risk on a daily basis in accordance with policies approved by our board of directors. Market risks are monitored by a risk control group to ensure compliance with our stated risk management policy. Concentrations of customers in the refining industry may impact our overall exposure to counterparty risk because these customers may be similarly affected by changes in economic or other conditions. In addition, financial services companies are the counterparties in certain of our price risk management activities, and such financial services companies may be adversely affected by periods of uncertainty and illiquidity in the credit and capital markets.

As of December 31, 2011, we had net receivables related to derivative instruments of \$2 million from counterparties in the refining industry and no amounts from counterparties in the financial services industry. As of December 31, 2010, we had net receivables related to derivative instruments of \$4 million from counterparties in the refining industry and \$21 million from counterparties in the financial services industry. These amounts represent the aggregate amount payable to us by companies in those industries, reduced by payables from us to those companies under master netting arrangements that allow for the setoff of amounts receivable from and payable to the same party. We do not require any collateral or other security to support derivative instruments into which we enter. We also do not have any derivative instruments that require us to maintain a minimum investment-grade credit rating.

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

***Effect of Derivative Instruments on Statements of Income and Other Comprehensive Income***

The following tables provide information about the gain or loss recognized in income and other comprehensive income on our derivative instruments and the line items in the financial statements in which such gains and losses are reflected (in millions).

Derivatives in Fair Value Hedging Relationships	Location of Gain (Loss) Recognized in Income on Derivatives	Year Ended December 31,		
		2011	2010	2009
Commodity contracts:				
Gain (loss) recognized in income on derivatives	Cost of sales	\$ (6)	\$ 45	\$ (75)
Gain (loss) recognized in income on hedged item	Cost of sales	(23)	(40)	69
Gain (loss) recognized in income on derivatives (ineffective portion)	Cost of sales	(29)	5	(6)

For fair value hedges, no component of the derivative instruments' gains or losses was excluded from the assessment of hedge effectiveness for the years ended December 31, 2011, 2010, and 2009. No amounts were recognized in income for hedged firm commitments that no longer qualify as fair value hedges for the years ended December 31, 2011, 2010, and 2009.

Derivatives in Cash Flow Hedging Relationships	Location of Gain (Loss) Recognized in Income on Derivatives	Year Ended December 31,		
		2011	2010	2009
Commodity contracts:				
Gain (loss) recognized in OCI on derivatives (effective portion)		\$ 32	\$ (2)	\$ 125
Gain (loss) reclassified from accumulated OCI into income (effective portion)	Cost of sales	3	178	337
	Loss from discontinued operations, net of income taxes	—	—	(132)
Gain (loss) recognized in income on derivatives (ineffective portion)	Cost of sales	5	—	3

For cash flow hedges, no component of the derivative instruments' gains or losses was excluded from the assessment of hedge effectiveness for the years ended December 31, 2011, 2010, and 2009. For the year ended December 31, 2011, cash flow hedges primarily related to forward sales of distillates and associated forward purchases of crude oil, with \$19 million of cumulative after-tax gains on cash flow hedges remaining in accumulated other comprehensive income. We estimate that \$19 million of the deferred gains as of December 31, 2011 will be reclassified into cost of sales over the next 12 months as a result of hedged transactions that are forecasted to occur. For the years ended December 31, 2011 and 2010, there were no amounts reclassified from accumulated other comprehensive income into income as a result of the

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

discontinuance of cash flow hedge accounting. For the year ended December 31, 2009, there were \$132 million of pre-tax losses reclassified from accumulated other comprehensive income into income as a result of the discontinuance of cash flow hedge accounting. This amount, which is the amount classified as a loss from discontinued operations in the table, relates to the forecasted sales of distillates that did not occur due to the shutdown of the Delaware City Refinery.

<b>Derivatives Designated as Economic Hedges and Other Derivative Instruments</b>	<b>Location of Gain Recognized in Income on Derivatives</b>	<b>Year Ended December 31,</b>		
		<b>2011</b>	<b>2010</b>	<b>2009</b>
Commodity contracts	Cost of sales	\$ (349)	\$ (210)	\$ 55
Foreign currency contracts	Cost of sales	18	(24)	(22)
Other contract	Cost of sales	29	—	—
		(302)	(234)	33
Alon earn-out agreement	Other income, net	—	—	20
Alon earn-out hedge commodity contracts	Other income, net	—	—	(62)
		—	—	(42)
Total		\$ (302)	\$ (234)	\$ (9)

The gain of \$29 million on the other contract for the year ended December 31, 2011 is related to the difference between the fair value of inventories acquired in connection with the Pembroke Acquisition and the amount paid for such inventories based on the terms of the purchase agreement. The loss of \$349 million on commodity contracts for the year ended December 31, 2011 includes a \$542 million loss related to forward sales of refined products.

<b>Trading Derivatives</b>	<b>Location of Gain (Loss) Recognized in Income on Derivatives</b>	<b>Year Ended December 31,</b>		
		<b>2011</b>	<b>2010</b>	<b>2009</b>
Commodity contracts	Cost of sales	\$ 23	\$ 8	\$ 126

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (Continued)**

**22. QUARTERLY FINANCIAL DATA (Unaudited)**

The following table summarizes quarterly financial data for the years ended December 31, 2011 and 2010 (in millions, except per share amounts).

	<b>2011 Quarter Ended</b>			
	<b>March 31</b>	<b>June 30</b>	<b>September 30 (a)</b>	<b>December 31 (b)</b>
Operating revenues	\$ 26,308	\$ 31,293	\$ 33,713	\$ 34,673
Operating income	244	1,290	1,979	167
Income from continuing operations	104	744	1,203	45
Net income	98	743	1,203	45
Net income attributable to Valero Energy Corporation stockholders	98	744	1,203	45
Earnings per common share from continuing operations – assuming dilution	0.18	1.30	2.11	0.08
Earnings per common share – assuming dilution	0.17	1.30	2.11	0.08
	<b>2010 Quarter Ended</b>			
	<b>March 31</b>	<b>June 30 (c)</b>	<b>September 30</b>	<b>December 31 (d)</b>
Operating revenues	\$ 18,493	\$ 20,561	\$ 21,015	\$ 22,164
Operating income	4	904	590	378
Income (loss) from continuing operations	(80)	520	303	180
Net income (loss)	(113)	583	292	(438)
Net income (loss) attributable to Valero Energy Corporation stockholders	(113)	583	292	(438)
Earnings per common share from continuing operations – assuming dilution	(0.14)	0.92	0.53	0.32
Earnings per common share – assuming dilution	(0.20)	1.03	0.51	(0.77)

(a) Includes the operations related to the Pembroke Acquisition beginning August 1, 2011.

(b) Includes the operations related to the Meraux Acquisition beginning October 1, 2011.

(c) Net income for the quarter ended June 30, 2010 includes the \$92 million pre-tax gain related to the sale of the Delaware City Refinery as discussed in Note 3.

(d) Net loss for the quarter ended December 31, 2010 includes the \$980 million pre-tax loss related to the sale of the Paulsboro Refinery as discussed in Note 3.

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

**ITEM 9A. CONTROLS AND PROCEDURES**

**Disclosure Controls and Procedures.** Our management has evaluated, with the participation of our principal executive officer and principal financial officer, the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934) as of the end of the period covered by this report, and has concluded that our disclosure controls and procedures were effective as of December 31, 2011.

**Internal Control over Financial Reporting.**

*(a) Management's Report on Internal Control over Financial Reporting.*

The management report on Valero's internal control over financial reporting required by Item 9A appears in Item 8 on page 56 of this report, and is incorporated herein by reference.

*(b) Attestation Report of the Independent Registered Public Accounting Firm.*

KPMG LLP's report on Valero's internal control over financial reporting appears in Item 8 beginning on page 58 of this report, and is incorporated herein by reference.

*(c) Changes in Internal Control over Financial Reporting.*

There has been no change in our internal control over financial reporting that occurred during our last fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

**ITEM 9B. OTHER INFORMATION**

None.



### PART III

#### ITEMS 10-14.

The information required by Items 10 through 14 of Form 10-K is incorporated herein by reference to the definitive proxy statement for our 2012 annual meeting of stockholders. We will file the proxy statement with the SEC before March 31, 2012.

### PART IV

#### ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

**(a) 1. Financial Statements.** The following consolidated financial statements of Valero Energy Corporation and its subsidiaries are included in Part II, Item 8 of this Form 10-K:

	<b>Page</b>
<a href="#">Management's report on internal control over financial reporting</a>	<a href="#">56</a>
<a href="#">Reports of independent registered public accounting firm</a>	<a href="#">57</a>
<a href="#">Consolidated balance sheets as of December 31, 2011 and 2010</a>	<a href="#">60</a>
<a href="#">Consolidated statements of income for the years ended December 31, 2011, 2010, and 2009</a>	<a href="#">61</a>
<a href="#">Consolidated statements of equity for the years ended December 31, 2011, 2010, and 2009</a>	<a href="#">62</a>
<a href="#">Consolidated statements of cash flows for the years ended December 31, 2011, 2010, and 2009</a>	<a href="#">63</a>
<a href="#">Consolidated statements of comprehensive income for the years ended December 31, 2011, 2010, and 2009</a>	<a href="#">64</a>
<a href="#">Notes to consolidated financial statements</a>	<a href="#">65</a>

**2. Financial Statement Schedules and Other Financial Information .** No financial statement schedules are submitted because either they are inapplicable or because the required information is included in the consolidated financial statements or notes thereto.

**3. Exhibits.** Filed as part of this Form 10-K are the following exhibits:

- 3.01 -- Amended and Restated Certificate of Incorporation of Valero Energy Corporation, formerly known as Valero Refining and Marketing Company - incorporated by reference to Exhibit 3.1 to Valero's Registration Statement on Form S-1 (SEC File No. 333-27013) filed May 13, 1997.
- 3.02 -- Certificate of Amendment (effective July 31, 1997) to Restated Certificate of Incorporation of Valero Energy Corporation - incorporated by reference to Exhibit 3.02 to Valero's Annual Report on Form 10-K for the year ended December 31, 2003 (SEC File No. 1-13175).
- 3.03 -- Certificate of Merger of Ultramar Diamond Shamrock Corporation with and into Valero Energy Corporation dated December 31, 2001 - incorporated by reference to Exhibit 3.03 to Valero's Annual Report on Form 10-K for the year ended December 31, 2003 (SEC File No. 1-13175).
- 3.04 -- Amendment (effective December 31, 2001) to Restated Certificate of Incorporation of Valero Energy Corporation - incorporated by reference to Exhibit 3.1 to Valero's Current Report on Form 8-K dated December 31, 2001, and filed January 11, 2002 (SEC File No. 1-13175).
- 3.05 -- Second Certificate of Amendment (effective September 17, 2004) to Restated Certificate of Incorporation of Valero Energy Corporation - incorporated by reference to Exhibit 3.04 to Valero's Quarterly Report on Form 10-Q for the quarter ended September 30, 2004 (SEC File No. 1-13175).
- 3.06 -- Certificate of Merger of Premcor Inc. with and into Valero Energy Corporation effective September 1, 2005 - incorporated by reference to Exhibit 2.01 to Valero's Quarterly Report on Form 10-Q for the quarter ended September 30, 2005 (SEC File No. 1-13175).

- 3.07 -- Third Certificate of Amendment (effective December 2, 2005) to Restated Certificate of Incorporation of Valero Energy Corporation - incorporated by reference to Exhibit 3.07 to Valero's Annual Report on Form 10-K for the year ended December 31, 2005 (SEC File No. 1-13175).
- 3.08 -- Fourth Certificate of Amendment (effective May 24, 2011) to Restated Certificate of Incorporation of Valero Energy Corporation - incorporated by reference to Exhibit 4.8 to Valero's Current Report on Form 8-K dated and filed May 24, 2011 (SEC File No. 1-13175).
- 3.09 -- Amended and Restated Bylaws of Valero Energy Corporation (as of July 12, 2007) - incorporated by reference to Exhibit 3.01 to Valero's Current Report on Form 8-K dated July 11, 2007, and filed July 17, 2007 (SEC File No. 1-13175).
- 4.01 -- Indenture dated as of December 12, 1997 between Valero Energy Corporation and The Bank of New York - incorporated by reference to Exhibit 3.4 to Valero's Registration Statement on Form S-3 (SEC File No. 333-56599) filed June 11, 1998.
- 4.02 -- First Supplemental Indenture dated as of June 28, 2000 between Valero Energy Corporation and The Bank of New York (including Form of 7 3/4% Senior Deferrable Note due 2005) - incorporated by reference to Exhibit 4.6 to Valero's Current Report on Form 8-K dated June 28, 2000, and filed June 30, 2000 (SEC File No. 1-13175).
- 4.03 -- Indenture (Senior Indenture) dated as of June 18, 2004 between Valero Energy Corporation and Bank of New York - incorporated by reference to Exhibit 4.7 to Valero's Registration Statement on Form S-3 (SEC File No. 333-116668) filed June 21, 2004.
- 4.04 -- Form of Indenture related to subordinated debt securities - incorporated by reference to Exhibit 4.8 to Valero's Registration Statement on Form S-3 (SEC File No. 333-116668) filed June 21, 2004.
- 4.05 -- Specimen Certificate of Common Stock - incorporated by reference to Exhibit 4.1 to Valero's Registration Statement on Form S-3 (SEC File No. 333-116668) filed June 21, 2004.
- +10.01 -- Valero Energy Corporation Annual Bonus Plan, amended and restated as of July 29, 2009 - incorporated by reference to Exhibit 10.01 to Valero's Current Report on Form 8-K dated July 29, 2009, and filed August 4, 2009 (SEC File No. 1-13175).
- +10.02 -- Valero Energy Corporation 2005 Omnibus Stock Incentive Plan, amended and restated as of October 1, 2005 - incorporated by reference to Exhibit 10.02 to Valero's Annual Report on Form 10-K for the year ended December 31, 2009 (SEC File No. 1-13175).
- +10.03 -- Valero Energy Corporation 2011 Omnibus Stock Incentive Plan - incorporated by reference to Appendix A to Valero's Definitive Proxy Statement on Schedule 14A for the 2011 annual meeting of stockholders, filed March 18, 2011 (SEC File No. 1-13175).
- +10.04 -- Valero Energy Corporation Deferred Compensation Plan, amended and restated as of January 1, 2008 - incorporated by reference to Exhibit 10.04 to Valero's Annual Report on Form 10-K for the year ended December 31, 2008 (SEC File No. 1-13175).
- \*+10.05 -- Form of 2011 Elective Deferral Agreement pursuant to the Valero Energy Corporation Deferred Compensation Plan.
- \*+10.06 -- Form of Investment Election Form pursuant to the Valero Energy Corporation Deferred Compensation Plan.
- \*+10.07 -- Form of 2011 Distribution Election Form pursuant to the Valero Energy Corporation Deferred Compensation Plan.
- +10.08 -- Valero Energy Corporation Amended and Restated Supplemental Executive Retirement Plan, amended and restated as of November 10, 2008 - incorporated by reference to Exhibit 10.08 to Valero's Annual Report on Form 10-K for the year ended December 31, 2008 (SEC File No. 1-13175).
- \*+10.09 -- Valero Energy Corporation Supplemental Retirement Plan for Selected Employees of Canadian Subsidiaries, amended and restated as of December 31, 2011.
- \*+10.10 -- Valero Energy Corporation Excess Pension Plan, as amended and restated effective December 31, 2011.

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- +10.11 -- Valero Energy Corporation 2003 Employee Stock Incentive Plan, as amended and restated effective October 1, 2005 - incorporated by reference to Exhibit 10.11 to Valero's Annual Report on Form 10-K for the year ended December 31, 2005 (SEC File No. 1-13175).
- +10.12 -- Valero Energy Corporation Restricted Stock Plan for Non-Employee Directors, as amended and restated July 11, 2007 - incorporated by reference to Exhibit 10.02 to Valero's Current Report on Form 8-K/A dated July 11, 2007, and filed September 18, 2007 (SEC File No. 1-13175).
- +10.13 -- Form of Indemnity Agreement between Valero Energy Corporation (formerly known as Valero Refining and Marketing Company) and certain officers and directors - incorporated by reference to Exhibit 10.8 to Valero's Registration Statement on Form S-1 (SEC File No. 333-27013) filed May 13, 1997.
- \*+10.14 -- Schedule of Indemnity Agreements.
- \*+10.15 -- Change of Control Agreement (Tier I) dated January 18, 2007 between Valero Energy Corporation and William R. Klesse, with IRC Section 409A technical amendment dated December 14, 2011.
- \*+10.16 -- Schedule of Change of Control Agreements (Tier I).
- \*+10.17 -- Change of Control Agreement (Tier II) dated March 15, 2007 between Valero Energy Corporation and Kimberly S. Bowers, with IRC Section 409A technical amendment dated December 14, 2011.
- +10.18 -- Form of Performance Award Agreement pursuant to the Valero Energy Corporation 2005 Omnibus Stock Incentive Plan - incorporated by reference to Exhibit 10.18 to Valero's Annual Report on Form 10-K for the year ended December 31, 2010 (SEC File No. 1-13175).
- \*+10.19 -- Form of Performance Award Agreement pursuant to the Valero Energy Corporation 2011 Omnibus Stock Incentive Plan.
- +10.20 -- Form of Stock Option Agreement pursuant to the Valero Energy Corporation 2005 Omnibus Stock Incentive Plan - incorporated by reference to Exhibit 10.03 to Valero's Current Report on Form 8-K dated October 20, 2005, and filed October 26, 2005 (SEC File No. 1-13175).
- \*+10.21 -- Form of Stock Option Agreement pursuant to the Valero Energy Corporation 2011 Omnibus Stock Incentive Plan.
- +10.22 -- Form of Stock Option Agreement pursuant to the Valero Energy Corporation Non-Employee Director Stock Option Plan - incorporated by reference to Exhibit 10.04 to Valero's Quarterly Report on Form 10-Q for the quarter ended September 30, 2006 (SEC File No. 1-13175).
- +10.23 -- Form of Restricted Stock Agreement pursuant to the Valero Energy Corporation 2005 Omnibus Stock Incentive Plan - incorporated by reference to Exhibit 10.02 to Valero's Quarterly Report on Form 10-Q for the quarter ended September 30, 2005 (SEC File No. 1-13175).
- \*+10.24 -- Form of Restricted Stock Agreement pursuant to the Valero Energy Corporation 2011 Omnibus Stock Incentive Plan.
- +10.25 -- Form of Restricted Stock Agreement pursuant to the Valero Energy Corporation Restricted Stock Plan for Non-Employee Directors - incorporated by reference to Exhibit 10.03 to Valero's Quarterly Report on Form 10-Q for the quarter ended September 30, 2006 (SEC File No. 1-13175).
- \*10.26 -- \$3,000,000,000 5-Year Amended and Restated Revolving Credit Agreement, dated as of December 5, 2011, among Valero Energy Corporation, as Borrower; JPMorgan Chase Bank, N.A., as Administrative Agent; and the lenders named therein.
- \*12.01 -- Statements of Computations of Ratios of Earnings to Fixed Charges.
  - 14.01 -- Code of Ethics for Senior Financial Officers - incorporated by reference to Exhibit 14.01 to Valero's Annual Report on Form 10-K for the year ended December 31, 2003 (SEC File No. 1-13175).
- \*21.01 -- Valero Energy Corporation subsidiaries.
- \*23.01 -- Consent of KPMG LLP dated February 24, 2012.

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- \*24.01 -- Power of Attorney dated February 23, 2012 (on the signature page of this Form 10-K).
- \*31.01 -- Rule 13a-14(a) Certification (under Section 302 of the Sarbanes-Oxley Act of 2002) of principal executive officer.
- \*31.02 -- Rule 13a-14(a) Certification (under Section 302 of the Sarbanes-Oxley Act of 2002) of principal financial officer.
- \*32.01 -- Section 1350 Certifications (under Section 906 of the Sarbanes-Oxley Act of 2002).
- \*99.01 -- Audit Committee Pre-Approval Policy.
- \*\*101 -- Interactive Data Files

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\* Filed herewith.

+ Identifies management contracts or compensatory plans or arrangements required to be filed as an exhibit hereto.

\*\* Submitted electronically herewith.

Copies of exhibits filed as a part of this Form 10-K may be obtained by stockholders of record at a charge of \$0.15 per page, minimum \$5.00 each request. Direct inquiries to Jay D. Browning, Senior Vice President – Corporate Law and Secretary, Valero Energy Corporation, P.O. Box 696000, San Antonio, Texas 78269-6000.

Pursuant to paragraph 601(b)(4)(iii)(A) of Regulation S-K, the registrant has omitted from the foregoing listing of exhibits, and hereby agrees to furnish to the SEC upon its request, copies of certain instruments, each relating to debt not exceeding 10 percent of the total assets of the registrant and its subsidiaries on a consolidated basis.



**POWER OF ATTORNEY**

**KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below hereby constitutes and appoints William R. Klesse, Michael S. Ciskowski, and Jay D. Browning, or any of them, each with power to act without the other, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any or all subsequent amendments and supplements to this Annual Report on Form 10-K, and to file the same, or cause to be filed the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto each said attorney-in-fact and agent full power to do and perform each and every act and thing requisite and necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby qualifying and confirming all that said attorney-in-fact and agent or his substitute or substitutes may lawfully do or cause to be done by virtue hereof.**

**Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.**

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ William R. Klesse</u> (William R. Klesse)	Chief Executive Officer, President, and Chairman of the Board (Principal Executive Officer)	February 23, 2012
<u>/s/ Michael S. Ciskowski</u> (Michael S. Ciskowski)	Executive Vice President and Chief Financial Officer (Principal Financial and Accounting Officer)	February 23, 2012
<u>/s/ Ronald K. Calgaard</u> (Ronald K. Calgaard)	Director	February 23, 2012
<u>/s/ Jerry D. Choate</u> (Jerry D. Choate)	Director	February 23, 2012
<u>/s/ Ruben M. Escobedo</u> (Ruben M. Escobedo)	Director	February 23, 2012
<u>/s/ Bob Marbut</u> (Bob Marbut)	Director	February 23, 2012
<u>/s/ Donald L. Nickles</u> (Donald L. Nickles)	Director	February 23, 2012
<u>/s/ Robert A. Profusek</u> (Robert A. Profusek)	Director	February 23, 2012
<u>/s/ Susan Kaufman Purcell</u> (Susan Kaufman Purcell)	Director	February 23, 2012
<u>/s/ Stephen M. Waters</u> (Stephen M. Waters)	Director	February 23, 2012
<u>/s/ Randall J. Weisenburger</u> (Randall J. Weisenburger)	Director	February 23, 2012
<u>/s/ Rayford Wilkins, Jr.</u> (Rayford Wilkins, Jr.)	Director	February 23, 2012

**2012 ELECTIVE DEFERRAL AGREEMENT**  
**Valero Energy Corporation**  
**Deferred Compensation Plan**

Pursuant to the Valero Energy Corporation Deferred Compensation Plan (the "Plan"):

- I elect not to participate in the Plan during **2012**.
- I hereby elect to defer a portion of my compensation for the period **commencing January 1, 2012 and ending December 31, 2012** (the "Plan Year") as follows:

**Salary** (*elect either 1 or 2*)

- 1. \_\_\_\_\_% (in even 1% increments not to exceed 30%) of the regular salary to which I may become entitled during the Plan Year;
- 2. \$\_\_\_\_\_ per pay period of the regular salary to which I may become entitled with respect to (check either (a) or (b) below):
  - (a) \_\_\_\_\_ all pay periods during the Plan Year
  - (b) \_\_\_\_\_ the following pay periods (specify):

\_\_\_\_\_

**Bonus** (*elect either 3 or 4 for bonus earned in 2012 and possibly payable in 2012*)

- 3. \_\_\_\_\_% (in even 1% increments not to exceed 50%) of any cash bonuses to which I may become entitled;
- 4. \$\_\_\_\_\_ of any cash bonuses to which I may become entitled.

**NOTE:** In order to be effective, this form must be completed, signed, and returned to Financial Benefits (San Antonio/Mailstation E1L) on or before **December 2, 2011**. If your form is not timely submitted, you will not be eligible to participate in the Plan for the 2012 Plan Year.

The Company has taken measures to design the Plan in a manner that conforms to current tax law. However, it is possible that new legislation could affect your deferral elections. Your 2012 Plan Year deferral elections are *irrevocable* and are governed by the terms and conditions of the Plan as well as any modifications made to the Plan in order to conform to legal requirements.

**ACKNOWLEDGED AND AGREED:**

I hereby authorize the above amounts to be deducted and deferred through payroll deduction/reduction by the Company.

\_\_\_\_\_  
Participant's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Participant's Name

\_\_\_\_\_  
Participant's Employee ID Number





**2012 DISTRIBUTION ELECTION FORM**  
**Valero Energy Corporation**  
**Deferred Compensation Plan**

<b>Payment Election Upon Retirement</b>	<b>DEFAULT PAYMENT IF NO ELECTION IS MADE:</b> Fifteen annual installments commencing at date of retirement
I elect that, upon retirement, the value of my Plan account related to deferrals made for the <b>2012 Plan Year</b> will be paid at the time and in the manner elected below:	
<b>Payment Commencement</b> (choose one):	
<input type="checkbox"/> As soon as administratively possible following retirement <i>(this is the default if no election is made)</i>	
<input type="checkbox"/> January 1 after the year of retirement	
<b>AND</b>	
<b>Form of Distribution</b> (choose one):	
<input type="checkbox"/> Lump sum payment	
<input type="checkbox"/> Annual installments for _____ years (choose 2 - 15 years)	

<b>Payment Election Upon Other Separation</b>	<b>DEFAULT PAYMENT IF NO ELECTION IS MADE:</b> Immediate lump sum payable upon separation
I elect that, upon my separation from employment for a reason other than retirement, the value of my Plan account related to deferrals made for the <b>2012 Plan Year</b> will be paid at the time and in the manner elected below:	
<b>Payment Commencement</b> (choose one):	
<input type="checkbox"/> As soon as administratively possible following separation <i>(this is the default if no election is made)</i>	
<input type="checkbox"/> January 1 after the year of separation	
<b>AND</b>	
<b>Form of Distribution</b> (choose one):	
<input type="checkbox"/> Lump sum <i>(this is the default payment if no election is made)</i>	
<input type="checkbox"/> Five annual installments	

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**Distribution on Specified Date**

In accordance with Section 6.4 of the Plan, I hereby elect to receive in one lump sum payment my Account derived from deferrals made during the **2012 Plan Year** on the date or dates specified below, or the balance of the Account, if less. Any amounts distributed pursuant to this election shall immediately reduce my Account accordingly. *(The earliest date that can be elected to receive 2012 deferrals is January 1, 2016.)*

<u>Specified Date</u>	<u>Amount of Elective Deferral or Total Amount of the Account (Whichever is Less)</u>
_____	_____
_____	_____
_____	_____

**NOTE:** In order to be effective, this form must be completed, signed, and returned to Financial Benefits (San Antonio/Mailstation E1L) on or before **December 2, 2011**. If your form is not timely submitted, your Plan deferral will be subject to the default distributions noted above.

The Company has taken measures to design the Plan in a manner that conforms to current tax law. However, it is possible that new legislation could affect your distribution elections, including delaying your distributions, in order to comply with legal requirements. Distribution elections submitted pursuant to the Plan will be governed by the terms and conditions of the Plan and governing law, and your elections will be subject to modifications made to the Plan in order to conform to legal requirements.

ACKNOWLEDGED AND AGREED:

\_\_\_\_\_  
Participant's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Participant's Name

\_\_\_\_\_  
Participant's Employee ID Number

**VALERO ENERGY CORPORATION  
SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN  
FOR  
SELECTED EMPLOYEES OF CANADIAN SUBSIDIARIES**

**Amended and Restated effective December 31, 2011**

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**VALERO ENERGY CORPORATION  
SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN  
FOR  
SELECTED EMPLOYEES OF CANADIAN SUBSIDIARIES**

WHEREAS, Valero Energy Corporation (“Valero”) has established the Valero Energy Corporation Supplemental Executive Retirement Plan for Selected Employees of Canadian Subsidiaries originally effective November 1, 2004, which provides for selected management personnel of Canadian Subsidiaries of Valero who adopt this Plan with supplemental retirement compensation as an incentive to such personnel to maintain and increase their performance and loyalty to the Company and such affiliated entities; and

WHEREAS, Valero retained the right of the Board of Directors to amend the Plan at any time by an instrument in writing; and

WHEREAS, the Plan has been amended from time to time, and Valero desires at this time to further amend and to restate the Plan.

NOW, THEREFORE, the Plan is hereby amended and restated as follows:

**ARTICLE I**

**DEFINITIONS**

The following terms shall have the meanings set forth below.

1.1 **Accrued Benefit.** “Accrued Benefit” means, as of any given date of determination, the Retirement benefit calculated under Section 4.1 hereof, with Final Average Compensation and Credited Service determined as of that date.

1.2 **Actuarial Equivalent or Actuarially Equivalent Basis.** “Actuarial Equivalent” or “Actuarially Equivalent Basis” means an equality in value of the aggregate amounts expected to be received under different forms of benefit payment based on the same mortality and interest rate assumptions. Such assumptions shall be determined by the actuary for the Plan selected by the Committee, and shall be reasonable in light of legal requirements and precedent, standard actuarial practice and other plans maintained by Valero and its affiliates.

1.3 **Board of Directors.** “Board of Directors” means the Board of Directors of the Company.

1.4 **Change of Control.** “Change of Control” means the occurrence of one or more of the following events:

(a) Change in Ownership of Valero. The acquisition by any one person, or more than one person acting as a group (within the meaning of Code Section 409A), of ownership of stock of Valero that, together with stock held by such person or group, constitutes more than fifty percent (50%) of the total fair market value or total voting power of the stock of Valero.

(b) Change in Effective Control of Valero. Either of the following:

(i) The acquisition, during any 12-month period, by any one person, or more than one person acting as a group (within the meaning of Code Section 409A), of stock of Valero comprising thirty percent (30%) or more of the total voting power of the stock of Valero; or

(ii) The replacement, during any 12-month period, of a majority of the members of the Board of Directors with directors whose appointment or election is not endorsed by the majority of the members of the Board of Directors before the date of such appointment or election.

(c) Change in Ownership of a Substantial Portion of Valero's Assets. The acquisition by any one person, or more than one person acting as a group (within the meaning of Code Section 409A), during the 12 month period ending on the date of the most recent acquisition by such person or persons, of assets of Valero that have a total gross fair market value equal to or more than forty percent (40%) of the total gross fair market value of all of the assets of Valero immediately before such acquisition or acquisitions. For purposes of this provision, "gross fair market value" means the value of the assets of Valero, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets.

The provisions of this Plan relating to a Change in Control shall be interpreted and administered in a manner consistent with Code Section 409A.

1.5 **Code.** "Code" means the United States Internal Revenue Code of 1986, as amended from time to time.

1.6 **Company or Valero.** "Company" or "Valero" means Valero Energy Corporation, the plan sponsor of the Plan.

1.7 **Committee.** "Committee" means the Compensation Committee of Valero.

1.8 **Credited Service.** "Credited Service" means a Participant's continuing period of employment with a Participating Employer (whether or not contiguous), commencing on the first day for which such Participant is paid, or entitled to payment, for the performance of duties with a Participating Employer and terminating with the Participant's final cessation of participation in the Plan. With respect to any full calendar year in which a Participant receives Eligible Earnings in each payroll period as an active employee, he shall be credited with one year of Credited Service. With respect to any partial calendar year in which a Participant receives Eligible Earnings as an active employee (such as the calendar year in which employment commences or participation ceases) he shall be credited with a fraction of a year of Credited Service in proportion to the number of payroll periods during such calendar year that he received Eligible Earnings as an active employee bears to the total number of payroll periods during such year. All partial years of Credited Service shall be aggregated so that a Participant receives credit for all periods of employment regardless of whether the Credited Service is interrupted.

1.9 **Eligible Earnings.** “Eligible Earnings” means all compensation paid or payable by a Participating Employer to a Participant in the form of base salary performance and bonuses (not to include a retention bonus and whether paid or payable in cash or securities or any combination thereof), including therein any amounts of such base salary and bonuses earned which, at the employee’s election, in lieu of a cash payment to him, are contributed to a Plan of Deferred Compensation maintained by a Participating Employer. During a leave of absence from work without pay, such as disability leave of absence or personal leave of absence, the Participant’s base rate of pay in effect immediately prior to the leave of absence and (if he does not receive a bonus for such period of absence from work) his most recent bonus amount paid shall be used in computing his Eligible Earnings.

1.10 **Final Average Compensation.** “Final Average Compensation” means a Participant’s average monthly Eligible Earnings from a Participating Employer for the thirty-six consecutive calendar months that give the highest average monthly rate of Eligible Earnings for the Participant out of all calendar months next preceding the earliest of: (a) the date upon which a Participant becomes ineligible for participation in this Plan pursuant to Section 2.2; (b) the latest of (i) the Participant’s termination for total disability, or (ii) his Retirement; (c) the termination of the Plan; or (d) a Change of Control.

1.11 **Normal Retirement Date.** “Normal Retirement Date” means the first day of the month coincident with or next following the date on which the Participant attains the age of 65 years.

1.12 **Participant.** “Participant” means an employee of a Participating Employer who is selected by the Committee for participation in the Plan pursuant to Section 2.1, as well as a former employee of a Participating Employer who, as a result of participation in the Plan, is receiving or is eligible to receive benefits under the Plan.

1.13 **Participating Employer.** “Participating Employer” means any Subsidiary which is established and operates under the laws of Canada, and which adopts this Plan pursuant to action of its board of directors or other governing body, and is approved for participation in this Plan by the Committee. A listing of Participating Employers is set forth on Exhibit “A” attached hereto. Said Exhibit “A” may be modified from time to time to reflect the then current Participating Employers.

1.14 **Plan.** “Plan” means the Valero Energy Corporation Supplemental Executive Retirement Plan for Selected Employees of Canadian Subsidiaries as set forth in this document, as amended from time to time.

1.15 **Plan of Deferred Compensation.** “Plan of Deferred Compensation” means any plan maintained by a Participating Employer providing for the deferral or reduction of Eligible Earnings.

1.16 **Plan Year.** “Plan Year” means the calendar year.

1.17 **Retirement.** “Retirement,” “Retirees,” “Retire” or “Retired” means the retirement of a Participant from a Participating Employer either (a) early, as of the first day of any month coincident with or next following (with respect to a Participant in the active

employment of a Participating Employer who has attained the age of 55 years and completed at least five (5) years of Credited Service), the date such Participant retires from the service of the Participating Employer prior to his attainment of age 65, or (b) upon, or as of the first day of any month following, his Normal Retirement Date.

1.18 **Subsidiary.** “Subsidiary” means (i) any corporation 50% or more of whose stock having ordinary voting power to elect directors (irrespective of whether or not at the time stock of any class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time owned, directly or indirectly, by Valero, and (ii) any partnership, association, joint venture or other entity in which, Valero, directly or indirectly, has a 50% or greater equity interest at the time.

1.19 **Surviving Spouse.** “Surviving Spouse” means the individual, if any, who was the legally recognized spouse (as determined under the governing law of the Participant’s residence) of a Participant at the time of Participant’s death.

1.20 **Valero Pension Plan.** “Valero Pension Plan” means the Valero Energy Corporation Pension Plan, as amended from time to time.

1.21 **Voting Securities.** “Voting Securities” means with respect to any corporation or other entity, the common stock or any other security of such person ordinarily entitled to vote for directors (or other governing body) of such corporation or entity, and any debt or equity security convertible into or exchangeable or exercisable for a security so entitled to vote. In calculating the percentage of Voting Securities owned by a person or group, securities that are immediately convertible, or by their terms upon the occurrence of any event or the lapse of time, or both, will become convertible into or exchangeable or exercisable for securities so entitled to vote shall be deemed to represent the number of shares of common stock or other voting securities into which such securities are then or will become ultimately convertible or for which they are or will ultimately become exchangeable or exercisable, and the total number of issued and outstanding shares of common stock (or other voting securities) shall be determined on a pro forma basis after giving effect to such conversion, exchange or exercise. The percentage of Voting Securities held by a person or Group shall be deemed to be equal to the percentage of the number of votes that could be cast for the election of directors (or other governing body) that such person or Group would be entitled to so cast after giving effect to the provisions of the preceding sentence. As used in this Plan, the term “person” shall include any individual, corporation, partnership, firm or other entity.

## ARTICLE II

### ELIGIBILITY

2.1 **Initial Eligibility.** An employee of a Participating Employer shall become a Participant in the Plan as of the date such employee is selected and named by the Committee for inclusion as a Participant in the Plan. The determination of employees who become Participants in the Plan, as well as the effective date of such participation shall be made by the Committee in its sole and absolute discretion.



**2.2 Frozen Participation.** If an employee who is a Participant later becomes ineligible to continue to participate but still is employed by a Participating Employer, his Accrued Benefit will be frozen as of the last day of the Plan Year prior to the Plan Year during which he initially became ineligible to participate. He will later be entitled to that frozen Accrued Benefit, upon Change of Control, Plan termination, Retirement or his earlier termination of employment with all Participating Employers with a vested interest, subject to the requirements of Articles III and IV. The frozen Accrued Benefit will be payable at the time and in the available payment options set forth in Article IV. The Surviving Spouse of a Participant whose Accrued Benefit is frozen at the time of the Participant's death may be entitled to a death benefit pursuant to the terms of Article V. A Participant whose Accrued Benefit is frozen at the time of incurring a disability shall not accrue any further Credited Service either for accrual or vesting purposes after the disability occurs so long as the Participant's Accrued Benefit in this Plan is frozen. If the frozen Accrued Benefit is less than the benefit which could otherwise be provided without this limitation, then the benefit will not exceed the Participant's frozen Accrued Benefit. Additionally, if any of the events described in Article VI should occur, the Participant whose Accrued Benefit is frozen shall be subject to having his frozen Accrued Benefit either restricted in amount or forfeited in accordance with Article VI.

Notwithstanding the foregoing or any other provision of this Plan, unless otherwise determined and approved by the Committee, the following shall apply to a Participant who is transferred from a Participating Employer to a Subsidiary of the Company which is established under and operates under the laws of the United States: (i) such Participant's period of service with such United States Subsidiary shall not be included as Credited Service under this Plan; and (ii) such Participant's Eligible Earnings shall include compensation paid or payable by such United States Subsidiary to the Participant to the same extent that such compensation would have constituted Eligible Earnings if it had been paid or payable from a Participating Employer.

**2.3 Renewed Eligibility.** If a Participant becomes ineligible to continue to participate but remains employed by a Participating Employer and then later again becomes eligible to participate, the Participant will be given Credited Service for the intervening period, will have his Final Average Compensation computed as though the freeze had never occurred, and will be treated for all purposes as though he had not had his participation interrupted.

## ARTICLE III

### VESTING

Except as otherwise set forth herein, effective as of August 1, 2010, a Participant's Accrued Benefit shall, subject to the forfeiture provisions set forth in Sections 6.4 and 6.5 hereof, become fully vested upon the Participant attaining at least five (5) years of Credited Service. Prior to such time, a Participant shall have no vested interest in his Accrued Benefit. All Credited Service of a Participant shall be counted in determining whether the Participant's Accrued Benefit has vested.

Except as otherwise set forth herein, a Participant's Accrued Benefit shall vest only upon the occurrence of the Participant's death, disability or Retirement, and all benefits under this Plan

shall be forfeited if the Participant terminates employment from all Companies prior to death, disability or Retirement.

The foregoing notwithstanding, a Participant's Accrued Benefit shall vest upon the occurrence of a Change of Control, upon termination of the Plan pursuant to Section 9.1 or if the adopting Subsidiary employing a Participant terminates its participation in the Plan and such Participant's participation in the Plan is not promptly continued through employment by another adopting Subsidiary.

#### ARTICLE IV

##### RETIREMENT BENEFIT

4.1 **Calculation of Retirement Benefits; Commencement of Benefit Payments.** Subject to the provisions of this Plan, the benefit payable under this Plan shall be an amount equal to the lump sum of the Accrued Benefit payable for life from Normal Retirement Date where the Accrued Benefit is equal to 1.2% of the Participant's Final Average Compensation multiplied by his number of years of Credited Service; provided that, if the Participant's termination of employment occurs prior to the Participant attaining age 55, the benefit shall be calculated in the same manner as set forth above, but 1% shall be used instead of 1.2%. The lump sum amount payable hereunder shall be determined using the lump sum actuarial factors provided for, and/or used under, the Valero Pension Plan.

4.2 **Form and Time of Payment.** Benefits payable under this Plan shall be made in a single lump sum payment as soon as reasonably practical following the Participant's Retirement or other termination of employment, and in any event within 90 days thereof. Such lump sum amount shall be calculated as of the date of the Participant's Retirement or termination of employment by the actuary for the Valero Pension Plan applying actuarial factors used under the Valero Pension Plan.

#### ARTICLE V

##### PRE-RETIREMENT SPOUSAL DEATH BENEFIT

5.1 **Death Prior to Retirement.** In the event that a Participant who completed at least five years of Credited Service dies while employed by a Participating Employer but has not Retired, the Participant's Surviving Spouse shall receive a Surviving Spouse benefit under the Plan equal to fifty percent (50%) of the amount the Participant would have received under Section 4.1 if he had Retired or otherwise terminated his employment on his date of death. Such payment shall be made to the Participant's Surviving Spouse as soon as reasonably practical following the Participant's death and, in any event within 90 days thereof.

5.2 **Beneficiary Designation Prohibited.** Since the only death benefit payable under the Plan is to a Surviving Spouse, no Participant shall have the right to designate a beneficiary other than the Participant's Surviving Spouse to receive death benefits hereunder.

## ARTICLE VI

### PROVISIONS RELATING TO ALL BENEFITS

6.1 **Effect of This Article.** The provisions of this Article will control over all other provisions of this Plan.

6.2 **No Duplication of Benefits.** It is not intended that there be any duplication of benefits. Therefore, if a Participant has met the requirements of Article IV and has Retired, then the Participant and/or his Surviving Spouse shall only receive a benefit under that Article. If a Participant dies before actual Retirement, the Participant's Surviving Spouse shall only receive a benefit, if the Surviving Spouse qualifies for one, under Article V. But, in no event will a Participant and/or such Participant's Surviving Spouse qualify for a benefit under both Articles IV and V.

6.3 **Forfeiture for Cause.** If the Committee determines that a Participant was discharged for fraud, embezzlement, theft, commission of a felony, dishonesty in the course of his employment which damaged a Participating Employer or any affiliate, or for disclosing trade secrets or other confidential or proprietary information of a Participating Employer or any affiliate, the entire benefit accrued for the benefit of the Participant and/or his Surviving Spouse will be forfeited even though it may have been previously vested under Article III. The decision of the Committee as to the cause of a former Participant's discharge and the damage caused thereby will be final and binding on all parties. No decision of the Committee will affect the finality of the discharge of the Participant in any manner.

6.4 **Forfeiture for Competition.** If at the time a distribution is being made or is to be made to a Participant, the Committee determines that the Participant at any time within two years following his termination of employment, and without written consent of the Committee, directly or indirectly owns, operates, manages, controls or participates in the ownership, (other than through ownership of less than 5% of the Voting Securities of a publicly traded entity) management, operation or control of or is employed by, or is paid as a consultant or other independent contractor by a business which competes or at any time did compete with a Participating Employer or any affiliate by which he was formerly employed in a trade area served by a Participating Employer or any affiliate at the time distributions are being made or to be made and in which the Participant had represented a Participating Employer or any affiliate while employed by it, and if the Participant continues to be so engaged 60 days after written notice has been given to him, the Committee may forfeit all benefits otherwise due the Participant even though such benefit may have been previously vested under Article III.

6.5 **Expenses Incurred in Enforcing the Plan.** The Company or other Participating Employer will reimburse a Participant for all reasonable legal fees and expenses incurred by him in successfully seeking to obtain or enforce any benefit provided by this Plan if such disputed benefit is payable following a Change of Control.

**ARTICLE VII**  
**ADMINISTRATION**

7.1 **Administration of the Plan by the Committee.** The Committee will have the exclusive authority and responsibility for the general administration of this Plan according to the terms and provisions of this Plan and will have all such authority, discretion and powers necessary or appropriate to accomplish those purposes, including but not by way of limitation the right, discretion, power and authority:

- (a) to make rules and regulations for the administration of this Plan;
- (b) to construe and interpret all terms, provisions, conditions and limitations of this Plan, including any terms which are alleged or determined to be ambiguous or susceptible to differing interpretations, and the interpretation of the Committee shall be final and binding on all parties;
- (c) to correct any defect, supply any omission or reconcile any inconsistency that may appear in this Plan;
- (d) to determine all controversies relating to the administration of this Plan, including but not limited to:
  - (1) differences of opinion arising between the Company and a Participant; and
  - (2) any question it deems advisable to determine in order to promote the proper and efficient administration of this Plan for the benefit of all parties at interest; and
- (e) to delegate, without limitation, by written notice to Company representatives or independent advisers or any other designee, powers of investment and administration as well as those ministerial duties of the Committee, as it deems necessary or advisable for the proper and efficient administration of this Plan.

7.2 **Committee Discretion.** The Committee in exercising any power or authority granted under this Plan or in making any determination under this Plan may use its sole discretion and judgment. Any decision made or any act or omission, by the Committee in good faith shall be final and binding on all parties and shall not be subject to *de novo* review.

7.3 **Reliance Upon Information.** The Committee will not be liable for any decision or action taken in good faith in connection with the administration of this Plan. Without limiting the generality of the foregoing, any decision or action taken by the Committee when it relies upon information supplied it by any officer of the Company, a Participating Employer, the Company's legal counsel, the Company's actuary, the Company's independent accountants or other advisors in connection with the administration of this Plan will be deemed to have been taken in good faith.

## ARTICLE VIII

### ADOPTION BY SUBSIDIARIES

8.1 **Procedure for Adoption.** Any Subsidiary may adopt this Plan and become a Participating Employer by appropriate action of its board of directors or other governing body, subject to approval of such participation by the Committee. Each Subsidiary adopting the Plan delegates to the Committee exclusive administrative responsibility for the Plan. However, subject to the following sentence, the costs of Plan benefits shall be allocated among Participating Employers such that each Participating Employer shall bear the primary responsibility for the costs of participation by those Participants who are or were employees of such Participating Employer. Notwithstanding the foregoing, each Participating Employer, by adopting this Plan, and in consideration of the like undertakings of the other adopting Participating Employers, agrees that the obligations and liabilities of the Participating Employers for the payment of benefits to all Participants (and to any person claiming through a Participant) hereunder shall be the joint and several obligation of each Participating Employer, not solely of the Participating Employer employing or previously employing a Participant. Thus, a Participant (or a person claiming through a Participant) shall look first to the Participating Employer which employed the Participant for payment of Plan benefits, but if such Participating Employer fails to pay any Plan benefit payable hereunder, such Participant (or other person) may submit a claim for payment of such Plan benefits to the other Participating Employer.

8.2 **Termination of Participation By Adopting Subsidiary.** Any Subsidiary adopting, this Play may, by appropriate action of its board of directors or other governing body, terminate its participation in this Plan. The Committee may, in its discretion, also terminate a Subsidiary's participation in this Plan at any time. The termination of the participation in this Plan by a Subsidiary will not, however, affect the rights of any Participant who is working or has worked for the Subsidiary as to benefits previously accrued and vested under Articles II and III of this Plan.

## ARTICLE IX

### AMENDMENT AND/OR TERMINATION

9.1 **Amendment or Termination of the Plan.** The Committee may amend or terminate this Plan in whole or in part at any time.

9.2 **No Retroactive Effect on Accrued Benefits.** No amendment will affect the rights of any Participant to such Participant's then Accrued Benefit or will change a Participant's rights under any provision relating to a Change of Control after a Change of Control has occurred.

9.3 **Effect of Termination.** If this Plan is terminated, the accrued benefit of all Participants shall immediately become fully vested, and the benefit of each Participant (determined as of the date of the Plan termination and calculated in the manner provided in this Plan) shall, except as provided in Section 9.4, be paid at the time it would otherwise be paid under the terms of the Plan.

9.4 **Effect of Change of Control.** In the event of a Change in Control, the accrued benefit of all Participants in the Plan shall immediately become fully vested. Additionally, the Committee may, within the period beginning thirty (30) days prior to the effective date of the Change in Control, and ending twelve (12) months after the effective date of the Change in Control, make an irrevocable decision to terminate the Plan (and all deferred compensation plans maintained by Valero which must be aggregated with the Plan under Code Section 409A) and distribute all benefits to Participants. In the event of such termination following a Change in Control, the accrued benefits of each Participant (determined as of the date of Plan termination and calculated in the manner provided for in this Plan) shall be distributed in the form of a lump sum payment within twelve (12) months following the termination of this Plan. In the absence of such Plan termination, a Change in Control shall not alter the time and manner of the payment of benefits hereunder, and all benefits shall be paid at the time and in the manner as they would otherwise be paid in accordance with the provisions of this Plan.

## ARTICLE X

### MISCELLANEOUS

10.1 **Mandatory Arbitration.** Any and all disputes, claims and/or controversies relating to, or arising out of, this Plan shall, to the fullest extent legally permitted, be submitted to final and binding arbitration.

10.2 **Responsibility for Distributions and Withholding of Taxes.** The Committee shall calculate, or cause the actuary for the Plan to calculate, the amount of any benefit payable to a Participant hereunder, and the amounts of any deductions required with respect to federal, state or local tax withholding, and shall withhold or cause the same to be withheld. However, any and all taxes payable with respect to any distribution or benefit hereunder shall be the sole responsibility of the Participant, not of Valero or any Participating Employer, whether or not Valero or any Participating Employer shall have withheld or collected from the Participant any sums required to be so withheld or collected in respect thereof and whether or not any sums so withheld or collected shall be sufficient to provide for any such taxes.

10.3 **Limitation of Rights.** Nothing in this Plan will be construed:

- (a) to give a Participant or other person claiming through him/her any right with respect to any benefit except in accordance with the terms of this Plan;
- (b) to limit in any way the right of to terminate a Participant's employment with a Participating Employer at any time;
- (c) to evidence any agreement or understanding, expressed or implied, that a Participating Employer will employ a Participant in any particular position or for any particular remuneration; or
- (d) to give a Participant or any other person claiming through him any interest or right under this Plan other than that of any unsecured general creditor.

10.4 **Distributions to Incompetents.** Should a Participant or a Surviving Spouse become incompetent, the Company is authorized to pay the funds due to the guardian or conservator of the incompetent Participant or Surviving Spouse or directly to the Participant or Surviving Spouse or to apply those funds for the benefit of the incompetent Participant or Surviving Spouse in any manner the Committee determines in its sole discretion.

10.5 **Nonalienation of Benefits.** No right or benefit provided in this Plan will be transferable by the Participant except, upon his death, to a Surviving Spouse as provided in this Plan. No right or benefit under this Plan will be subject to anticipation, alienation, sale, assignment, pledge, encumbrance or charge, and any attempt to anticipate, alienate, sell, assign, pledge, encumber, or charge the same will be void. No right or benefit under this Plan will in any manner be liable for or subject to any debts, contracts, liabilities or torts of the person entitled to such benefits. If any Participant or any Surviving Spouse becomes bankrupt or attempts to anticipate, alienate, sell, assign, pledge, encumber or charge any right or benefit under this plan, that right or benefit will, in the discretion of the Committee, cease. In that event, the Committee may have a Participating Employer hold or apply the right or benefit or any part of it to the benefit of the Participant or Surviving Spouse, his or her spouse, children or other dependents or any of them in any manner and in any proportion the Committee believes to be proper in its sole and absolute discretion, but is not required to do so.

10.6 **Severability.** If any term, provision, covenant or condition of this Plan is held to be invalid, void or otherwise unenforceable, the rest of this Plan will remain in full force and effect and will in no way be affected, impaired or invalidated.

10.7 **Notice.** Any notice or filing required or permitted to be given to the Company, the Committee or a Participant will be sufficient if in writing and hand delivered or sent by Canadian mail to the principal office of the Company, acting on behalf of the Company or the Committee, or to the residential mailing address of the Participant. Notice will be deemed to be given as of the date of hand delivery or if delivery is by mail, as of the third day following the date shown on the postmark

10.8 **Gender and Number.** If the context requires it, words of one gender when used in this Plan will include the other genders, and words used in the singular or plural will include the other.

10.9 **Governing Law.** The Plan will be construed, administered and governed in all respects by the laws of Canada.

10.10 **Code Section 409A.** This Plan is intended to comply, and shall be administered consistently in all respects, with Code Section 409A, and the regulations and additional guidance promulgated thereunder, to the extent applicable. In this connection, the Company shall have authority to take any action, or refrain from taking any action, with respect to this Plan that is reasonably necessary to ensure compliance with Code Section 409A (provided that the Company shall choose the action that best preserves the value of the payments and benefits provided to Participants that is consistent with Code Section 409A). In furtherance, but not in limitation of the foregoing: (a) in no event may Participant designate, directly or indirectly, the calendar year of any payment to be made hereunder; (b) in the event that a Participant is a "specified

employee” within the meaning of Code Section 409A, payments which constitute a “deferral of compensation” under Code Section 409A and which would otherwise become due during the first six (6) months following the Participant’s Retirement or termination of employment shall be delayed and all such delayed payments shall be paid in full in the seventh (7th) month after the Participant’s Retirement or termination of employment or, if earlier, upon the Participant’s death, provided that the above delay shall not apply to any payment that is excepted from coverage by Code Section 409A; (c) notwithstanding any other provision of this Plan, a termination, resignation or Retirement of a Participant’s employment hereunder, shall mean, and be interpreted consistent with, a “separation from service” within the meaning of Code Section 409A; (d) with respect to any reimbursement of expenses, or similar payments or any in-kind benefits, the following shall apply: (i) unless a specific time period during which such expense reimbursements and payments may be incurred is provided for herein, such time period shall be deemed to be Participant’s lifetime; (ii) the amount of expenses eligible for reimbursement hereunder, or in-kind benefits to which a Participant is entitled hereunder, in any particular year shall not affect the expenses eligible for reimbursement or in-kind benefits in any other year; (ii) the right to reimbursement of expenses or in-kind benefits shall not be subject to liquidation or exchange for any other benefit; (iii) the reimbursement of an eligible expense or a payment shall be made on or before the last day of the calendar year following the calendar year in which the expense was incurred or the payment was remitted, as the case may be.

**IN WITNESS WHEREOF**, the Company has executed this document on this \_\_\_\_\_ day of \_\_\_\_\_, 2011, to be effective as of December 31, 2011.

VALERO ENERGY CORPORATION

By \_\_\_\_\_  
William R. Klesse,  
Chief Executive Officer



**Exhibit A**  
**Participating Employers**

**Ultramar Ltd.**

## VALERO ENERGY CORPORATION

## EXCESS PENSION PLAN

Amended and Restated December 31, 2011

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## VALERO ENERGY CORPORATION

### EXCESS PENSION PLAN

The Valero Energy Corporation Excess Pension Plan (hereinafter referred to as the “Plan” or the “Excess Pension Plan”) was originally established effective January 1, 1995 for the purpose of providing benefits to those employees of Valero Energy Corporation and its participating subsidiaries (hereinafter collectively referred to as “Valero”) whose pension benefits under the Valero Energy Corporation Pension Plan (the “Basic Plan”) are subject to limitations under the Internal Revenue Code of 1986, as amended (the “Code”), or are otherwise indirectly constrained by the Code from realizing the maximum benefit available to them under the terms of the Basic Plan.

The Plan is designed as an “excess benefit plan” as defined under §3(36) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), for those benefits provided in excess of section 415 of the Code. Benefits provided as a result of other statutory limitations are limited to a select group of management or other highly compensated employees. The Plan is not intended to constitute either a qualified plan under the provisions of Section 401(a) of the Code, or a funded plan subject to the funding requirements of ERISA.

The Plan was amended and restated effective January 1, 2008 to: (i) segregate the Plan into two (2) separate components, one (1) for the benefits of Participants who incurred a Separation from Service on or prior to December 31, 2004, which shall be evidenced and governed by the Grandfathered Plan, and one (1) for the benefits of Participants whose Separation from Service with the Company occurs on or after January 1, 2005; (ii) incorporate modifications and additional provisions in order to comply with section 409A of the Code; (iii) reflect the spin-off and transfer of liabilities relating to Eligible NuStar Employees into a separate plan maintained by NuStar; and

(iv) evidence certain other changes described herein. The Plan is hereby amended and restated effective as of December 31, 2011, to reflect certain amendments made since the previous restatement.

**VALERO ENERGY CORPORATION**  
**EXCESS PENSION PLAN**

**PART I**  
**GRANDFATHERED PLAN**

Notwithstanding any other provision of this Plan, the terms, conditions and provisions of the Grandfathered Plan (as defined in Part II, Section 1.13 of this Plan) shall be the sole and exclusive provisions which apply with respect to Participants who incurred a Separation from Service (and whose benefits hereunder had fully accrued and were fully vested as of their Separation from Service) on or prior to December 31, 2004, regardless of when the benefits of such Participants commence. The provisions of Part II of this Plan shall not apply to such Participants.

**PART II**  
**CURRENT PLAN**

The terms, conditions and provisions of this Part II shall apply with respect to Participants whose Separation from Service with the Company occurred, or occurs, on or after January 1, 2005 (except for Eligible NuStar Employees, whose benefit liabilities under the Plan were transferred to the NuStar Excess Pension Plan, as described in Section 11.8).

**SECTION 1. DEFINITIONS**

All defined terms used in the Pension Plan shall have the same meanings provided therein for purposes of this Plan except as modified below.

1.1 “Change in Control” means the occurrence of one or more of the following events:

- (a) Change in Ownership of Valero. The acquisition by any one person, or more than one person acting as a group (within the meaning of Code section 409A), of ownership of stock of Valero that, together with stock held by such person or group, constitutes more than fifty percent (50%) of the total fair market value or total voting power of the stock of Valero.
- (b) Change in Effective Control of Valero. Either of the following:
  - (i) The acquisition, during any 12-month period, by any one person, or more than one person acting as a group (within the meaning of Code section 409A), of stock of Valero comprising thirty percent (30%) or more of the total voting power of the stock of Valero; or
  - (ii) The replacement, during any 12-month period, of a majority of the members of the Board of Directors with directors whose appointment or election is not endorsed by the majority of the members of the Board of Directors before the date of such appointment or election.

- (c) Change in Ownership of a Substantial Portion of Valero's Assets. The acquisition by any one person, or more than one person acting as a group (within the meaning of Code section 409A), during the 12 month period ending on the date of the most recent acquisition by such person or persons, of assets of Valero that have a total gross fair market value equal to or more than forty percent (40%) of the total gross fair market value of all of the assets of Valero immediately before such acquisition or acquisitions. For purposes of this provision, "gross fair market value" means the value of the assets of Valero, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets.

The provisions of this Plan relating to a Change in Control shall be interpreted and administered in a manner consistent with Code section 409A and the regulations and additional guidance thereunder.

- 1.2 "Code" shall mean the Internal Revenue Code of 1986, as amended.
- 1.3 "Committee" shall mean the Valero Benefit Plans Administrative Committee.
- 1.4 "Company" shall include the Employer and any Affiliated Employer as such terms are respectively defined in the Pension Plan.
- 1.5 "Considered Compensation" shall mean Considered Compensation as such term is defined in the Pension Plan, but determined without regard to the Compensation Limit.
- 1.6 "Compensation Limit" shall mean the maximum annual compensation allowed to be taken into account under the Pension Plan for any Plan Year pursuant to the provisions of Code section 401(a)(17), or any successor provision thereto.
- 1.7 "Credited Service" shall have the meaning provided under the Pension Plan, except that Credited Service shall not include any period for which a Participant has received a payment hereunder, under the SERP, under the NuStar Excess Pension Plan, or under the NuStar SERP.
- 1.8 "Former Eligible NuStar Employees" shall mean (a) individuals who, as of July 1, 2006, were employees of Valero GP, LLC, as well as any other individuals who transferred from the Company to NuStar on or before December 22, 2006; and (b) individuals who are identified on the list of Former Eligible NuStar Employees attached to this Plan as Exhibit "A".
- 1.9 "Employee" shall mean any individual who is characterized on the internal payroll records of the Company as an employee.
- 1.10 "Equivalent Actuarial Value" shall mean equality in value of the aggregate amounts expected to be received under different forms of payment based on the same mortality and interest rate assumptions. For this purpose, the mortality and interest rate assumptions used in computing benefits under the Pension Plan will be used.

- 1.11 “Excess Pension Plan” or “Plan” shall mean the Valero Energy Corporation Excess Pension Plan, as evidenced hereby.
- 1.12 “Final Average Monthly Earnings” shall mean Final Average Salary as such term is defined in the Pension Plan, but determined without regard to the Compensation Limit, and inclusive of amounts that would otherwise be excluded because of having been contributed to a Plan of Deferred Compensation.
- 1.13 “Grandfathered Plan” shall mean all of the terms and provisions of the Valero Energy Corporation Excess Pension Plan as in effect on October 3, 2004, which said provisions are attached hereto as Addendum 1, and are hereby incorporated in this Plan by reference with respect to Participants who incurred a Separation from Service, and whose benefits hereunder had fully accrued and were fully vested on or prior to December 31, 2004, as provided for in Part I of this Plan.
- 1.14 “NuStar” shall mean NuStar GP, LLC, formerly known as Valero GP, LLC.
- 1.15 “NuStar Excess Pension Plan” shall mean the NuStar Excess Pension Plan, as amended from time to time, or any successor plan.
- 1.16 “NuStar SERP” shall mean the NuStar Supplemental Executive Retirement Plan, as amended from time to time, or any successor plan.
- 1.17 “Participant” shall mean an Employee who meets the eligibility criteria of, and is a participant in, this Plan.
- 1.18 “Pension Plan” shall mean the Valero Energy Corporation Pension Plan, as amended from time to time, or any successor defined Benefit pension plan.
- 1.19 “Plan of Deferred Compensation” shall mean (a) the Valero Energy Corporation Deferred Compensation Plan, as amended, any successor, alternative or additional nonqualified deferred compensation plan maintained by the Company, and (b) any Code section 125 cafeteria plan or Code section 401(k) cash or deferred arrangement maintained by the Company.
- 1.20 “Separation from Service” shall mean a separation from service within the meaning of Code section 409A.
- 1.21 “SERP” shall mean Valero Energy Corporation Supplemental Executive Retirement Plan, as amended from time to time, or any successor plan.
- 1.22 “Trust” shall mean the Valero Energy Corporation Excess Pension Plan Trust as is created by the terms and conditions of said Trust and as may be amended from time to time.
- 1.23 “Valero” shall mean Valero Energy Corporation, or any successor entity.

## **SECTION 2. PARTICIPATION - §415(b) BENEFIT PLAN COMPONENT**

### **2.1 Conditions of Eligibility and Participation.**

- (a) Except as otherwise provided herein, each Employee actively participating in the Pension Plan whose benefit under the Pension Plan would exceed the annual addition limitations of Code section 415(b) but for the limitations provided in the Pension Plan, shall automatically become a Participant in the §415(b) benefit plan component of this Plan as of the date it is determined that such excess benefit applies.
- (b) Notwithstanding paragraph (a) above, any Employee who is covered under a collective bargaining agreement and whose benefits are the subject of good faith bargaining shall not be eligible to participate in the §415(b) benefit plan component of the Plan, except to the extent such collective bargaining agreement expressly provides for participation in the Plan.
- (c) Additionally, effective as of July 1, 2006, Employees of NuStar ceased to be eligible to participate in this Plan or accrue any additional benefits hereunder. Additionally, the benefit obligations relating to Former Eligible NuStar Employees were transferred to the NuStar Excess Pension Plan as provided for in Section 11.8 hereof.

### **2.2 Special Rule.**

Any Employee actively participating in the SERP, or any other plan designed to provide a benefit with respect to the limitations under Code §415(b) similar to the benefit provided under this Plan, shall not be eligible to participate in the §415(b) benefit plan component of this Plan.

### **2.3 Forfeiture.**

Notwithstanding anything herein to the contrary, a Participant who is discharged for cause, or performs acts of willful malfeasance or gross negligence in a matter of material importance to Valero (all as determined by the Committee in its sole discretion), shall, at the discretion of the Committee, forfeit any and all benefits hereunder, and such Participant shall have no right to any future benefit payments hereunder. The determination of the nature of a Participant's discharge shall, for purposes of this Plan, be made by the Committee in its sole and absolute discretion, and such determination shall be final and binding on all parties.

## **SECTION 3. PARTICIPATION - §401(a)(17) BENEFIT PLAN COMPONENT**

### **3.1 Conditions of Eligibility and Participation.**

- (d) Except as otherwise provided herein, each Employee whose Considered Compensation exceeds the Compensation Limit shall become a Participant in the §401(a)(17) benefit plan component of the Plan as of the first date of such excess



Considered Compensation.

- (e) Notwithstanding paragraph (a) above, any Employee who is covered under a collective bargaining agreement and whose benefits are the subject of good faith bargaining shall not be eligible to participate in the §401(a)(17) benefit plan component of the Plan, except to the extent such collective bargaining agreement expressly provides for participation in this Plan.
- (f) Notwithstanding Section 3.1(a) above, effective as of July 1, 2006, Employees of NuStar ceased to be eligible to participate in this Plan or accrue additional benefits hereunder. Additionally, the benefit obligations relating to Former Eligible NuStar Employees were transferred to the NuStar Excess Pension Plan as provided for in Section 11.8 hereof.

### 3.2 Special Rule.

Any Employee actively participating in the SERP, or any other plan designed to provide the same or similar benefit with respect to the Compensation Limit as is provided under this Plan shall not be eligible to participate in the §401(a)(17) benefit plan component of this Plan.

### 3.3 Forfeiture.

Notwithstanding anything herein to the contrary, a Participant who is discharged for cause, or performs acts of willful malfeasance or gross negligence in a matter of material importance to the Company, shall, at the discretion of the Committee, forfeit any and all benefits hereunder, and such Participant shall have no right to any future benefit payments hereunder. The determination of the nature of a Participant's discharge shall, for purposes of this Plan, be made by the Committee, and such determination shall be final and binding on all parties.

## **SECTION 4. AMOUNT OF BENEFIT - TRADITIONAL FORMULA**

- 4.1 Amount of Benefit. For Participants whose Pension Plan benefit is calculated and determined under Article 4 of the Pension Plan, the benefit payable under this Plan shall, subject to the provisions of Sections 4.2 and 4.3, be an amount equal to “x” minus “y”, where:

— x is equal to 1.6 percent of a Participant's Final Average Monthly Earnings multiplied by his/her number of years of Credited Service; and

— y is equal to such Participant's Pension Plan benefit that is, or would be, payable at such time as benefit payments commence under this Plan.

Notwithstanding any other provision of this Plan, for purposes of calculating a Participant's benefit hereunder, Credited Service shall not include any period of service with the Company for which the Participant received, or has commenced and is receiving, a benefit under this Plan, the SERP, the NuStar Excess Pension Plan or the NuStar SERP. The benefits payable

hereunder shall be calculated as the Participant's Accrued Benefit payable at Normal Retirement, determined as if the Participant commenced payment of the Participant's Pension Plan benefit at the same time as benefits are paid, or commence hereunder (regardless of whether the Participant commences his/her Pension Plan benefit at such time). A Participant's benefit under this Plan shall not be recalculated or re-determined in the event that the Participant actually commences payment of his/her Pension Plan benefit at a different time.

- 4.2 Early Retirement Factors; Modification of Benefit Calculation. If a Participant's Plan benefit commences prior to his Normal Retirement Date, the Plan benefit payable to such Participant shall be determined by applying the early retirement reduction factors contained in the schedule of such factors set forth in the Pension Plan. Additionally, the benefit payable hereunder shall be reduced by the Equivalent Actuarial Value increase in the amount of the Pension Plan benefit and/or Prior Pension Plan benefit as the result of increases in the amount of maximum benefits payable from qualified plans in accordance with Code section 415.
- 4.3 Additionally, the Committee shall have the right to modify the calculation of Amount "x", identified in Section 4.1, as to any Participant as it may desire from time to time; provided, however, that any such modification shall not result in a reduction of Amount "x" below the basic level provided in Section 4.1, and shall not affect the timing of the payment, or the form, of benefits hereunder.

#### **SECTION 4A. AMOUNT OF BENEFIT - CASH BALANCE FORMULA**

- 4A.1 Amount of Benefit. For Participants whose Pension Plan benefit is calculated and determined under Article 4A of the Pension Plan, the benefit payable under this Plan in the form of a lump sum payment shall be an amount equal to "x" minus "y", where:

- x is equal to the accumulated Account Balance which the Participant would be entitled to receive under Article 4A of the Pension Plan without regard to the limitations imposed by Code Sections 415 and 401(a)(17); and

- y is equal to the Participant's accumulated Account Balance under Article 4A of the Pension Plan that is, or would be, payable under the terms of the Pension Plan at such time as benefit payments commence under this Plan

Notwithstanding any other provision of this Plan, for purposes of calculating a Participant's benefit hereunder, Account Balance shall not include any Pay Credits corresponding to a period of service with the Company for which the Participant received, or has commenced and is receiving, a benefit under this Plan or the SERP. A Participant's benefit under this Plan shall not be recalculated or re-determined in the event that the Participant actually commences payment of his/her Pension Plan benefit at a different time.

- 4A.2 Modification of Benefit Calculation. The Committee shall have the right to modify the calculation of amount “x” identified in Section 4A.1, as to any Participant as it may desire from time to time; provided, however, that any such modification shall not result in a reduction of amount “x” below the basic level provided for in Section 4A.1, and shall not affect the timing of the payment or the form, of benefits hereunder.

## **SECTION 5. VESTING**

- 5.1 Vesting. A Participant's benefits under this Plan shall vest concurrently with the vesting of the Participant's benefits under the Pension Plan.

## **SECTION 6. PROVISIONS REGARDING PAYMENT OF BENEFITS**

- 6.1 Form and Time of Payment.

Except as otherwise specifically provided herein, effective for benefit payments commencing on or after January 1, 2008, benefits shall be made in a single lump sum payment (i.e., the single sum payment of the monthly life annuity payable at Normal Retirement Date) as of the Participant's Separation from Service. Such lump sum amount shall be calculated as of the Participant's Separation from Service by the actuary for the Pension Plan applying actuarial factors used under the Pension Plan, and shall be made as soon as reasonably practical following the Participant's Separation from Service and, in any event, within 90 days thereafter.

- 6.2 Special Provision for Vested Terminated Participants.

Notwithstanding any other provision of this Plan, for Participants who incurred a Separation from Service on or after January 1, 2005 and prior to January 1, 2008, but had not commenced the receipt of benefit payments hereunder as of January 1, 2008, the benefits hereunder shall be made in a single lump sum payment (i.e., the single sum payment of the monthly life annuity payable at Normal Retirement Date) as of a date, on or after January 1, 2009, selected by the Participant on an election form provided by Valero (and if no such election is made by the Participant within the election period prescribed by Valero, which election period shall end prior to December 31, 2008, such lump sum payment shall be made on, or as soon as administratively practical after January 1, 2009, and, in any event within 90 days after such date). Such lump sum payment shall be calculated as of the date of payment, by the actuary for the Pension Plan applying actuarial factors used under the Pension Plan.

- 6.3 Application of Code Section 409A Transition Relief Provisions.

Notwithstanding any other provision of this Plan, between January 1, 2005 and December 31, 2008, the Plan was administered in compliance with the applicable transition relief provided by the U.S. Treasury Department and the Internal Revenue Service under applicable guidance, including Notice 2005-1, the Temporary Regulations issued under Code section 409A, Notice 2007-78, and Notice 2007-86. Specifically, but without limitation, Participants who incurred a Separation from Service with the Company between January 1, 2005 and

December 31, 2008, and who commenced their Pension Plan benefits prior to January 1, 2008, received, or commenced, their benefits hereunder at the time and in the form provided for under the Grandfathered Plan.

#### 6.4 Delay of Certain Payments.

With respect to any Participant who is a “specified employee”, as defined in Code section 409A and the regulations and rulings issued hereunder, any benefit that becomes payable by reason of such Participant's Separation from Service shall not commence prior to the date that is six (6) months following such Participant's Separation from Service (except to the extent that the payment of such benefit is not subject to Code section 409A, or is subject to an exception to such delay in payment). Such delayed payment shall be made in a single lump sum payment as soon as reasonably practical following the expiration of such 6 month delay period (and in any event within 90 days thereof) and shall be calculated as of the Participant's Separation from Service by the actuary for the Pension Plan applying actuarial factors used under the Pension Plan. The provisions of this Section 6.4 shall not apply (a) with respect to any benefit that becomes payable as the result of a reason other than the Participant's Separation from Service, or (b) if, at the time of such Participant's Separation from Service, no stock of the Company is publicly traded on an established securities market or otherwise.

### **SECTION 7. DEATH BENEFIT**

#### 7.1 Death Benefit.

In the event that a Participant with a vested, accrued benefit hereunder dies while in the employ of the Company and prior to the payment of his/her benefit, the surviving spouse of such Participant, or (if the Participant is not married at the time of his/her death) the Beneficiary designated by the Participant under the Pension Plan, shall be entitled to receive a death benefit hereunder. The amount of such death benefit shall equal: (a) the preretirement death benefit as calculated under the Pension Plan without regard to the annual addition limitations of Code section 415 or the Compensation Limit, less (b) the preretirement death benefit payable under the Pension Plan. Such death benefit shall be paid in the form of a single lump sum payment (i.e., the single sum payment of the monthly life annuity payable at Normal Retirement Date) as soon as administratively practical following the Participant's death (and in any event within 90 days thereof), and shall be calculated by the actuary for the Pension Plan applying actuarial assumptions used under the Pension Plan.

### **SECTION 8. ADMINISTRATION**

#### 8.1 Committee.

The Plan will be administered by the Committee.

## 8.2 Powers of the Committee.

The Committee will have the exclusive responsibility for the general administration of this Plan according to the terms and provisions of this Plan and will have all powers necessary to accomplish those purposes, including but not by way of limitation the right, power and authority:

- a. to make rules and regulations for the administration of this Plan;
- b. to construe all terms, provisions, conditions and limitations of this Plan;
- c. to correct any defect, supply any omission or reconcile any inconsistency that may appear in this Plan;
- d. to determine all controversies relating to the administration of this Plan, including but not limited to:
  1. differences of opinion arising between a Company and a Participant;
  2. any question it deems advisable to determine in order to promote the uniform administration of this Plan for the benefit of all interested parties; and
  3. delegating powers of investment and administration, as well as those clerical and recordation duties of the Committee, as it deems necessary or advisable for the proper and efficient administration of this Plan.

## 8.3 Committee Discretion.

The Committee in exercising any power or authority granted under this Plan or in making any determination under this Plan may use its sole discretion and judgment. Any decision made or any act or omission, by the Committee in good faith shall be final and binding on all parties and shall not be subject to *de novo* review.

## 8.4 Reliance Upon Information.

The Committee will not be liable for any decision or action taken in good faith in connection with the administration of this Plan. Without limiting the generality of the foregoing, any decision or action taken by the Committee when it relies upon information supplied it by any officer of the Company, the Company's legal counsel, the Plan's actuary, the Company's independent accountants, or other advisors in connection with the administration of this Plan will be deemed to have been taken in good faith.

## 8.5 Binding Arbitration.

Any claims relating to or arising out of this Plan of any nature whatsoever shall be submitted to, and settled by, mandatory and final arbitration in accordance with the provisions of the Valero Energy Corporation *Dialogue* dispute resolution program.

## **SECTION 9. AMENDMENT AND TERMINATION**

### **9.1 Amendment and Termination.**

Valero reserves the right, in its sole discretion, to terminate, suspend or amend this Plan, at any time and from time to time, in whole or in part for whatever reason it may deem appropriate. However, no such termination, suspension or amendment of this Plan shall result in the acceleration of the payment of any benefit hereunder, nor shall any such termination, suspension or amendment alter, impair or void any Participant's (or Beneficiary's) right with respect to a benefit which was accrued and vested under the Plan as of the date of such termination, suspension or amendment except such benefits as are voluntarily forfeited by a Participant. In the event of termination of the Plan, all unvested benefits shall immediately forfeit.

## **SECTION 10. CHANGE IN CONTROL**

### **10.1 Effect of Change in Control.**

In the event of a Change in Control, the accrued benefit of all Participants in the Plan shall immediately become fully vested. Additionally, the Committee may, within the period beginning thirty (30) days prior to the effective date of the Change in Control, and ending twelve (12) months after the effective date of the Change in Control, make an irrevocable decision to terminate the Plan (and all deferred compensation plans maintained by Valero which must be aggregated with the Plan under Code section 409A) and distribute all benefits to Participants. In the event of such termination following a Change in Control, the accrued benefits of each Participant (determined as of the date of Plan termination and calculated in the manner provided for in this Plan) shall be distributed in the form of a lump sum payment within twelve (12) months following the termination of this Plan. In the absence of such Plan termination, a Change in Control shall not alter the time or manner of the payment of benefits hereunder, and all benefits shall be paid at the time and in the manner as they would otherwise be paid in accordance with the provisions of this Plan.

## **SECTION 11. GENERAL**

### **11.1 No Employment Rights.**

Nothing contained in this Plan shall be construed as a contract of employment between the Employer and an Employee, or as a right of any employee to be continued in the employment of the Employer or as a limitation of the right of the Employer to discharge any Employee, with or without cause.

### **11.2 Forfeiture and Obligation to Repay for Competition.**

If the Committee finds, after consideration of the facts presented on behalf of the Company and a Participant, that the Participant, at any time within two years following his termination of employment from all Companies and without written consent of a Company, directly or

indirectly owned, operated, managed, controlled or participated in the ownership (other than through mere ownership of less than 5% of the voting securities of a publicly traded entity), management, operation or control of or was employed by, or was paid as a consultant or independent contractor by a business which competes with the Company, and if the Participant continues to be so engaged sixty (60) days after written notice is given to him/her: (a) the Participant shall, upon the demand of the Committee, repay to Valero the full amount of the payment(s) previously made to the Participant hereunder; or (b) if the Participant has not yet received the payment of his vested Accrued Benefit, the Participant shall forfeit any rights under this Plan and shall not be entitled to receive any benefit hereunder.

### 11.3 Assignment.

To the maximum extent permitted by law, no benefit under this Plan shall be assignable or in any manner subject to alienation, sale, transfer, hypothecation, claims, pledge, attachment or encumbrance of any kind. Notwithstanding the preceding sentence, however, this provision shall not effect the right of the Committee (upon the determination that a judgment, decree or order relating to child support, alimony payments or marital property rights of the spouse, former spouse, child or other dependent of the Participant is a "Qualified Domestic Relations Order" within the meaning of Code section 414(p)), to distribute or establish a separate subaccount of all or any portion of a Participant's benefits under the Plan to or for the benefit of the beneficiary of the Qualified Domestic Relations Order in a manner permitted under the Plan.

### 11.4 Withholding Taxes.

The Company shall have the right to deduct from all payments made under the Plan any federal, state or local taxes required by law to be withheld with respect to such payments. However, any and all taxes payable with respect to any distribution or benefit hereunder shall be the sole responsibility of the Participant, not of the Company or any Company, whether or not the Company or any Company shall have withheld or collected from the Participant any sums required to be so withheld or collected in respect thereof and whether or not any sums so withheld or collected shall be sufficient to provide for any such taxes. Without limitation of the foregoing, and except as may otherwise be provided in any separate employment, severance or other agreement between the Participant and any Company, the individual Participant or Surviving Spouse, as the case may be, shall be solely responsible for payment of any excise, income or other tax imposed (i) upon any payment hereunder which may be deemed to constitute an "excess parachute payment" pursuant to Code section 4999, (ii) under a theory that any additional or excise tax is required under Code section 409A, or (iii) under a theory of "constructive receipt" of any lump sum or other amount hereunder.

### 11.5 Rules and Regulations.

The Committee may adopt rules and regulations to assist in the administration of the Plan.

11.6 Administration and Interpretation Consistent with Code Section 409A.

The Plan, as amended and restated, is intended to satisfy the requirements of Code section 409A and the rules and regulations issued thereunder, and shall be construed, interpreted and administered consistent with such intent.

11.7 Law Applicable.

The Plan is established under and will be construed in accordance with and governed by the laws of the State of Texas.

11.8 Spinoff Plan.

All benefits accrued under this Plan with respect to Former Eligible NuStar Employees were, in connection with the spin-off of Valero's equity interest in NuStar and/or the transfer of such employees from the Company to NuStar, spun off and transferred to the NuStar Excess Pension Plan. Effective as of July 1, 2006, NuStar established what is now known as the NuStar Pension Plan, a defined benefit pension plan qualified under Code section 401(a), which will provide benefits to eligible employees of NuStar with respect to service earned by eligible employees of NuStar and its participating affiliated companies from and after July 1, 2006. Additionally, from and after July 1, 2006, NuStar ceased being a participating subsidiary under this Plan. It is the intent of Valero and NuStar that the NuStar Excess Pension Plan assumed the current liabilities of this Plan with respect to Former Eligible NuStar Employees, and shall provide a single supplemental benefit to such employees that is based on the benefits such Participant receives under the Valero Pension Plan, as well as the NuStar Pension Plan. Unless and except to the extent that a Former Eligible NuStar Employee is reemployed by the Company and, thereafter, becomes a Participant hereunder with respect to such reemployment, this Plan shall have no liability of any kind to any Former Eligible NuStar Employee, and all Former Eligible NuStar Employees shall look solely to NuStar and the NuStar Excess Pension Plan for benefits previously accrued hereunder.

IN WITNESS WHEREOF, Valero has executed this amendment and restatement of the Excess Pension Plan on \_\_\_\_\_, 2011, to be effective as of December 31, 2011.

**VALERO ENERGY CORPORATION**

By: \_\_\_\_\_



EXHIBIT 10.14

SCHEDULE OF INDEMNITY AGREEMENTS

The following have executed Indemnity Agreements substantially in the form of the agreement attached as Exhibit 10.8 to Valero's Registration Statement on Form S-1 (SEC File No. 333-27013) filed May 13, 1997.

Ronald K. Calgaard  
Ruben M. Escobedo  
Susan Kaufman Purcell

**CHANGE OF CONTROL  
SEVERANCE AGREEMENT**

AGREEMENT, dated as of the 18th day of January, 2007 (this "Agreement"), by and between Valero Energy Corporation, a Delaware corporation (the "Company"), and William R. Klesse (the "Executive").

WHEREAS, the Board of Directors of the Company (the "Board"), has determined that it is in the best interests of the Company and its stockholders to assure that the Company will have the continued dedication of the Executive, notwithstanding the possibility, threat or occurrence of a Change of Control (as defined herein). The Board believes it is imperative to diminish the inevitable distraction of the Executive by virtue of the personal uncertainties and risks created by a pending or threatened Change of Control and to encourage the Executive's full attention and dedication to the current Company in the event of any threatened or pending Change of Control, and to provide the Executive with compensation and benefits arrangements upon a Change of Control that ensure that the compensation and benefits expectations of the Executive will be satisfied and that are competitive with those of other corporations. Therefore, in order to accomplish these objectives, the Board has caused the Company to enter into this Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

**Section 1. Certain Definitions.** (a) "Effective Date" means the first date during the Change of Control Period (as defined herein) on which a Change of Control occurs. Notwithstanding anything in this Agreement to the contrary, if a Change of Control occurs and if the Executive's employment with the Company is terminated prior to the date on which the Change of Control occurs, and if it is reasonably demonstrated by the Executive that such termination of employment (1) was at the request of a third party that has taken steps reasonably calculated to effect a Change of Control or (2) otherwise arose in connection with or anticipation of a Change of Control, then "Effective Date" means the date immediately prior to the date of such termination of employment.

(b) "Change of Control Period" means the period commencing on the date hereof and ending on the third anniversary of the date hereof; *provided, however*, that, commencing on the date one year after the date hereof, and on each annual anniversary of such date (such date and each annual anniversary thereof, the "Renewal Date"), unless previously terminated, the Change of Control Period shall be automatically extended so as to terminate three years from such Renewal Date, unless, at least 60 days prior to the Renewal Date, the Company shall give notice to the Executive that the Change of Control Period shall not be so extended.

(c) "Affiliated Company" means any company controlled by, controlling or under common control with the Company.

(d) "Change of Control" means:

(1) The acquisition by any individual, entity or group (within the meaning of Section

13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) (a “Person”) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 20% or more of either (A) the then-outstanding shares of common stock of the Company (the “Outstanding Company Common Stock”) or (B) the combined voting power of the then-outstanding voting securities of the Company entitled to vote generally in the election of directors (the “Outstanding Company Voting Securities”); *provided, however*, that, for purposes of this Section 1(d)(1), the following acquisitions of Outstanding Company Common Stock or of Outstanding Company Voting Securities shall not constitute a Change of Control: (i) any acquisition directly from the Company, (ii) any acquisition by the Company, (iii) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any Affiliated Company or (iv) any acquisition by any corporation pursuant to a transaction that complies with Sections 1(d)(3)(A), 1(d)(3)(B) and 1(d)(3)(C);

(2) Individuals who, as of the date hereof, constitute the Board (the “Incumbent Board”) cease for any reason to constitute at least a majority of the Board; *provided, however*, that any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Company's stockholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board;

(3) Consummation of a reorganization, merger, statutory share exchange or consolidation or similar corporate transaction involving the Company or any of its subsidiaries, a sale or other disposition of all or substantially all of the assets of the Company (each, a “Business Combination”), in each case unless, following such Business Combination, (A) all or substantially all of the individuals and entities that were the beneficial owners of the Outstanding Company Common Stock and the Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of the then-outstanding shares of common stock and the combined voting power of the then-outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Business Combination (including, without limitation, a corporation that, as a result of such transaction, owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership immediately prior to such Business Combination of the Outstanding Company Common Stock and the Outstanding Company Voting Securities, as the case may be, (B) no Person (excluding any corporation resulting from such Business Combination or any employee benefit plan (or related trust) of the Company or such corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 20% or more of, respectively, the then-outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then-outstanding voting securities of such corporation, except to the extent that such ownership existed prior to the Business Combination, and (C) at least a majority of the members of the board of directors of the corporation resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement or of the action of the Board

providing for such Business Combination; or

- (4) Approval by the stockholders of the Company of a complete liquidation or dissolution of the Company.

**Section 2. Employment Period.** The Company hereby agrees to continue the Executive in its employ, subject to the terms and conditions of this Agreement, for the period commencing on the Effective Date and ending on the third anniversary of the Effective Date (the “Employment Period”). The Employment Period shall terminate upon the Executive's termination of employment for any reason.

**Section 3. Terms of Employment.** (a) **Position and Duties.** (1) During the Employment Period, (A) the Executive's position (including status, offices, titles and reporting requirements), authority, duties and responsibilities shall be at least commensurate in all material respects with the most significant of those held, exercised and assigned at any time during the 120-day period immediately preceding the Effective Date and (B) the Executive's services shall be performed at the office where the Executive was employed immediately preceding the Effective Date or at any other location less than 35 miles from such office.

(2) During the Employment Period, and excluding any periods of vacation and sick leave to which the Executive is entitled, the Executive agrees to devote reasonable attention and time during normal business hours to the business and affairs of the Company and, to the extent necessary to discharge the responsibilities assigned to the Executive hereunder, to use the Executive's reasonable best efforts to perform faithfully and efficiently such responsibilities. During the Employment Period, it shall not be a violation of this Agreement for the Executive to (A) serve on corporate, civic or charitable boards or committees, (B) deliver lectures, fulfill speaking engagements or teach at educational institutions and (C) manage personal investments, so long as such activities do not significantly interfere with the performance of the Executive's responsibilities as an employee of the Company in accordance with this Agreement. It is expressly understood and agreed that, to the extent that any such activities have been conducted by the Executive prior to the Effective Date, the continued conduct of such activities (or the conduct of activities similar in nature and scope thereto) subsequent to the Effective Date shall not thereafter be deemed to interfere with the performance of the Executive's responsibilities to the Company.

(a) **Compensation.** (1) **Base Salary.** During the Employment Period, the Executive shall receive an annual base salary (the “Annual Base Salary”) at an annual rate at least equal to 12 times the highest monthly base salary paid or payable, including any base salary that has been earned but deferred, to the Executive by the Company and the Affiliated Companies in respect of the 12-month period immediately preceding the month in which the Effective Date occurs. The Annual Base Salary shall be paid at such intervals as the Company pays executive salaries generally. During the Employment Period, the Annual Base Salary shall be reviewed at least annually, beginning no more than 12 months after the last salary increase awarded to the Executive prior to the Effective Date. Any increase in the Annual Base Salary shall not serve to limit or reduce any other obligation to the Executive under this Agreement. The Annual Base Salary shall not be reduced after any such increase and the term “Annual Base Salary” shall refer to the Annual Base Salary

as so increased.

(2) **Annual Bonus.** In addition to the Annual Base Salary, the Executive shall be awarded, for each fiscal year ending during the Employment Period, an annual bonus (the “Annual Bonus”) in cash at least equal to the Executive's highest bonus earned under the Company's annual incentive bonus plans, or any comparable bonus under any predecessor or successor plan or plans, for the last three full fiscal years prior to the Effective Date (or for such lesser number of full fiscal years prior to the Effective Date for which the Executive was eligible to earn such a bonus, and annualized in the case of any bonus earned for a partial fiscal year) (the “Recent Annual Bonus”). (If the Executive has not been eligible to earn such a bonus for any period prior to the Effective Date, the “Recent Annual Bonus” shall mean the Executive's target annual bonus for the year in which the Effective Date occurs.) Each such Annual Bonus shall be paid no later than the end of the third month of the fiscal year next following the fiscal year for which the Annual Bonus is awarded, unless the Executive shall elect to defer the receipt of such Annual Bonus.

(3) **Incentive, Savings and Retirement Plans.** During the Employment Period, the Executive shall be entitled to participate in all incentive, savings and retirement plans, practices, policies, and programs applicable generally to other peer executives of the Company and the Affiliated Companies, but in no event shall such plans, practices, policies and programs provide the Executive with incentive opportunities (measured with respect to both regular and special incentive opportunities, to the extent, if any, that such distinction is applicable), savings opportunities and retirement benefit opportunities, in each case, less favorable, in the aggregate, than the most favorable of those provided by the Company and the Affiliated Companies for the Executive under such plans, practices, policies and programs as in effect at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and the Affiliated Companies.

(4) **Welfare Benefit Plans.** During the Employment Period, the Executive and/or the Executive's family, as the case may be, shall be eligible for participation in and shall receive all benefits under welfare benefit plans, practices, policies and programs provided by the Company and the Affiliated Companies (including, without limitation, medical, prescription, dental, vision, disability, employee life, group life, accidental death and travel accident insurance plans and programs) to the extent applicable generally to other peer executives of the Company and the Affiliated Companies, but in no event shall such plans, practices, policies and programs provide the Executive with benefits that are less favorable, in the aggregate, than the most favorable of such plans, practices, policies and programs in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and the Affiliated Companies.

(5) **Expenses.** During the Employment Period, the Executive shall be entitled to receive prompt reimbursement for all reasonable expenses incurred by the Executive in accordance with the most favorable policies, practices and procedures of the Company and the Affiliated Companies in effect for the Executive at any time during the 120-day period immediately preceding the Effective

Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and the Affiliated Companies.

(6) **Fringe Benefits.** During the Employment Period, the Executive shall be entitled to fringe benefits, including, without limitation, tax and financial planning services, payment of club dues, and, if applicable, use of an automobile and payment of related expenses, in accordance with the most favorable plans, practices, programs and policies of the Company and the Affiliated Companies in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and the Affiliated Companies.

(7) **Office and Support Staff.** During the Employment Period, the Executive shall be entitled to an office or offices of a size and with furnishings and other appointments, and to exclusive personal secretarial and other assistance, at least equal to the most favorable of the foregoing provided to the Executive by the Company and the Affiliated Companies at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as provided generally at any time thereafter with respect to other peer executives of the Company and the Affiliated Companies.

(8) **Vacation.** During the Employment Period, the Executive shall be entitled to paid vacation in accordance with the most favorable plans, policies, programs and practices of the Company and the Affiliated Companies as in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and the Affiliated Companies.

(9) **Immediate Vesting of Outstanding Equity Incentive Awards.** Notwithstanding any provision in the Company's stock incentive plans or the award agreements thereunder, effective immediately upon the occurrence of a Change of Control, (A) all stock options (incentive or non-qualified) outstanding as of the date of such Change of Control, which are not then exercisable and vested, shall become fully exercisable and vested to the full extent of the original grant and, following the Executive's termination of employment for any reason, shall remain exercisable for the remainder of the original option term; (B) all restrictions and deferral limitations applicable to any restricted stock awards outstanding as of the date of such Change of Control shall lapse, and such restricted stock awards shall become free of all restrictions and become fully vested and transferable to the full extent of the original grant; and (C) all performance share awards outstanding as of the date of such Change of Control for any outstanding performance periods shall fully vest and be earned and payable in full based on the deemed achievement of performance at 200% of target level for the entire performance period.

**Section 4. Termination of Employment.** (a) **Death or Disability.** The Executive's employment shall terminate automatically if the Executive dies during the Employment Period. If the Company determines in good faith that the Executive has a Disability (as defined herein) that has occurred during the Employment Period (pursuant to the definition of "Disability"), it may give to the Executive written notice in accordance with Section 11(b) of its intention to terminate the Executive's employment. In such event, the Executive's employment with the Company shall

terminate effective on the 30th day after receipt of such notice by the Executive (the “Disability Effective Date”), *provided* that, within the 30 days after such receipt, the Executive shall not have returned to full-time performance of the Executive's duties. “Disability” means the absence of the Executive from the Executive's duties with the Company on a full-time basis for 180 consecutive business days as a result of incapacity due to mental or physical illness that is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to the Executive or the Executive's legal representative.

(b) **Cause.** The Company may terminate the Executive's employment during the Employment Period for Cause. “Cause” means:

(1) the willful and continued failure of the Executive to perform substantially the Executive's duties (as contemplated by Section 3(a)(1)(A)) with the Company or any Affiliated Company (other than any such failure resulting from incapacity due to physical or mental illness or following the Executive's delivery of a Notice of Termination for Good Reason), after a written demand for substantial performance is delivered to the Executive by the Board or the Chief Executive Officer of the Company that specifically identifies the manner in which the Board or the Chief Executive Officer of the Company believes that the Executive has not substantially performed the Executive's duties, or

(2) the willful engaging by the Executive in illegal conduct or gross misconduct that is materially and demonstrably injurious to the Company.

For purposes of this Section 4(b), no act, or failure to act, on the part of the Executive shall be considered “willful” unless it is done, or omitted to be done, by the Executive in bad faith or without reasonable belief that the Executive's action or omission was in the best interests of the Company. Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board or upon the instructions of the Chief Executive Officer of the Company or a senior officer of the Company or based upon the advice of counsel for the Company shall be conclusively presumed to be done, or omitted to be done, by the Executive in good faith and in the best interests of the Company. The cessation of employment of the Executive shall not be deemed to be for Cause unless and until there shall have been delivered to the Executive a copy of a resolution duly adopted by the affirmative vote of not less than three-quarters of the entire membership of the Board at a meeting of the Board called and held for such purpose (after reasonable notice is provided to the Executive and the Executive is given an opportunity, together with counsel for the Executive, to be heard before the Board), finding that, in the good faith opinion of the Board, the Executive is guilty of the conduct described in Section 4(b)(1) or 4(b)(2), and specifying the particulars thereof in detail.

(c) **Good Reason.** The Executive's employment may be terminated by the Executive for Good Reason or by the Executive voluntarily without Good Reason. “Good Reason” means:

(3) the assignment to the Executive of any duties inconsistent in any respect with the Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by Section 3(a)(1)(A), or any other action by the Company that results in a diminution in such position, authority, duties or

responsibilities, excluding for this purpose an isolated, insubstantial and inadvertent action not taken in bad faith and that is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(4) any failure by the Company to comply with any of the provisions of Section 3(b), other than an isolated, insubstantial and inadvertent failure not occurring in bad faith and that is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(5) the Company's requiring the Executive (i) to be based at any office or location other than as provided in Section 3(a)(1)(B), (ii) to be based at a location other than the principal executive offices of the Company if the Executive was employed at such location immediately preceding the Effective Date, or (iii) to travel on Company business to a substantially greater extent than required immediately prior to the Effective Date;

(6) any purported termination by the Company of the Executive's employment otherwise than as expressly permitted by this Agreement; or

(7) any failure by the Company to comply with and satisfy Section 10(c).

For purposes of this Section 4(c), any good faith determination of Good Reason made by the Executive shall be conclusive. The Executive's mental or physical incapacity following the occurrence of an event described above in clauses (1) through (5) shall not affect the Executive's ability to terminate employment for Good Reason.

(d) **Notice of Termination.** Any termination by the Company for Cause, or by the Executive for Good Reason, shall be communicated by Notice of Termination to the other party hereto given in accordance with Section 11(b). "Notice of Termination" means a written notice that (1) indicates the specific termination provision in this Agreement relied upon, (2) to the extent applicable, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated, and (3) if the Date of Termination (as defined herein) is other than the date of receipt of such notice, specifies the Date of Termination (which Date of Termination shall be not more than 30 days after the giving of such notice). The failure by the Executive or the Company to set forth in the Notice of Termination any fact or circumstance that contributes to a showing of Good Reason or Cause shall not waive any right of the Executive or the Company, respectively, hereunder or preclude the Executive or the Company, respectively, from asserting such fact or circumstance in enforcing the Executive's or the Company's respective rights hereunder.

(e) **Date of Termination.** "Date of Termination" means (1) if the Executive's employment is terminated by the Company for Cause, or by the Executive for Good Reason, the date of receipt of the Notice of Termination or any later date specified in the Notice of Termination, as the case may be, (2) if the Executive's employment is terminated by the Company other than for Cause or Disability, the Date of Termination shall be the date on which the Company notifies the Executive of such termination, and (3) if the Executive's employment is terminated by reason of death or Disability, the Date of Termination shall be the date of death of the Executive or the



Disability Effective Date, as the case may be.

Section 5. **Obligations of the Company upon Termination.** (a) **Good Reason; Other Than for Cause, Death or Disability.** If, during the Employment Period, the Company terminates the Executive's employment other than for Cause or Disability or the Executive terminates employment for Good Reason:

(1) the Company shall pay to the Executive, in a lump sum in cash within 30 days after the Date of Termination, the aggregate of the following amounts:

(A) the sum of (i) the Executive's Annual Base Salary through the Date of Termination, (ii) the product of (x) the Recent Annual Bonus and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination and the denominator of which is 365, and (iii) any accrued vacation pay, in each case, to the extent not theretofore paid (the sum of the amounts described in subclauses (i), (ii) and (iii), the "Accrued Obligations");

(B) the amount equal to the product of (i) three and (ii) the sum of (x) the Executive's Annual Base Salary and (y) the Recent Annual Bonus;

(C) an amount equal to the excess of (i) the actuarial equivalent of the benefit under the Company's qualified defined benefit retirement plan (the "Retirement Plan") (utilizing actuarial assumptions no less favorable to the Executive than those in effect under the Retirement Plan immediately prior to the Effective Date) and any excess or supplemental retirement plan in which the Executive participates (collectively, the "SERP") that the Executive would receive if the Executive's employment continued for three years after the Date of Termination, assuming for this purpose that (x) the Executive's age and service credit increase during the three-year period, (y) all accrued benefits are fully vested and (z) the Executive's compensation in each of the three years is that required by Sections 3(b)(1) and 3(b)(2), over (ii) the actuarial equivalent of the Executive's actual benefit (paid or payable), if any, under the Retirement Plan and the SERP as of the Date of Termination; and

(D) an amount equal to the sum of the Company matching or other Company contributions under the Company's qualified defined contribution plans and any excess or supplemental defined contribution plans in which the Executive participates that the Executive would receive if the Executive's employment continued for three years after the Date of Termination, assuming for this purpose that (x) the Executive's benefits under such plans are fully vested, (y) the Executive's compensation in each of the three years is that required by Sections 3(b)(1) and 3(b)(2) and (z) to the extent that the Company contributions are determined based on the contributions or deferrals of the Executive, that the Executive's contribution or deferral elections, as appropriate, are those in effect immediately prior the Date of Termination; and

(2) for three years after the Executive's Date of Termination, or such longer period as may be provided by the terms of the appropriate plan, program, practice or policy, the Company shall continue benefits to the Executive and/or the Executive's family at least equal to those that would have been provided to them in accordance with the plans, programs, practices and policies described in Section 3(b)(4) and 3(b)(6) if the Executive's employment had not been terminated or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and the Affiliated Companies and their families, *provided, however*, that, if the Executive becomes reemployed with another employer and is eligible to receive the benefits described in Section 3(b)(4) under another employer provided plan, the medical and other welfare benefits described herein shall be secondary to those provided under such other plan during such applicable period of eligibility. For purposes of determining eligibility (but not the time of commencement of benefits) of the Executive for retiree benefits pursuant to such plans, practices, programs and policies, the Executive shall be considered to have remained employed (for purposes of both age and service credit) until three years after the Date of Termination and to have retired on the last day of such period;

(3) during the 12-month period following the Date of Termination, the Company shall, at its sole expense as incurred, provide the Executive with outplacement services the scope and provider of which shall be selected by the Executive in the Executive's sole discretion, *provided* that, the cost of such outplacement shall not exceed \$25,000 (as adjusted for inflation based on the Consumer Price Index or another nationally recognized published inflation index); and

(4) to the extent not theretofore paid or provided, the Company shall timely pay or provide to the Executive any other amounts or benefits required to be paid or provided or that the Executive is eligible to receive under any plan, program, policy or practice or contract or agreement of the Company and the Affiliated Companies (such other amounts and benefits, the "Other Benefits").

(b) **Death.** If the Executive's employment is terminated by reason of the Executive's death during the Employment Period, the Company shall provide the Executive's estate or beneficiaries with the Accrued Obligations and the timely payment or delivery of the Other Benefits, and shall have no other severance obligations under this Agreement. The Accrued Obligations shall be paid to the Executive's estate or beneficiary, as applicable, in a lump sum in cash within 30 days of the Date of Termination. With respect to the provision of the Other Benefits, the term "Other Benefits" as utilized in this Section 5(b) shall include, without limitation, and the Executive's estate and/or beneficiaries shall be entitled to receive, benefits at least equal to the most favorable benefits provided by the Company and the Affiliated Companies to the estates and beneficiaries of peer executives of the Company and the Affiliated Companies under such plans, programs, practices and policies relating to death benefits, if any, as in effect with respect to other peer executives and their beneficiaries at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive's estate and/or the Executive's beneficiaries, as in effect on the date of the Executive's death

with respect to other peer executives of the Company and the Affiliated Companies and their beneficiaries.

(c) **Disability.** If the Executive's employment is terminated by reason of the Executive's Disability during the Employment Period, the Company shall provide the Executive with the Accrued Obligations and the timely payment or delivery of the Other Benefits, and shall have no other severance obligations under this Agreement. The Accrued Obligations shall be paid to the Executive in a lump sum in cash within 30 days of the Date of Termination. With respect to the provision of the Other Benefits, the term "Other Benefits" as utilized in this Section 5(c) shall include, and the Executive shall be entitled after the Disability Effective Date to receive, disability and other benefits at least equal to the most favorable of those generally provided by the Company and the Affiliated Companies to disabled executives and/or their families in accordance with such plans, programs, practices and policies relating to disability, if any, as in effect generally with respect to other peer executives and their families at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive and/or the Executive's family, as in effect at any time thereafter generally with respect to other peer executives of the Company and the Affiliated Companies and their families.

(d) **Cause; Other Than for Good Reason.** If the Executive's employment is terminated for Cause during the Employment Period, the Company shall provide to the Executive (1) the Executive's Annual Base Salary through the Date of Termination, (2) any accrued vacation pay, and (3) the Other Benefits, in each case, to the extent theretofore unpaid, and shall have no other severance obligations under this Agreement. If the Executive voluntarily terminates employment during the Employment Period, excluding a termination for Good Reason, the Company shall provide to the Executive the Accrued Obligations and the timely payment or delivery of the Other Benefits, and shall have no other severance obligations under this Agreement. In such case, all the Accrued Obligations shall be paid to the Executive in a lump sum in cash within 30 days of the Date of Termination.

**Section 6. Non-exclusivity of Rights.** Nothing in this Agreement shall prevent or limit the Executive's continuing or future participation in any plan, program, policy or practice provided by the Company or the Affiliated Companies and for which the Executive may qualify, nor, subject to Section 11(f), shall anything herein limit or otherwise affect such rights as the Executive may have under any other contract or agreement with the Company or the Affiliated Companies. Amounts that are vested benefits or that the Executive is otherwise entitled to receive under any plan, policy, practice or program of or any other contract or agreement with the Company or the Affiliated Companies at or subsequent to the Date of Termination shall be payable in accordance with such plan, policy, practice or program or contract or agreement, except as explicitly modified by this Agreement. Notwithstanding the foregoing, if the Executive receives payments and benefits pursuant to Section 5(a) of this Agreement, the Executive shall not be entitled to any severance pay or benefits under any severance plan, program or policy of the Company and the Affiliated Companies, unless otherwise specifically provided therein by a specific reference to this Agreement.

**Section 7. Full Settlement.** The Company's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense, or other claim, right or action that the Company may have against the Executive or others. In no event shall the Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to the Executive under any of the provisions of this Agreement, and such amounts shall not be reduced whether or not the Executive obtains other employment. The Company agrees to pay as incurred, to the full extent permitted by law, all legal fees and expenses that the Executive may reasonably incur as a result of any contest (regardless of the outcome thereof) by the Company, the Executive or others of the validity or enforceability of, or liability under, any provision of this Agreement or any guarantee of performance thereof (including as a result of any contest by the Executive about the amount of any payment pursuant to this Agreement), plus, in each case, interest on any delayed payment at the applicable federal rate provided for in Section 7872(f)(2)(A) of the Internal Revenue Code of 1986, as amended (the "Code").

**Section 8. Certain Additional Payments by the Company.**

(a) Anything in this Agreement to the contrary notwithstanding, in the event it shall be determined that any payment or distribution by the Company or its Affiliated Companies to or for the benefit of the Executive (whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise, but determined without regard to any additional payments required under this Section 8) (a "Payment") would be subject to the excise tax imposed by Section 4999 of the Code or any interest or penalties are incurred by the Executive with respect to such excise tax (such excise tax, together with any such interest and penalties, collectively the "Excise Tax"), then the Executive shall be entitled to receive an additional payment (the "Gross-Up Payment") in an amount such that, after payment by the Executive of all taxes (including any interest or penalties imposed with respect to such taxes), including, without limitation, any income taxes (and any interest and penalties imposed with respect thereto) and Excise Tax imposed upon the Gross-Up Payment, the Executive retains an amount of the Gross-Up Payment equal to the Excise Tax imposed upon the Payments.

(b) Subject to the provisions of Section 8(c), all determinations required to be made under this Section 8, including whether and when a Gross-Up Payment is required, the amount of such Gross-Up Payment and the assumptions to be utilized in arriving at such determination, shall be made by Ernst & Young, LLP, or such other nationally recognized certified public accounting firm as may be designated by the Executive, subject to the Company's approval which will not be unreasonably withheld (the "Accounting Firm"). The Accounting Firm shall provide detailed supporting calculations both to the Company and the Executive within 15 business days of the receipt of notice from the Executive that there has been a Payment or such earlier time as is requested by the Company. In the event that the Accounting Firm is serving as accountant or auditor for the individual, entity or group effecting the Change of Control, the Executive, subject to the Company's approval which will not be unreasonably withheld, may appoint another nationally recognized accounting firm to make the determinations required hereunder

(which accounting firm shall then be referred to as the Accounting Firm hereunder). All fees and expenses of the Accounting Firm shall be borne solely by the Company. Any Gross-Up Payment, as determined pursuant to this Section 8, shall be paid by the Company to the Executive within 5 days of the receipt of the Accounting Firm's determination. Any determination by the Accounting Firm shall be binding upon the Company and the Executive. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Gross-Up Payments that will not have been made by the Company should have been made (the "Underpayment"), consistent with the calculations required to be made hereunder. In the event the Company exhausts its remedies pursuant to Section 8(c) and the Executive thereafter is required to make a payment of any Excise Tax, the Accounting Firm shall determine the amount of the Underpayment that has occurred and any such Underpayment shall be promptly paid by the Company to or for the benefit of the Executive.

(c) The Executive shall notify the Company in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Company of the Gross-Up Payment. Such notification shall be given as soon as practicable, but no later than 10 business days after the Executive is informed in writing of such claim. The Executive shall apprise the Company of the nature of such claim and the date on which such claim is requested to be paid. The Executive shall not pay such claim prior to the expiration of the 30-day period following the date on which the Executive gives such notice to the Company (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Company notifies the Executive in writing prior to the expiration of such period that the Company desires to contest such claim, the Executive shall:

- (1) give the Company any information reasonably requested by the Company relating to such claim,
- (2) take such action in connection with contesting such claim as the Company shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney reasonably selected by the Company,
- (3) cooperate with the Company in good faith in order effectively to contest such claim, and
- (4) permit the Company to participate in any proceedings relating to such claim;

*provided, however,* that the Company shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest, and shall indemnify and hold the Executive harmless, on an after-tax basis, for any Excise Tax or income tax (including interest and penalties) imposed as a result of such representation and payment of costs and expenses. Without limitation on the foregoing provisions of this Section 8(c), the Company shall control all proceedings taken in connection with such contest, and, at its sole discretion, may pursue or forgo any and all administrative appeals, proceedings, hearings and conferences with the

applicable taxing authority in respect of such claim and may, at its sole discretion, either pay the tax claimed to the appropriate taxing authority on behalf of the Executive and direct the Executive to sue for a refund or contest the claim in any permissible manner, and the Executive agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Company shall determine; *provided, however*, that, if the Company pays such claim and directs the Executive to sue for a refund, the Company shall indemnify and hold the Executive harmless, on an after-tax basis, from any Excise Tax or income tax (including interest or penalties) imposed with respect to such payment or with respect to any imputed income in connection with such payment; and *provided, further*, that any extension of the statute of limitations relating to payment of taxes for the taxable year of the Executive with respect to which such contested amount is claimed to be due is limited solely to such contested amount. Furthermore, the Company's control of the contest shall be limited to issues with respect to which the Gross-Up Payment would be payable hereunder, and the Executive shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

(d) If, after the receipt by the Executive of a Gross-Up Payment or payment by the Company of an amount on the Executive's behalf pursuant to Section 8(c), the Executive becomes entitled to receive any refund with respect to the Excise Tax to which such Gross-Up Payment relates or with respect to such claim, the Executive shall (subject to the Company's complying with the requirements of Section 8(c), if applicable) promptly pay to the Company the amount of such refund (together with any interest paid or credited thereon after taxes applicable thereto). If, after payment by the Company of an amount on the Executive's behalf pursuant to Section 8(c), a determination is made that the Executive shall not be entitled to any refund with respect to such claim and the Company does not notify the Executive in writing of its intent to contest such denial of refund prior to the expiration of 30 days after such determination, then the amount of such payment shall offset, to the extent thereof, the amount of Gross-Up Payment required to be paid.

(e) Notwithstanding any other provision of this Section 8, the Company may, in its sole discretion, withhold and pay to the Internal Revenue Service or any other applicable taxing authority, for the benefit of the Executive, all or any portion of any Gross-Up Payment, and the Executive hereby consents to such withholding.

**Section 9.** **Confidential Information.** The Executive shall hold in a fiduciary capacity for the benefit of the Company all secret or confidential information, knowledge or data relating to the Company or the Affiliated Companies, and their respective businesses, which information, knowledge or data shall have been obtained by the Executive during the Executive's employment by the Company or the Affiliated Companies and which information, knowledge or data shall not be or become public knowledge (other than by acts by the Executive or representatives of the Executive in violation of this Agreement). After termination of the Executive's employment with the Company, the Executive shall not, without the prior written consent of the Company or as may otherwise be required by law or legal process, communicate or divulge any such information, knowledge or data to anyone other than the Company and those persons designated by the Company. In no event shall an asserted violation of the provisions of this Section 9 constitute a basis for

deferring or withholding any amounts otherwise payable to the Executive under this Agreement.

**Section 10. Successors.** (a) This Agreement is personal to the Executive, and, without the prior written consent of the Company, shall not be assignable by the Executive other than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns. Except as provided in Section 10(c), without the prior written consent of the Executive, this Agreement shall not be assignable by the Company.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. "Company" means the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid that assumes and agrees to perform this Agreement by operation of law or otherwise.

**Section 11. Miscellaneous.** (a) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without reference to principles of conflict of laws. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement may not be amended or modified other than by a written agreement executed by the parties hereto or their respective successors and legal representatives.

(b) All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

if to the Executive: At the most recent address on file in the Company's records

if to the Company: Valero Energy Corporation

One Valero Way

San Antonio, Texas 78249

Attention: Corporate Secretary

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(c) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(d) The Company may withhold from any amounts payable under this Agreement such United States federal, state or local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(e) The Executive's or the Company's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right the Executive or the Company may have hereunder, including, without limitation, the right of the Executive to terminate employment for Good Reason pursuant to Sections 4(c)(1) through 4(c)(5), shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

(f) The Executive and the Company acknowledge that, except as may otherwise be provided under any other written agreement between the Executive and the Company, the employment of the Executive by the Company is "at will" and, subject to Section 1(a), prior to the Effective Date, the Executive's employment may be terminated by either the Executive or the Company at any time prior to the Effective Date, in which case the Executive shall have no further rights under this Agreement. From and after the Effective Date, except as specifically provided herein, this Agreement shall supersede any other agreement between the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the Executive has hereunto set the Executive's hand and, pursuant to the authorization from the Board, the Company has caused these presents to be executed in its name on its behalf, all as of the day and year first above written.

/s/ William R. Klesse  
William R. Klesse

**VALERO ENERGY CORPORATION**

By: /s/ Gregory C. King  
Name: Gregory C. King  
Title: President



December 14, 2011

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Technical Amendment for Internal Revenue Code Section 409A

Dear \_\_\_\_\_:

This letter constitutes an amendment of the Change of Control Severance Agreement (“Agreement”) between you and Valero Energy Corporation dated \_\_\_\_\_, made for the sole purpose of attempting to ensure compliance of the Agreement with the documentation requirements under Internal Revenue Code Section 409A and, as such, attempting to avoid the imposition of taxes and penalties on you under Section 409A of the Internal Revenue Code.

In that connection, the Agreement is hereby amended by adding the following language as a new Section 11 of the Agreement and by renumbering the remaining sections appropriately:

“11. **Code Section 409A.** This Agreement is intended to comply, and shall be administered consistently in all respects, with Code Section 409A of the Internal Revenue Code of 1986, as amended (“Code”), and the regulations and additional guidance promulgated thereunder, to the extent applicable. In this connection, the Company shall have authority to take any action, or refrain from taking any action, with respect to this Agreement that is reasonably necessary to ensure compliance with Code Section 409A (provided that the Company shall choose the action that best preserves the value of the payments and benefits provided to the Executive under this Agreement that is consistent with Code Section 409A), and the parties agree that this Agreement shall be interpreted in a manner that is consistent with Code Section 409A. In furtherance, but not in limitation of the foregoing: (a) in no event may Executive designate, directly or indirectly, the calendar year of any payment to be made hereunder; (b) in the event that Executive is a “specified employee” within the meaning of Code Section 409A, payments which constitute a “deferral of compensation” under Code Section 409A and which would otherwise become due during the first six (6) months following Executive's Date of Termination shall be delayed and all such delayed payments shall be paid in full in the seventh (7th) month after the Executive's termination of employment or, if earlier, upon the Executive's death, provided that the above delay shall not apply to any payment that is excepted from coverage by Code Section 409A, such as a payment covered by

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the short-term deferral exception described in Treasury Regulations Section 1.409A-1(b)(4); (c) notwithstanding any other provision of this Agreement, a termination, resignation or retirement of Executive's employment hereunder, shall mean, and be interpreted consistent with, a "separation from service" within the meaning of Code Section 409A, and "Date of Termination," for purposes of determining the date that any payment or benefit is required to be provided hereunder, shall be deemed to mean the date of Executive's separation from service within the meaning of Code Section 409A; (d) with respect to any reimbursement of fees and expenses, or similar payments or any in-kind benefits, the following shall apply: (i) unless a specific time period during which such expense reimbursements and payments may be incurred is provided for herein, such time period shall be deemed to be Executive's lifetime; (ii) the amount of expenses eligible for reimbursement hereunder, or in-kind benefits to which Executive is entitled hereunder, in any particular year shall not affect the expenses eligible for reimbursement or in-kind benefits in any other year; (iii) the right to reimbursement of expenses or in-kind benefits shall not be subject to liquidation or exchange for any other benefit; (iv) the reimbursement of an eligible expense or a payment shall be made on or before the last day of the calendar year following the calendar year in which the expense was incurred or the payment was remitted, as the case may be."

Please indicate your acceptance of, and agreement to, this amendment by signing this letter in the space provided below.

Sincerely,

Valero Energy Corporation

By: \_\_\_\_\_  
R. Michael Crownover  
Senior Vice President  
Human Resources

AGREED AND ACCEPTED:

\_\_\_\_\_  
[Executive]

EXHIBIT 10.16

SCHEDULE OF CHANGE OF CONTROL AGREEMENTS

The following have executed Change of Control Agreements substantially in the form of the agreement attached as Exhibit 10.15 to Valero's Annual Report on Form 10-K for the year ended December 31, 2011 (SEC File No. 1-13175).

Michael S. Ciskowski  
S. Eugene Edwards  
Joseph W. Gorder

**CHANGE OF CONTROL  
SEVERANCE AGREEMENT**

AGREEMENT, dated as of the 15th day of March, 2007 (this "Agreement"), by and between Valero Energy Corporation, a Delaware corporation (the "Company"), and Kimberly S. Bowers (the "Executive").

WHEREAS, the Board of Directors of the Company (the "Board"), has determined that it is in the best interests of the Company and its stockholders to assure that the Company will have the continued dedication of the Executive, notwithstanding the possibility, threat or occurrence of a Change of Control (as defined herein). The Board believes it is imperative to diminish the inevitable distraction of the Executive by virtue of the personal uncertainties and risks created by a pending or threatened Change of Control and to encourage the Executive's full attention and dedication to the current Company in the event of any threatened or pending Change of Control, and to provide the Executive with compensation and benefits arrangements upon a Change of Control that ensure that the compensation and benefits expectations of the Executive will be satisfied and that are competitive with those of other corporations. Therefore, in order to accomplish these objectives, the Board has caused the Company to enter into this Agreement.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

**Section 1. Certain Definitions.** (a) "Effective Date" means the first date during the Change of Control Period (as defined herein) on which a Change of Control occurs. Notwithstanding anything in this Agreement to the contrary, if a Change of Control occurs and if the Executive's employment with the Company is terminated prior to the date on which the Change of Control occurs, and if it is reasonably demonstrated by the Executive that such termination of employment (1) was at the request of a third party that has taken steps reasonably calculated to effect a Change of Control or (2) otherwise arose in connection with or anticipation of a Change of Control, then "Effective Date" means the date immediately prior to the date of such termination of employment.

(b) "Change of Control Period" means the period commencing on the date hereof and ending on the third anniversary of the date hereof; *provided, however*, that, commencing on the date one year after the date hereof, and on each annual anniversary of such date (such date and each annual anniversary thereof, the "Renewal Date"), unless previously terminated, the Change of Control Period shall be automatically extended so as to terminate three years from such Renewal Date, unless, at least 60 days prior to the Renewal Date, the Company shall give notice to the Executive that the Change of Control Period shall not be so extended.

(c) "Affiliated Company" means any company controlled by, controlling or under common control with the Company.

(d) "Change of Control" means:

(1) The acquisition by any individual, entity or group (within the meaning of Section

13(d)(3) or 14(d)(2) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) (a “Person”) of beneficial ownership (within the meaning of Rule 13d-3 promulgated under the Exchange Act) of 20% or more of either (A) the then-outstanding shares of common stock of the Company (the “Outstanding Company Common Stock”) or (B) the combined voting power of the then-outstanding voting securities of the Company entitled to vote generally in the election of directors (the “Outstanding Company Voting Securities”); *provided, however*, that, for purposes of this Section 1(d)(1), the following acquisitions of Outstanding Company Common Stock or of Outstanding Company Voting Securities shall not constitute a Change of Control: (i) any acquisition directly from the Company, (ii) any acquisition by the Company, (iii) any acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any Affiliated Company or (iv) any acquisition by any corporation pursuant to a transaction that complies with Sections 1(d)(3)(A), 1(d)(3)(B) and 1(d)(3)(C);

(2) Individuals who, as of the date hereof, constitute the Board (the “Incumbent Board”) cease for any reason to constitute at least a majority of the Board; *provided, however*, that any individual becoming a director subsequent to the date hereof whose election, or nomination for election by the Company's stockholders, was approved by a vote of at least a majority of the directors then comprising the Incumbent Board shall be considered as though such individual were a member of the Incumbent Board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a Person other than the Board;

(3) Consummation of a reorganization, merger, statutory share exchange or consolidation or similar corporate transaction involving the Company or any of its subsidiaries, a sale or other disposition of all or substantially all of the assets of the Company (each, a “Business Combination”), in each case unless, following such Business Combination, (A) all or substantially all of the individuals and entities that were the beneficial owners of the Outstanding Company Common Stock and the Outstanding Company Voting Securities immediately prior to such Business Combination beneficially own, directly or indirectly, more than 50% of the then-outstanding shares of common stock and the combined voting power of the then-outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Business Combination (including, without limitation, a corporation that, as a result of such transaction, owns the Company or all or substantially all of the Company's assets either directly or through one or more subsidiaries) in substantially the same proportions as their ownership immediately prior to such Business Combination of the Outstanding Company Common Stock and the Outstanding Company Voting Securities, as the case may be, (B) no Person (excluding any corporation resulting from such Business Combination or any employee benefit plan (or related trust) of the Company or such corporation resulting from such Business Combination) beneficially owns, directly or indirectly, 20% or more of, respectively, the then-outstanding shares of common stock of the corporation resulting from such Business Combination or the combined voting power of the then-outstanding voting securities of such corporation, except to the extent that such ownership existed prior to the Business Combination, and (C) at least a majority of the members of the board of directors of the corporation resulting from such Business Combination were members of the Incumbent Board at the time of the execution of the initial agreement or of the action of the Board

providing for such Business Combination; or

- (4) Approval by the stockholders of the Company of a complete liquidation or dissolution of the Company.

**Section 2. Employment Period.** The Company hereby agrees to continue the Executive in its employ, subject to the terms and conditions of this Agreement, for the period commencing on the Effective Date and ending on the third anniversary of the Effective Date (the “Employment Period”). The Employment Period shall terminate upon the Executive's termination of employment for any reason.

**Section 3. Terms of Employment.** (a) **Position and Duties.** (1) During the Employment Period, (A) the Executive's position (including status, offices, titles and reporting requirements), authority, duties and responsibilities shall be at least commensurate in all material respects with the most significant of those held, exercised and assigned at any time during the 120-day period immediately preceding the Effective Date and (B) the Executive's services shall be performed at the office where the Executive was employed immediately preceding the Effective Date or at any other location less than 35 miles from such office.

(2) During the Employment Period, and excluding any periods of vacation and sick leave to which the Executive is entitled, the Executive agrees to devote reasonable attention and time during normal business hours to the business and affairs of the Company and, to the extent necessary to discharge the responsibilities assigned to the Executive hereunder, to use the Executive's reasonable best efforts to perform faithfully and efficiently such responsibilities. During the Employment Period, it shall not be a violation of this Agreement for the Executive to (A) serve on corporate, civic or charitable boards or committees, (B) deliver lectures, fulfill speaking engagements or teach at educational institutions and (C) manage personal investments, so long as such activities do not significantly interfere with the performance of the Executive's responsibilities as an employee of the Company in accordance with this Agreement. It is expressly understood and agreed that, to the extent that any such activities have been conducted by the Executive prior to the Effective Date, the continued conduct of such activities (or the conduct of activities similar in nature and scope thereto) subsequent to the Effective Date shall not thereafter be deemed to interfere with the performance of the Executive's responsibilities to the Company.

(b) **Compensation.** (1) **Base Salary.** During the Employment Period, the Executive shall receive an annual base salary (the “Annual Base Salary”) at an annual rate at least equal to 12 times the highest monthly base salary paid or payable, including any base salary that has been earned but deferred, to the Executive by the Company and the Affiliated Companies in respect of the 12-month period immediately preceding the month in which the Effective Date occurs. The Annual Base Salary shall be paid at such intervals as the Company pays executive salaries generally. During the Employment Period, the Annual Base Salary shall be reviewed at least annually, beginning no more than 12 months after the last salary increase awarded to the Executive prior to the Effective Date. Any increase in the Annual Base Salary shall not serve to limit or reduce any other obligation to the Executive under this Agreement. The Annual Base Salary shall not be reduced after any such increase and the term “Annual Base Salary” shall refer to the Annual Base Salary as so increased.

(2) **Annual Bonus.** In addition to the Annual Base Salary, the Executive shall be awarded, for each fiscal year ending during the Employment Period, an annual bonus (the “Annual Bonus”) in cash at least equal to the Executive's highest bonus earned under the Company's annual incentive bonus plans, or any comparable bonus under any predecessor or successor plan or plans, for the last three full fiscal years prior to the Effective Date (or for such lesser number of full fiscal years prior to the Effective Date for which the Executive was eligible to earn such a bonus, and annualized in the case of any bonus earned for a partial fiscal year) (the “Recent Annual Bonus”). (If the Executive has not been eligible to earn such a bonus for any period prior to the Effective Date, the “Recent Annual Bonus” shall mean the Executive's target annual bonus for the year in which the Effective Date occurs.) Each such Annual Bonus shall be paid no later than the end of the third month of the fiscal year next following the fiscal year for which the Annual Bonus is awarded, unless the Executive shall elect to defer the receipt of such Annual Bonus.

(3) **Incentive, Savings and Retirement Plans.** During the Employment Period, the Executive shall be entitled to participate in all incentive, savings and retirement plans, practices, policies, and programs applicable generally to other peer executives of the Company and the Affiliated Companies, but in no event shall such plans, practices, policies and programs provide the Executive with incentive opportunities (measured with respect to both regular and special incentive opportunities, to the extent, if any, that such distinction is applicable), savings opportunities and retirement benefit opportunities, in each case, less favorable, in the aggregate, than the most favorable of those provided by the Company and the Affiliated Companies for the Executive under such plans, practices, policies and programs as in effect at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and the Affiliated Companies.

(4) **Welfare Benefit Plans.** During the Employment Period, the Executive and/or the Executive's family, as the case may be, shall be eligible for participation in and shall receive all benefits under welfare benefit plans, practices, policies and programs provided by the Company and the Affiliated Companies (including, without limitation, medical, prescription, dental, vision, disability, employee life, group life, accidental death and travel accident insurance plans and programs) to the extent applicable generally to other peer executives of the Company and the Affiliated Companies, but in no event shall such plans, practices, policies and programs provide the Executive with benefits that are less favorable, in the aggregate, than the most favorable of such plans, practices, policies and programs in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, those provided generally at any time after the Effective Date to other peer executives of the Company and the Affiliated Companies.

(5) **Expenses.** During the Employment Period, the Executive shall be entitled to receive prompt reimbursement for all reasonable expenses incurred by the Executive in accordance with the most favorable policies, practices and procedures of the Company and the Affiliated Companies in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect

to other peer executives of the Company and the Affiliated Companies.

(6) **Fringe Benefits.** During the Employment Period, the Executive shall be entitled to fringe benefits, including, without limitation, tax and financial planning services, payment of club dues, and, if applicable, use of an automobile and payment of related expenses, in accordance with the most favorable plans, practices, programs and policies of the Company and the Affiliated Companies in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and the Affiliated Companies.

(7) **Office and Support Staff.** During the Employment Period, the Executive shall be entitled to an office or offices of a size and with furnishings and other appointments, and to exclusive personal secretarial and other assistance, at least equal to the most favorable of the foregoing provided to the Executive by the Company and the Affiliated Companies at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as provided generally at any time thereafter with respect to other peer executives of the Company and the Affiliated Companies.

(8) **Vacation.** During the Employment Period, the Executive shall be entitled to paid vacation in accordance with the most favorable plans, policies, programs and practices of the Company and the Affiliated Companies as in effect for the Executive at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and the Affiliated Companies.

(9) **Immediate Vesting of Outstanding Equity Incentive Awards.** Notwithstanding any provision in the Company's stock incentive plans or the award agreements thereunder, effective immediately upon the occurrence of a Change of Control, (A) all stock options (incentive or non-qualified) outstanding as of the date of such Change of Control, which are not then exercisable and vested, shall become fully exercisable and vested to the full extent of the original grant and, following the Executive's termination of employment for any reason, shall remain exercisable for the shorter of (x) five years from the Executive's date of termination of employment and (y) the remainder of the original option term; (B) all restrictions and deferral limitations applicable to any restricted stock awards outstanding as of the date of such Change of Control shall lapse, and such restricted stock awards shall become free of all restrictions and become fully vested and transferable to the full extent of the original grant; and (C) all performance share awards outstanding as of the date of such Change of Control for any outstanding performance periods shall fully vest and be earned and payable in full based on the deemed achievement of performance at 200% of target level for the entire performance period.

**Section 4. Termination of Employment.** (a) **Death or Disability.** The Executive's employment shall terminate automatically if the Executive dies during the Employment Period. If the Company determines in good faith that the Executive has a Disability (as defined herein) that has occurred during the Employment Period (pursuant to the definition of "Disability"), it may give to the Executive written notice in accordance with Section 11(b) of its intention to terminate the Executive's employment. In such event, the Executive's employment with the Company shall



terminate effective on the 30th day after receipt of such notice by the Executive (the “Disability Effective Date”), *provided* that, within the 30 days after such receipt, the Executive shall not have returned to full-time performance of the Executive's duties. “Disability” means the absence of the Executive from the Executive's duties with the Company on a full-time basis for 180 consecutive business days as a result of incapacity due to mental or physical illness that is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to the Executive or the Executive's legal representative.

(b) **Cause.** The Company may terminate the Executive's employment during the Employment Period for Cause. “Cause” means:

(1) the willful and continued failure of the Executive to perform substantially the Executive's duties (as contemplated by Section 3(a)(1)(A)) with the Company or any Affiliated Company (other than any such failure resulting from incapacity due to physical or mental illness or following the Executive's delivery of a Notice of Termination for Good Reason), after a written demand for substantial performance is delivered to the Executive by the Board or the Chief Executive Officer of the Company that specifically identifies the manner in which the Board or the Chief Executive Officer of the Company believes that the Executive has not substantially performed the Executive's duties, or

(2) the willful engaging by the Executive in illegal conduct or gross misconduct that is materially and demonstrably injurious to the Company.

For purposes of this Section 4(b), no act, or failure to act, on the part of the Executive shall be considered “willful” unless it is done, or omitted to be done, by the Executive in bad faith or without reasonable belief that the Executive's action or omission was in the best interests of the Company. Any act, or failure to act, based upon authority given pursuant to a resolution duly adopted by the Board or upon the instructions of the Chief Executive Officer of the Company or a senior officer of the Company or based upon the advice of counsel for the Company shall be conclusively presumed to be done, or omitted to be done, by the Executive in good faith and in the best interests of the Company. The cessation of employment of the Executive shall not be deemed to be for Cause unless and until there shall have been delivered to the Executive a copy of a resolution duly adopted by the affirmative vote of not less than three-quarters of the entire membership of the Board at a meeting of the Board called and held for such purpose (after reasonable notice is provided to the Executive and the Executive is given an opportunity, together with counsel for the Executive, to be heard before the Board), finding that, in the good faith opinion of the Board, the Executive is guilty of the conduct described in Section 4(b)(1) or 4(b)(2), and specifying the particulars thereof in detail.

(c) **Good Reason.** The Executive's employment may be terminated by the Executive for Good Reason or by the Executive voluntarily without Good Reason. “Good Reason” means:

(1) the assignment to the Executive of any duties inconsistent in any respect with the Executive's position (including status, offices, titles and reporting requirements), authority, duties or responsibilities as contemplated by Section 3(a)(1)(A), or any other action by the Company that results in a diminution in such position, authority, duties or

responsibilities, excluding for this purpose an isolated, insubstantial and inadvertent action not taken in bad faith and that is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(2) any failure by the Company to comply with any of the provisions of Section 3(b), other than an isolated, insubstantial and inadvertent failure not occurring in bad faith and that is remedied by the Company promptly after receipt of notice thereof given by the Executive;

(3) the Company's requiring the Executive (i) to be based at any office or location other than as provided in Section 3(a)(1)(B), (ii) to be based at a location other than the principal executive offices of the Company if the Executive was employed at such location immediately preceding the Effective Date, or (iii) to travel on Company business to a substantially greater extent than required immediately prior to the Effective Date;

(4) any purported termination by the Company of the Executive's employment otherwise than as expressly permitted by this Agreement; or

(5) any failure by the Company to comply with and satisfy Section 10(c).

For purposes of this Section 4(c), any good faith determination of Good Reason made by the Executive shall be conclusive. The Executive's mental or physical incapacity following the occurrence of an event described above in clauses (1) through (5) shall not affect the Executive's ability to terminate employment for Good Reason.

(d) **Notice of Termination.** Any termination by the Company for Cause, or by the Executive for Good Reason, shall be communicated by Notice of Termination to the other party hereto given in accordance with Section 11(b). "Notice of Termination" means a written notice that (1) indicates the specific termination provision in this Agreement relied upon, (2) to the extent applicable, sets forth in reasonable detail the facts and circumstances claimed to provide a basis for termination of the Executive's employment under the provision so indicated, and (3) if the Date of Termination (as defined herein) is other than the date of receipt of such notice, specifies the Date of Termination (which Date of Termination shall be not more than 30 days after the giving of such notice). The failure by the Executive or the Company to set forth in the Notice of Termination any fact or circumstance that contributes to a showing of Good Reason or Cause shall not waive any right of the Executive or the Company, respectively, hereunder or preclude the Executive or the Company, respectively, from asserting such fact or circumstance in enforcing the Executive's or the Company's respective rights hereunder.

(e) **Date of Termination.** "Date of Termination" means (1) if the Executive's employment is terminated by the Company for Cause, or by the Executive for Good Reason, the date of receipt of the Notice of Termination or any later date specified in the Notice of Termination, as the case may be, (2) if the Executive's employment is terminated by the Company other than for Cause or Disability, the Date of Termination shall be the date on which the Company notifies the Executive of such termination, and (3) if the Executive's employment is terminated by reason of death or Disability, the Date of Termination shall be the date of death of the Executive or the

Disability Effective Date, as the case may be.

**Section 5. Obligations of the Company upon Termination.** (a) **Good Reason; Other Than for Cause, Death or Disability.** If, during the Employment Period, the Company terminates the Executive's employment other than for Cause or Disability or the Executive terminates employment for Good Reason:

(1) the Company shall pay to the Executive, in a lump sum in cash within 30 days after the Date of Termination, the aggregate of the following amounts:

(A) the sum of (i) the Executive's Annual Base Salary through the Date of Termination, (ii) the product of (x) the Recent Annual Bonus and (y) a fraction, the numerator of which is the number of days in the current fiscal year through the Date of Termination and the denominator of which is 365, and (iii) any accrued vacation pay, in each case, to the extent not theretofore paid (the sum of the amounts described in subclauses (i), (ii) and (iii), the "Accrued Obligations");

(B) the amount equal to the product of (i) two and (ii) the sum of (x) the Executive's Annual Base Salary and (y) the Recent Annual Bonus;

(C) an amount equal to the excess of (i) the actuarial equivalent of the benefit under the Company's qualified defined benefit retirement plan (the "Retirement Plan") (utilizing actuarial assumptions no less favorable to the Executive than those in effect under the Retirement Plan immediately prior to the Effective Date) and any excess or supplemental retirement plan in which the Executive participates (collectively, the "SERP") that the Executive would receive if the Executive's employment continued for two years after the Date of Termination, assuming for this purpose that (x) the Executive's age and service credit increase during the two-year period, (y) all accrued benefits are fully vested and (z) the Executive's compensation in each of the two years is that required by Sections 3(b)(1) and 3(b)(2), over (ii) the actuarial equivalent of the Executive's actual benefit (paid or payable), if any, under the Retirement Plan and the SERP as of the Date of Termination; and

(D) an amount equal to the sum of the Company matching or other Company contributions under the Company's qualified defined contribution plans and any excess or supplemental defined contribution plans in which the Executive participates that the Executive would receive if the Executive's employment continued for two years after the Date of Termination, assuming for this purpose that (x) the Executive's benefits under such plans are fully vested, (y) the Executive's compensation in each of the two years is that required by Sections 3(b)(1) and 3(b)(2) and (z) to the extent that the Company contributions are determined based on the contributions or deferrals of the Executive, that the Executive's contribution or deferral elections, as appropriate, are those in effect immediately prior the Date of Termination; and

(2) for two years after the Executive's Date of Termination, or such longer period as may be provided by the terms of the appropriate plan, program, practice or policy, the Company shall continue benefits to the Executive and/or the Executive's family at least equal to those that would have been provided to them in accordance with the plans, programs, practices and policies described in Section 3(b)(4) if the Executive's employment had not been terminated or, if more favorable to the Executive, as in effect generally at any time thereafter with respect to other peer executives of the Company and the Affiliated Companies and their families, *provided, however*, that, if the Executive becomes reemployed with another employer and is eligible to receive such benefits under another employer provided plan, the medical and other welfare benefits described herein shall be secondary to those provided under such other plan during such applicable period of eligibility. For purposes of determining eligibility (but not the time of commencement of benefits) of the Executive for retiree benefits pursuant to such plans, practices, programs and policies, the Executive shall be considered to have remained employed (for purposes of both age and service credit) until two years after the Date of Termination and to have retired on the last day of such period;

(3) during the 12-month period following the Date of Termination, the Company shall, at its sole expense as incurred, provide the Executive with outplacement services the scope and provider of which shall be selected by the Executive in the Executive's sole discretion, *provided* that, the cost of such outplacement shall not exceed \$25,000 (as adjusted for inflation based on the Consumer Price Index or another nationally recognized published inflation index); and

(4) to the extent not theretofore paid or provided, the Company shall timely pay or provide to the Executive any other amounts or benefits required to be paid or provided or that the Executive is eligible to receive under any plan, program, policy or practice or contract or agreement of the Company and the Affiliated Companies (such other amounts and benefits, the "Other Benefits").

(b) **Death.** If the Executive's employment is terminated by reason of the Executive's death during the Employment Period, the Company shall provide the Executive's estate or beneficiaries with the Accrued Obligations and the timely payment or delivery of the Other Benefits, and shall have no other severance obligations under this Agreement. The Accrued Obligations shall be paid to the Executive's estate or beneficiary, as applicable, in a lump sum in cash within 30 days of the Date of Termination. With respect to the provision of the Other Benefits, the term "Other Benefits" as utilized in this Section 5(b) shall include, without limitation, and the Executive's estate and/or beneficiaries shall be entitled to receive, benefits at least equal to the most favorable benefits provided by the Company and the Affiliated Companies to the estates and beneficiaries of peer executives of the Company and the Affiliated Companies under such plans, programs, practices and policies relating to death benefits, if any, as in effect with respect to other peer executives and their beneficiaries at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive's estate and/or the Executive's beneficiaries, as in effect on the date of the Executive's death with respect to other peer executives of the Company and the Affiliated Companies and their beneficiaries.

(c) **Disability.** If the Executive's employment is terminated by reason of the Executive's Disability during the Employment Period, the Company shall provide the Executive with the Accrued Obligations and the timely payment or delivery of the Other Benefits, and shall have no other severance obligations under this Agreement. The Accrued Obligations shall be paid to the Executive in a lump sum in cash within 30 days of the Date of Termination. With respect to the provision of the Other Benefits, the term "Other Benefits" as utilized in this Section 5(c) shall include, and the Executive shall be entitled after the Disability Effective Date to receive, disability and other benefits at least equal to the most favorable of those generally provided by the Company and the Affiliated Companies to disabled executives and/or their families in accordance with such plans, programs, practices and policies relating to disability, if any, as in effect generally with respect to other peer executives and their families at any time during the 120-day period immediately preceding the Effective Date or, if more favorable to the Executive and/or the Executive's family, as in effect at any time thereafter generally with respect to other peer executives of the Company and the Affiliated Companies and their families.

(d) **Cause; Other Than for Good Reason.** If the Executive's employment is terminated for Cause during the Employment Period, the Company shall provide to the Executive (1) the Executive's Annual Base Salary through the Date of Termination, (2) any accrued vacation pay, and (3) the Other Benefits, in each case, to the extent theretofore unpaid, and shall have no other severance obligations under this Agreement. If the Executive voluntarily terminates employment during the Employment Period, excluding a termination for Good Reason, the Company shall provide to the Executive the Accrued Obligations and the timely payment or delivery of the Other Benefits, and shall have no other severance obligations under this Agreement. In such case, all the Accrued Obligations shall be paid to the Executive in a lump sum in cash within 30 days of the Date of Termination.

**Section 6. Non-exclusivity of Rights.** Nothing in this Agreement shall prevent or limit the Executive's continuing or future participation in any plan, program, policy or practice provided by the Company or the Affiliated Companies and for which the Executive may qualify, nor, subject to Section 11(f), shall anything herein limit or otherwise affect such rights as the Executive may have under any other contract or agreement with the Company or the Affiliated Companies. Amounts that are vested benefits or that the Executive is otherwise entitled to receive under any plan, policy, practice or program of or any other contract or agreement with the Company or the Affiliated Companies at or subsequent to the Date of Termination shall be payable in accordance with such plan, policy, practice or program or contract or agreement, except as explicitly modified by this Agreement. Notwithstanding the foregoing, if the Executive receives payments and benefits pursuant to Section 5(a) of this Agreement, the Executive shall not be entitled to any severance pay or benefits under any severance plan, program or policy of the Company and the Affiliated Companies, unless otherwise specifically provided therein by a specific reference to this Agreement.

**Section 7. Full Settlement.** The Company's obligation to make the payments provided for in this Agreement and otherwise to perform its obligations hereunder shall not be affected by any set-off, counterclaim, recoupment, defense, or other claim, right or action that the Company may have against the Executive or others. In no event shall the Executive be obligated to seek other employment or take any other action by way of mitigation of the amounts payable to the Executive under any of the provisions of this Agreement, and such amounts shall not be reduced whether or

not the Executive obtains other employment. The Company agrees to pay as incurred, to the full extent permitted by law, all legal fees and expenses that the Executive may reasonably incur as a result of any contest (regardless of the outcome thereof) by the Company, the Executive or others of the validity or enforceability of, or liability under, any provision of this Agreement or any guarantee of performance thereof (including as a result of any contest by the Executive about the amount of any payment pursuant to this Agreement), plus, in each case, interest on any delayed payment at the applicable federal rate provided for in Section 7872(f)(2)(A) of the Internal Revenue Code of 1986, as amended (the "Code").

**Section 8. Certain Additional Payments by the Company.**

(a) Anything in this Agreement to the contrary notwithstanding, in the event it shall be determined that any payment or distribution by the Company or its Affiliated Companies to or for the benefit of the Executive (whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise, but determined without regard to any additional payments required under this Section 8) (a "Payment") would be subject to the excise tax imposed by Section 4999 of the Code or any interest or penalties are incurred by the Executive with respect to such excise tax (such excise tax, together with any such interest and penalties, collectively the "Excise Tax"), then the Executive shall be entitled to receive an additional payment (the "Gross-Up Payment") in an amount such that, after payment by the Executive of all taxes (including any interest or penalties imposed with respect to such taxes), including, without limitation, any income taxes (and any interest and penalties imposed with respect thereto) and Excise Tax imposed upon the Gross-Up Payment, the Executive retains an amount of the Gross-Up Payment equal to the Excise Tax imposed upon the Payments.

(b) Subject to the provisions of Section 8(c), all determinations required to be made under this Section 8, including whether and when a Gross-Up Payment is required, the amount of such Gross-Up Payment and the assumptions to be utilized in arriving at such determination, shall be made by Ernst & Young, LLP, or such other nationally recognized certified public accounting firm as may be designated by the Executive, subject to the Company's approval which will not be unreasonably withheld (the "Accounting Firm"). The Accounting Firm shall provide detailed supporting calculations both to the Company and the Executive within 15 business days of the receipt of notice from the Executive that there has been a Payment or such earlier time as is requested by the Company. In the event that the Accounting Firm is serving as accountant or auditor for the individual, entity or group effecting the Change of Control, the Executive, subject to the Company's approval which will not be unreasonably withheld, may appoint another nationally recognized accounting firm to make the determinations required hereunder (which accounting firm shall then be referred to as the Accounting Firm hereunder). All fees and expenses of the Accounting Firm shall be borne solely by the Company. Any Gross-Up Payment, as determined pursuant to this Section 8, shall be paid by the Company to the Executive within 5 days of the receipt of the Accounting Firm's determination. Any determination by the Accounting Firm shall be binding upon the Company and the Executive. As a result of the uncertainty in the application of Section 4999 of the Code at the time of the initial determination by the Accounting Firm hereunder, it is possible that Gross-Up Payments that will not have been made by the Company should have been made (the "Underpayment"), consistent with the calculations required to be made hereunder. In the event the Company exhausts its remedies pursuant to Section 8(c) and the Executive thereafter is required to

make a payment of any Excise Tax, the Accounting Firm shall determine the amount of the Underpayment that has occurred and any such Underpayment shall be promptly paid by the Company to or for the benefit of the Executive.

(c) The Executive shall notify the Company in writing of any claim by the Internal Revenue Service that, if successful, would require the payment by the Company of the Gross-Up Payment. Such notification shall be given as soon as practicable, but no later than 10 business days after the Executive is informed in writing of such claim. The Executive shall apprise the Company of the nature of such claim and the date on which such claim is requested to be paid. The Executive shall not pay such claim prior to the expiration of the 30-day period following the date on which the Executive gives such notice to the Company (or such shorter period ending on the date that any payment of taxes with respect to such claim is due). If the Company notifies the Executive in writing prior to the expiration of such period that the Company desires to contest such claim, the Executive shall:

- (1) give the Company any information reasonably requested by the Company relating to such claim,
- (2) take such action in connection with contesting such claim as the Company shall reasonably request in writing from time to time, including, without limitation, accepting legal representation with respect to such claim by an attorney reasonably selected by the Company,
- (3) cooperate with the Company in good faith in order effectively to contest such claim, and
- (4) permit the Company to participate in any proceedings relating to such claim;

*provided, however,* that the Company shall bear and pay directly all costs and expenses (including additional interest and penalties) incurred in connection with such contest, and shall indemnify and hold the Executive harmless, on an after-tax basis, for any Excise Tax or income tax (including interest and penalties) imposed as a result of such representation and payment of costs and expenses. Without limitation on the foregoing provisions of this Section 8(c), the Company shall control all proceedings taken in connection with such contest, and, at its sole discretion, may pursue or forgo any and all administrative appeals, proceedings, hearings and conferences with the applicable taxing authority in respect of such claim and may, at its sole discretion, either pay the tax claimed to the appropriate taxing authority on behalf of the Executive and direct the Executive to sue for a refund or contest the claim in any permissible manner, and the Executive agrees to prosecute such contest to a determination before any administrative tribunal, in a court of initial jurisdiction and in one or more appellate courts, as the Company shall determine; *provided, however,* that, if the Company pays such claim and directs the Executive to sue for a refund, the Company shall indemnify and hold the Executive harmless, on an after-tax basis, from any Excise Tax or income tax (including interest or penalties) imposed with respect to such payment or with respect to any imputed income in connection with such payment; and *provided, further,* that any extension of the statute of limitations relating to payment of taxes for the taxable year of the Executive with respect to which such contested amount is claimed to be due is limited solely to such contested

amount. Furthermore, the Company's control of the contest shall be limited to issues with respect to which the Gross-Up Payment would be payable hereunder, and the Executive shall be entitled to settle or contest, as the case may be, any other issue raised by the Internal Revenue Service or any other taxing authority.

(d) If, after the receipt by the Executive of a Gross-Up Payment or payment by the Company of an amount on the Executive's behalf pursuant to Section 8(c), the Executive becomes entitled to receive any refund with respect to the Excise Tax to which such Gross-Up Payment relates or with respect to such claim, the Executive shall (subject to the Company's complying with the requirements of Section 8(c), if applicable) promptly pay to the Company the amount of such refund (together with any interest paid or credited thereon after taxes applicable thereto). If, after payment by the Company of an amount on the Executive's behalf pursuant to Section 8(c), a determination is made that the Executive shall not be entitled to any refund with respect to such claim and the Company does not notify the Executive in writing of its intent to contest such denial of refund prior to the expiration of 30 days after such determination, then the amount of such payment shall offset, to the extent thereof, the amount of Gross-Up Payment required to be paid.

(e) Notwithstanding any other provision of this Section 8, the Company may, in its sole discretion, withhold and pay to the Internal Revenue Service or any other applicable taxing authority, for the benefit of the Executive, all or any portion of any Gross-Up Payment, and the Executive hereby consents to such withholding.

**Section 9. Confidential Information.** The Executive shall hold in a fiduciary capacity for the benefit of the Company all secret or confidential information, knowledge or data relating to the Company or the Affiliated Companies, and their respective businesses, which information, knowledge or data shall have been obtained by the Executive during the Executive's employment by the Company or the Affiliated Companies and which information, knowledge or data shall not be or become public knowledge (other than by acts by the Executive or representatives of the Executive in violation of this Agreement). After termination of the Executive's employment with the Company, the Executive shall not, without the prior written consent of the Company or as may otherwise be required by law or legal process, communicate or divulge any such information, knowledge or data to anyone other than the Company and those persons designated by the Company. In no event shall an asserted violation of the provisions of this Section 9 constitute a basis for deferring or withholding any amounts otherwise payable to the Executive under this Agreement.

**Section 10. Successors.** (a) This Agreement is personal to the Executive, and, without the prior written consent of the Company, shall not be assignable by the Executive other than by will or the laws of descent and distribution. This Agreement shall inure to the benefit of and be enforceable by the Executive's legal representatives.

(b) This Agreement shall inure to the benefit of and be binding upon the Company and its successors and assigns. Except as provided in Section 10(c), without the prior written consent of the Executive, this Agreement shall not be assignable by the Company.

(c) The Company will require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business and/or assets of the



Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place. "Company" means the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid that assumes and agrees to perform this Agreement by operation of law or otherwise.

**Section 11. Miscellaneous.** (a) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without reference to principles of conflict of laws. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement may not be amended or modified other than by a written agreement executed by the parties hereto or their respective successors and legal representatives.

(b) All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

if to the Executive: At the most recent address on file in the Company's records

if to the Company: Valero Energy Corporation  
One Valero Way  
San Antonio, Texas 78249  
Attention: Corporate Secretary

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(c) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(d) The Company may withhold from any amounts payable under this Agreement such United States federal, state or local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

(e) The Executive's or the Company's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right the Executive or the Company may have hereunder, including, without limitation, the right of the Executive to terminate employment for Good Reason pursuant to Sections 4(c)(1) through 4(c)(5), shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

(f) The Executive and the Company acknowledge that, except as may otherwise be provided under any other written agreement between the Executive and the Company, the employment of the Executive by the Company is "at will" and, subject to Section 1(a), prior to the Effective Date, the Executive's employment may be terminated by either the Executive or the Company at any time prior to the Effective Date, in which case the Executive shall have no further rights under this Agreement. From and after the Effective Date, except as specifically provided herein, this Agreement shall supersede any other agreement between the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the Executive has hereunto set the Executive's hand and, pursuant to the authorization from the Board, the Company has caused these presents to be executed in its name on its behalf, all as of the day and year first above written.

---

Kimberly S. Bowers

**VALERO ENERGY CORPORATION**

By: \_\_\_\_\_  
Name: Gregory C. King  
Title: President

December 14, 2011

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Technical Amendment for Internal Revenue Code Section 409A

Dear \_\_\_\_\_:

This letter constitutes an amendment of the Change of Control Severance Agreement (“Agreement”) between you and Valero Energy Corporation dated \_\_\_\_\_, made for the sole purpose of attempting to ensure compliance of the Agreement with the documentation requirements under Internal Revenue Code Section 409A and, as such, attempting to avoid the imposition of taxes and penalties on you under Section 409A of the Internal Revenue Code.

In that connection, the Agreement is hereby amended by adding the following language as a new Section 11 of the Agreement and by renumbering the remaining sections appropriately:

“11. **Code Section 409A.** This Agreement is intended to comply, and shall be administered consistently in all respects, with Code Section 409A of the Internal Revenue Code of 1986, as amended (“Code”), and the regulations and additional guidance promulgated thereunder, to the extent applicable. In this connection, the Company shall have authority to take any action, or refrain from taking any action, with respect to this Agreement that is reasonably necessary to ensure compliance with Code Section 409A (provided that the Company shall choose the action that best preserves the value of the payments and benefits provided to the Executive under this Agreement that is consistent with Code Section 409A), and the parties agree that this Agreement shall be interpreted in a manner that is consistent with Code Section 409A. In furtherance, but not in limitation of the foregoing: (a) in no event may Executive designate, directly or indirectly, the calendar year of any payment to be made hereunder; (b) in the event that Executive is a “specified employee” within the meaning of Code Section 409A, payments which constitute a “deferral of compensation” under Code Section 409A and which would otherwise become due during the first six (6) months following Executive's Date of Termination shall be delayed and all such delayed payments shall be paid in full in the seventh (7th) month after the Executive's termination of employment or, if earlier, upon the Executive's death, provided that the above delay shall not apply to any payment that is excepted from coverage by Code Section 409A, such as a payment covered by the short-term deferral exception described in Treasury Regulations Section 1.409A-1(b)(4); (c) notwithstanding any other provision of this Agreement, a termination, resignation or retirement of Executive's employment hereunder, shall mean, and be interpreted consistent with, a “separation from service” within the meaning of Code Section 409A, and “Date of Termination,” for purposes of determining the date that any payment or benefit is required to be provided hereunder,

\_\_\_\_\_

shall be deemed to mean the date of Executive's separation from service within the meaning of Code Section 409A; (d) with respect to any reimbursement of fees and expenses, or similar payments or any in-kind benefits, the following shall apply: (i) unless a specific time period during which such expense reimbursements and payments may be incurred is provided for herein, such time period shall be deemed to be Executive's lifetime; (ii) the amount of expenses eligible for reimbursement hereunder, or in-kind benefits to which Executive is entitled hereunder, in any particular year shall not affect the expenses eligible for reimbursement or in-kind benefits in any other year; (iii) the right to reimbursement of expenses or in-kind benefits shall not be subject to liquidation or exchange for any other benefit; (iv) the reimbursement of an eligible expense or a payment shall be made on or before the last day of the calendar year following the calendar year in which the expense was incurred or the payment was remitted, as the case may be."

Please indicate your acceptance of, and agreement to, this amendment by signing this letter in the space provided below.

Sincerely,

Valero Energy Corporation

By:

\_\_\_\_\_  
R. Michael Crownover  
Senior Vice President  
Human Resources

AGREED AND ACCEPTED:

\_\_\_\_\_  
[Executive]

**Exhibit 10.19**  
**PERFORMANCE SHARE AGREEMENT**

This Performance Share Agreement (the "Agreement") is entered into as of **October 28, 2011**, by and between **Valero Energy Corporation**, a Delaware corporation ("Valero"), and [\_\_\_\_], a participant (the "Participant") in Valero's **2011 Omnibus Stock Incentive Plan** (as may be amended, the "Plan"), pursuant to and subject to the provisions of the Plan.

1. **Grant of Performance Shares.** Valero hereby grants to Participant [\_\_\_\_] Performance Shares pursuant to Section 6.7 of the Plan. The Performance Shares represent rights to receive shares of Common Stock of Valero, subject to the terms and conditions of this Agreement and the Plan.
  
2. **Vesting and Delivery of Shares.**
  - A. **Vesting.** The Performance Shares granted hereunder shall vest over a period of three years in equal, one-third increments with the first increment vesting on the date of the regularly scheduled meeting of the Board's Compensation Committee in January 2013, and the second and third increments vesting on the Committee's meeting dates in January 2014 and January 2015, respectively (each of these three vesting dates is referred to as a "Normal Vesting Date"); any award(s) of shares of Common Stock resulting in connection with such vesting shall be subject to verification of attainment of the Performance Objectives described in Section 4 (below) by the Compensation Committee. If the Committee is unable to meet in January of a given year, then the Normal Vesting Date for that year will be the date not later than March 31 of that year as selected by the Compensation Committee.
  - B. **Rights.** Until shares of Common Stock are actually issued to Participant (or his or her estate) in settlement of the Performance Shares, neither Participant nor any person claiming by, through or under Participant shall have any rights as a stockholder of Valero (including, without limitation, voting rights or any right to receive dividends or other distributions) with respect to such shares.
  - C. **Distribution.** Any shares of Common Stock to be distributed under the terms of this Agreement shall be distributed as soon as administratively practicable after Performance Objectives described in Section 4 below have been verified by the Compensation Committee, but not later than two-and-one-half months following the end of the year in which such verification occurred.
  
3. **Performance Period.** Except as provided below with respect to a Change of Control (as defined in the Plan), the "Performance Period" for any Performance Shares eligible to vest on any given Normal Vesting Date shall be as follows:
  - A. **First Segment.** The Performance Period for the first one-third vesting of Performance Shares (those vesting on the Normal Vesting Date in January 2013) shall be the calendar year ending on December 31, 2012.
  - B. **Second Segment.** The Performance Period for the second one-third vesting of Performance Shares (those vesting on the Normal Vesting Date in January 2014) shall be the two calendar years ending December 31, 2013.
  - C. **Third Segment.** The Performance Period for the final one-third vesting of Performance Shares (those vesting on the Normal Vesting Date in January 2015) shall be the three calendar years ending December 31, 2014.

4. **Performance Objectives.**

- A. **Total Shareholder Return.** Total Shareholder Return (“TSR”) will be compiled for a peer group of companies (the “Target Group”) for the Performance Period immediately preceding each Normal Vesting Date. TSR for each such company is measured by dividing (A) the sum of (i) the dividends on the common stock of such company during the Performance Period, assuming dividend reinvestment, and (ii) the difference between the average closing price of a share of such company's common stock for the 30 days of December 2 to December 31 at the end of the Performance Period and the average closing price of such shares for the 30 days of December 2 to December 31 immediately prior to the beginning of the Performance Period (appropriately adjusted for any stock dividend, stock split, spin-off, merger or other similar corporate events), by (B) the average closing price of a share of such company's common stock for the 30 days of December 2 to December 31 immediately prior to the beginning of the Performance Period.
- B. **Target Group.** The applicable Target Group shall be selected by the Compensation Committee, acting in its sole discretion, each year not later than 90 days after the commencement of the calendar year preceding each Normal Vesting Date. The same Target Group shall be used to measure TSR with regard to all Performance Shares vesting under all Performance Award Agreements of Valero having a similar Normal Vesting Date.
- C. **Performance Ranking and Award of Common Shares.** For each Performance Period, the TSR for Valero and each company in the Target Group shall be arranged by rank from best performer to worst performer according to the TSR achieved by each company. Shares of Common Stock will be awarded to Participant in accordance with Valero's percentile ranking within the Target Group. The number of shares of Common Stock, if any, that Participant will be entitled to receive in settlement of the vested Performance Shares will be determined on each Normal Vesting Date and, subject to the provisions of the Plan and this Agreement, on such Normal Vesting Date, the following percentage of the vested Performance Shares will be awarded as shares of Common Stock to the Participant when Valero's TSR during the Performance Period falls within the following percentiles (“Percentiles”), with awards of Common Stock to be interpolated between the “25th Percentile” and “50th Percentile” and between the “50th Percentile” and “75th Percentile”:

<u>Valero Performance</u>	Percent of vested Performance Shares to be awarded as <u>Shares of Common Stock</u>
75th Percentile or Higher	200%
50th Percentile (to 74.99%)	100% (to 199%)
25th Percentile (to 49.99%)	50% (to 99%)
Below 25th Percentile	0%

- D. **Unearned Shares.** Any Performance Shares not awarded as shares of Common Stock on a Normal Vesting Date will expire and be forfeited; such Performance Shares may not be carried forward for any additional Performance Period.

5. **Termination of Employment.**

A. **Voluntary Termination, Termination for “Cause,” and Early Retirement.** If Participant's employment is

- (i) voluntarily terminated by the Participant (other than through normal retirement, death or disability), including termination in connection with Participant's voluntary early retirement (*i.e.*, prior to age 62),
- (ii) terminated by Valero for “cause” (as defined pursuant to the Plan),

then those Performance Shares that are outstanding and have not vested as of the effective date of termination shall thereupon be forfeited.

B. **Retirement.** If a Participant's employment is terminated through his or her normal retirement (*i.e.*, age 62+ retirement), then any Performance Shares that (i) have not theretofore vested or been forfeited, and (ii) were granted at least one year prior to the Participant's effective date of retirement, shall continue to remain outstanding and shall vest on the Normal Vesting Dates according to their original vesting schedule. But any outstanding Performance Shares that were granted within one year of the Participant's effective date of retirement shall thereupon be forfeited.

C. **Death, Disability, Involuntary Termination Other Than for “Cause,” and Change of Control.** If a Participant's employment is terminated (i) through death or disability, or (ii) by Valero other than for cause (as determined pursuant to the Plan), or (iii) as a result of a Change of Control (as described in the Plan) (each of the foregoing is hereafter referred to as a “Trigger Date”), then each Performance Period with respect to any Performance Shares that have not vested or been forfeited shall be terminated effective as of such Trigger Date; the TSR for Valero and for each company in the Target Group shall be determined for each such shortened Performance Period and the percentage of Performance Shares to be received by the Participant for each such Performance Period shall be determined in accordance with Section 4 and shall be distributed as soon as administratively practicable thereafter. For purposes of determining the number of Performance Shares to be received as of any Trigger Date, the Target Group as most recently determined by the Compensation Committee prior to the Trigger Date shall be used.

6. **Plan Incorporated by Reference.** The Plan is incorporated into this Agreement by this reference and is made a part hereof for all purposes. Capitalized terms not otherwise defined in this Agreement shall have the meaning specified in the Plan.

7. **No Assignment.** This Agreement and the Participant's interest in the Performance Shares granted by this Agreement are of a personal nature, and, except as expressly permitted under the Plan, Participant's rights with respect thereto may not be sold, mortgaged, pledged, assigned, transferred, conveyed or disposed of in any manner by Participant, except by an executor or beneficiary pursuant to a will or pursuant to the laws of descent and distribution. Any such attempted sale, mortgage, pledge, assignment, transfer, conveyance or disposition is void, and Valero will not be bound thereby.

8. **Successors.** This Agreement shall be binding upon any successors of Valero and upon the beneficiaries, legatees, heirs, administrators, executors, legal representatives, successors and permitted assigns of Participant.

9. **Code Section 409A.** This Agreement is intended to comply, and shall be administered consistently in all respects, with Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations and additional guidance promulgated thereunder to the extent applicable. Accordingly, Valero shall have the authority to take any action, or refrain from taking any action, with respect to this Agreement that is reasonably necessary to ensure compliance with Code Section 409A (provided that Valero shall choose the action that best preserves the value of payments and benefits provided to Participant under this Agreement that is consistent with Code Section 409A), and the parties agree that this Agreement shall be interpreted in a manner that is consistent with Code Section 409A. In furtherance, but not in limitation of the foregoing:

- (a) in no event may Participant designate, directly or indirectly, the calendar year of any payment to be made hereunder;
- (b) to the extent the Participant is a “specified employee” within the meaning of Code Section 409A, payments, if any, that constitute a “deferral of compensation” under Code Section 409A and that would otherwise become due during the first six months following Participant's termination of employment shall be delayed and all such delayed payments shall be paid in full in the seventh month after such termination date, *provided that* the above delay shall not apply to any payment that is excepted from coverage by Code Section 409A, such as a payment covered by the short-term deferral exception described in Treasury Regulations Section 1.409A-1(b)(4);
- (c) notwithstanding any other provision of this Agreement, a termination, resignation or retirement of Participant's employment hereunder shall mean and be interpreted consistent with a “separation from service” within the meaning of Code Section 409A.

Executed effective as of the date first written above.

**VALERO ENERGY CORPORATION**

By: \_\_\_\_\_  
**R. Michael Crownover**, Senior Vice President

\_\_\_\_\_  
[ \_\_\_\_\_ ], Participant



**Notice of Grant of Stock Option  
and Option Agreement**

Valero Energy Corporation  
ID: 74-1828067  
P. O. Box 696000  
San Antonio, TX 78269-6000

«First\_Name» «Middle\_Name» «Last\_Name»

Option Number: «NUM»  
Plan: «PLAN\_NAME»  
ID: «SSN»

Effective «Option\_Date», you have been granted a «Long\_Type» to buy «Shares\_Granted» shares of the common stock of Valero Energy Corporation (the “Company”) at «Option\_Price» per share.

The total Option price of the shares granted is «Total\_Option\_Price».

Your Options will vest on the dates shown below.

<u>Shares</u>	<u>Grant Date</u>	<u>Vest Type</u>	<u>Full Vest</u>	<u>Expiration</u>
«Shares_Period_1»	«Option_Date»	«Vest_Type_Period_1»	«Vest_Date_Period_1»	«Expiration_Date_Period_1»
«Shares_Period_2»	«Option_Date»	«Vest_Type_Period_2»	«Vest_Date_Period_2»	«Expiration_Date_Period_2»
«Shares_Period_3»	«Option_Date»	«Vest_Type_Period_3»	«Vest_Date_Period_3»	«Expiration_Date_Period_3»

By your signature and the Company's signature below, you and the Company agree that the Option referenced above is granted under and governed by the terms and conditions of the **Company's 2011 Omnibus Stock Incentive Plan** (as may be amended) and the Option Agreement attached hereto, all of which are made a part of this agreement.

VALERO ENERGY CORPORATION

By: \_\_\_\_\_  
R Michael Crownover  
Senior Vice President - Human Resources

\_\_\_\_\_  
Date

«First\_Name» «Middle\_Name» «Last\_Name»  
Employee

\_\_\_\_\_  
Date

**OPTION AGREEMENT**  
**Valero Energy Corporation 2011 Omnibus Stock Incentive Plan**

This Option Agreement (this "Agreement") is entered into between Valero Energy Corporation, a Delaware corporation ("Valero"), and Employee pursuant to the terms of the **Valero Energy Corporation 2011 Omnibus Stock Incentive Plan** (as may be amended, the "Plan"). As used herein, Employee means «**First\_Name**» «**Middle\_Name**» «**Last\_Name**». Capitalized terms used in this Agreement and the attached Form A but not otherwise defined in this Agreement have the meanings set forth in the Plan.

**1. Grant of Option.** Valero grants to Employee the option (the "Option") to purchase up to «**Shares\_Granted**» shares of common stock of Valero, \$.01 par value per share ("Shares"), in accordance with the terms of this Agreement and the Plan. The Shares, when issued to Employee upon the exercise of the Option, will be fully paid and non-assessable.

**2. Purchase Price.** The purchase price of the Shares will be «**Option\_Price**» per Share.

**3. Exercise of Option.** The period during which the Option is in effect (the "Option Period") will commence on «**Option\_Date**». The Option Period will terminate on «**Expiration\_Date\_Period\_1**». No portion of the Option may be exercised prior to «**Vest\_Date\_Period\_1**». Subject to the provisions of the Plan relating to suspension or termination from the Plan, the Option will be available for exercise in the following increments: «**Shares\_Period\_1**» shares on «**Vest\_Date\_Period\_1**»; «**Shares\_Period\_2**» shares on «**Vest\_Date\_Period\_2**»; and «**Shares\_Period\_3**» shares on «**Vest\_Date\_Period\_3**».

The Option must be exercised in accordance with procedures established by Valero and pursuant to one of the methods for exercise set forth in the Exercise Notice. Payment for the Shares will be made at Valero's San Antonio offices.

If any law or regulation requires Valero to take any action with respect to the Shares specified in the Exercise Notice, then the date of delivery of the Shares against payment will be extended for the period necessary to take such action. In the event of any failure by Employee to pay for the number of Shares specified in the Exercise Notice on the Exercise Date, the exercise of the Option with respect to such number of Shares will be treated as if it had never been made.

**4. Plan Incorporated by Reference.** The Plan is incorporated herein, and by this reference, is made a part hereof for all purposes.

**5. Limitation of Rights of Employee.** Employee will have no rights with respect to any Shares not expressly conferred by the Plan or this Agreement.

**6. No Assignment.** This Agreement and the Option granted hereunder are of a personal nature and Employee's rights with respect hereto and thereto may not be sold, mortgaged, pledged, assigned, transferred, conveyed or disposed of in any manner by Employee and may not

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be exercised by any person, other than Employee, except as expressly permitted under the Plan. Any such attempted sale, mortgage, pledge, assignment, transfer, conveyance, disposition or exercise will be void, and Valero will not be bound thereby.

**7. Successors.** This Agreement is binding upon any successors of Valero and the heirs, successors and legal representatives of Employee.

**8. Direct Registration.** Employee agrees that in lieu of stock certificates, any Shares issuable in connection with the exercise of the Option may be issued in uncertificated form pursuant to the Direct Registration System (“DRS”) of Valero's stock transfer agent.

**RESTRICTED STOCK AGREEMENT**  
**Valero Energy Corporation 2011 Omnibus Stock Incentive Plan**  
(subject to performance accelerated vesting)

This Restricted Stock Agreement (this "Agreement") is between Valero Energy Corporation, a Delaware corporation ("Valero"), and «FIRST\_NAME» «MIDDLE\_NAME» «LAST\_NAME», an employee of Valero or one of its Affiliates ("Employee"), who agree as follows:

1. Introduction. Pursuant to the **Valero Energy Corporation 2011 Omnibus Stock Incentive Plan** (as may be amended, the "Plan"), on «OPTION\_DATE», Employee was awarded «SHARES\_GRANTED\_» shares of Common Stock of Valero under the Plan as Restricted Stock (as defined in the Plan) ("Restricted Stock"). The parties hereby enter into this Agreement to evidence the terms, conditions and restrictions applicable to the Restricted Stock.

2. The Plan, Restrictions, Vesting. The Plan is incorporated herein by reference for all purposes, and Employee hereby agrees to the terms and conditions stated therein applicable to the Restricted Stock and the rights and powers of Valero and the Committee as provided therein. In addition, Employee agrees as follows:

2.01 Nontransferable. Except to the extent otherwise provided in the Plan or this Agreement, shares of Restricted Stock issued to Employee under the Plan may not be sold, exchanged, pledged, hypothecated, transferred, garnished or otherwise disposed of or alienated prior to vesting.

2.02 Regular Vesting. Except to the extent otherwise provided in the Plan, Employee's rights to and interest in the shares of Restricted Stock described herein shall vest and accrue to Employee in the following increments: «SHARES\_PERIOD\_1\_» shares on «VEST\_DATE\_PERIOD\_1\_»; «SHARES\_PERIOD\_2\_» shares on «VEST\_DATE\_PERIOD\_2\_»; and «SHARES\_PERIOD\_3\_» shares on «VEST\_DATE\_PERIOD\_3\_».

2.03 Performance Accelerated Vesting for Eligible Shares. Fifty percent (50%) of the shares of Restricted Stock stated in Section 1 above shall be eligible for performance accelerated vesting ("Eligible Shares"). Notwithstanding the vesting schedule stated in Section 2.02, to the extent any Eligible Shares have not yet vested per the schedule stated in Section 2.02, and to the extent the Eligible Shares have not been forfeited or otherwise canceled pursuant to the terms of the Plan, all unvested Eligible Shares shall automatically vest at the close of business on the last date of the Acceleration Period. The "Acceleration Period" means the first period following the Effective Date when the closing price per share of Valero Common Stock is \$40.00 or above for five consecutive trading days as reported on the New York Stock Exchange (NYSE).

2.04 Book Entry Shares. Employee agrees that in lieu of certificates representing Employee's shares of Restricted Stock, the Restricted Stock and any Shares issuable in connection with their vesting may be issued in uncertificated form pursuant to the Direct Registration System ("DRS") of Valero's stock transfer agent.

2.05 Restructuring or Reorganization. If, as the result of a stock split, stock dividend, combination of shares or any other change, including an exchange of securities for any reason, the Employee shall be entitled to new or additional or different shares of stock or securities, such stock or securities shall be subject to the terms and conditions of the Plan and this Agreement.

3. Limitation. The Employee shall have no rights with respect to any shares of Restricted Stock not expressly conferred by the Plan or this Agreement.

4. Miscellaneous. All capitalized terms contained in this Agreement shall have the definitions set forth in the Plan unless otherwise defined herein. This Agreement shall be binding upon the parties hereto and their respective

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beneficiaries, heirs, administrators, executors, legal representatives and successors.

5. Code Section 409A. The issuance of shares under this Award shall be made on or as soon as reasonably practical following the applicable date of vesting, but in any event no later than the 15th day of the third month following the end of the year in which the applicable date of vesting occurs. With respect to the receipt of dividends, the payment of dividends shall be made by the last day of the fiscal quarter during which dividends on Valero Common Stock are paid, but in any event by no later than the 15th day of the month following the end of the year in which the applicable dividends on Valero Common Stock are paid. This Agreement and the award evidenced hereby are intended to comply, and shall be administered consistently, in all respects with Section 409A of the Internal Revenue Code and the regulations promulgated thereunder. If necessary in order to ensure such compliance, this Agreement may be reformed consistent with guidance issued by the Internal Revenue Service.

EFFECTIVE as of the \_\_\_ day of \_\_\_\_\_, 2011 (the "Effective Date").

VALERO ENERGY CORPORATION

\_\_\_\_\_  
R Michael Crownover  
Senior Vice President-Human Resources

\_\_\_\_\_  
Employee

\$3,000,000,000 5-YEAR AMENDED AND RESTATED  
REVOLVING CREDIT AGREEMENT

dated as of December 5, 2011

among

VALERO ENERGY CORPORATION  
The Lenders Party Hereto

and

JPMORGAN CHASE BANK, N.A.,  
as Administrative Agent

CITIBANK, N.A.,  
as Syndication Agent

and

BNP PARIBAS,  
MIZUHO CORPORATE BANK, LTD.,

and

THE ROYAL BANK OF SCOTLAND PLC,  
as Co-Documentation Agents

J.P.MORGAN SECURITIES LLC, CITIGROUP GLOBAL MARKETS INC.,  
BNP PARIBAS SECURITIES CORP., MIZUHO CORPORATE BANK, LTD., and  
RBS SECURITIES INC.,  
as Joint Lead Arrangers and Joint Bookrunners

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\$3,000,000,000 5-YEAR AMENDED AND RESTATED REVOLVING CREDIT AGREEMENT, dated as of December 5, 2011 (as amended, supplemented or otherwise modified from time to time, the “Agreement”), among VALERO ENERGY CORPORATION, the LENDERS party hereto, JPMORGAN CHASE BANK, N.A., as Administrative Agent, CITIBANK, N.A., as Syndication Agent and BNP PARIBAS, MIZUHO CORPORATE BANK, LTD., and THE ROYAL BANK OF SCOTLAND PLC, as Co-Documentation Agents.

WHEREAS, the parties hereto have agreed to amend and restate that certain \$2,500,000,000 5-Year Revolving Credit Agreement, dated as of August 17, 2005 (as amended, supplemented or otherwise modified prior to the date hereof, the “Existing Revolving Credit Agreement”), among the Borrower, the financial institutions party thereto as lenders, JPMorgan Chase Bank, N.A., as Administrative Agent and the other Persons from time to time party thereto.

NOW THEREFORE, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

Section 1.01 Defined Terms.

As used in this Agreement, the following terms have the meanings specified below:

“ABR”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

“Adjusted Consolidated Net Debt” means, at any date, Consolidated Net Debt less the principal amount of Hybrid Equity Securities in an aggregate amount not to exceed 15% of Total Capitalization.

“Adjusted LIBO Rate” means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) the LIBO Rate for such Interest Period multiplied by (b) the Statutory Reserve Rate.

“Administrative Agent” means JPMorgan Chase Bank, N.A., in its capacity as administrative agent for the Lenders hereunder.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Agreement” has the meaning set forth in the introductory paragraphs hereto.

“Alternate Base Rate” means, for any day, a rate per annum equal to the highest of

(a) the Prime Rate in effect on such day, (b) the Federal Funds Effective Rate in effect on such day plus ½ of 1% and (c) the Adjusted LIBO Rate for a one month Interest Period plus 1%. Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Effective Rate or the Adjusted LIBO Rate, respectively.

“Alternative Currency Equivalent” means, at any time, with respect to any amount denominated in dollars, the equivalent amount thereof in the applicable Approved Currency (other than dollars) as determined by the Administrative Agent or the applicable Issuing Bank, as the case may be, at such time on the basis of the Spot Rate on any date of determination for the purchase of such Approved Currency (other than dollars) with dollars.

“Applicable Percentage” means, with respect to any Lender, the percentage of the total Commitments represented by such Lender's Commitment. If the Commitments have terminated or expired, the Applicable Percentages shall be determined based upon the Commitments most recently in effect, giving effect to any assignments.

“Applicable Rate” means, for any day, with respect to any ABR Loan or Eurodollar Loan, or with respect to the facility fees payable hereunder, as the case may be, the applicable rate per annum set forth on the Pricing Schedule under the caption “ABR Margin,” “LIBOR Margin” or “Facility Fee”, as the case may be, based upon the ratings by Moody's and S&P, respectively, applicable on such date to the Index Debt.

“Approved Currency” means dollars, Canadian dollars, British pounds and euros.

“Approved Fund” has the meaning set forth in Section 9.04(b).

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, substantially in the form of Exhibit A or any other form approved by the Administrative Agent.

“Availability Period” means the period from and including the Revolving Effective Date to but excluding the earlier of the Maturity Date and the date of termination of the Commitments.

“Bankruptcy Event” means, with respect to any Person, such Person becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, administrator, custodian, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business appointed for it, or, in the good faith determination of the Administrative Agent, has taken any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any such proceeding or appointment, provided that a Bankruptcy Event shall not result solely by virtue of any ownership interest, or the acquisition of any ownership interest, in such Person by a Governmental Authority or instrumentality thereof, provided, further, that such ownership interest does not result in or provide such Person with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Person (or such Governmental Authority or instrumentality) to reject,

repudiate, disavow or disaffirm any contracts or agreements made by such Person.

“Benefit Arrangement” means at any time an employee benefit plan within the meaning of Section 3(3) of ERISA which is not a Plan or a Multiemployer Plan and which is maintained or otherwise contributed to by any ERISA Affiliate.

“Board” means the Board of Governors of the Federal Reserve System of the United States of America.

“Borrower” means Valero Energy Corporation, a Delaware corporation.

“Borrowing” means (a) Loans of the same Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect or (b) a Swingline Loan.

“Borrowing Request” means a request by the Borrower for a Borrowing in accordance with Section 2.05.

“Business Day” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that, when used in connection with a Eurodollar Loan, the term “Business Day” shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market.

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“Cash Equivalents” means (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States Government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition; (b) certificates of deposit, time deposits, eurodollar time deposits or overnight bank deposits having maturities of six months or less from the date of acquisition issued by any Lender or by any commercial bank organized under the laws of the United States of America or any state thereof having combined capital and surplus of not less than \$250,000,000; (c) commercial paper of an issuer rated at least A-2 by Standard & Poor's Ratings Services or P-2 by Moody's Investors Service, Inc., or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally, and maturing within six months from the date of acquisition; (d) money market accounts or funds with or issued by Qualified Issuers; (e) short term debt obligations of an issuer rated at least BBB by Standard & Poor's Ratings Services or Baa2 by Moody's Investor Service, Inc., and maturing within thirty days from the date of acquisition; (f) repurchase obligations with a term of not more than 90 days for underlying securities of the types described in clause (a) above entered into with any bank meeting the qualifications specified in clause (b) above; and (g) solely with respect to a Subsidiary which is incorporated or organized under the laws of a jurisdiction outside

of the United States, in addition to the investments described in clauses (a) through (f) of this definition, substantially similar investments denominated in foreign currencies (including similarly capitalized foreign banks).

“Change in Control” means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof) of shares representing more than 25% of the aggregate ordinary voting power represented by the issued and outstanding capital stock of the Borrower (excluding, however, any such person or group entitled to report such ownership on Schedule 13G in accordance with Rule 13d-1(b)(1) or (2)); or (b) occupation of a majority of the seats (other than vacant seats) on the board of directors of the Borrower by Persons who were neither (i) nominated by the board of directors of the Borrower nor (ii) appointed by directors so nominated.

“Change in Law” means the occurrence after the date of this Agreement (or, with respect to any Person that becomes a Lender after the date hereof, such later date on which such Person becomes a Lender under this Agreement) (a) the adoption of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the interpretation or application thereof by any Governmental Authority or (c) compliance by any Lender or any Issuing Bank (or, for purposes of Section 2.15(b), by any lending office of such Lender or by such Lender's or such Issuing Bank's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided that, notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“CI Lender” has the meaning set forth in Section 2.02(a).

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Co-Documentation Agents” means, collectively, BNP Paribas, Mizuho Corporate Bank, Ltd., and The Royal Bank of Scotland plc, each in its capacity as a co-documentation agent for the Lenders hereunder.

“Commitment” means, with respect to each Lender, the commitment of such Lender to make Loans and to acquire participations in Letters of Credit and Swingline Loans hereunder, expressed as an amount representing the maximum potential aggregate amount of such Lender's Credit Exposure hereunder, as such commitment may be (a) modified from time to time pursuant to Section 2.02, (b) reduced from time to time pursuant to Section 2.09, or (c) reduced or increased from time to time pursuant to assignments by or to such Lender pursuant to Section 9.04. The initial amount of each Lender's Commitment is set forth on Schedule 2.01, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Commitment, as applicable. The

initial aggregate amount of the Lenders' Commitments is \$3,000,000,000.

“Commitment Increase” has the meaning set forth in Section 2.02(a).

“Commitment Increase Effective Date” has the meaning set forth in Section 2.02(b).

“Competitor” means (a) any Person who is primarily engaged in businesses of the type primarily conducted by the Borrower and its Subsidiaries and (b) any Affiliate of a Person identified in clause (a) above (it being agreed that an investment firm or other financial institution shall not be deemed to Control a Person described in clause (a) above merely as a result of owning a minority interest in such Person if it does not otherwise Control such Person).

“Consenting Lenders” has the meaning set forth in Section 2.21(b).

“Consolidated Net Debt” means, at any date, the Indebtedness of the Borrower and its Subsidiaries less the aggregate amount of (a) cash and Cash Equivalents held by the Borrower and its Subsidiaries at such date and (b) cash and Cash Equivalents that have been deposited in a trust account or account created or pledged for the sole benefit of the holders of any Indebtedness of the Borrower or its Subsidiaries that has been defeased pursuant to such deposit and the other applicable terms of the instrument governing such Indebtedness, in each case determined on a consolidated basis in accordance with GAAP.

“Consolidated Net Tangible Assets” means, on any date, the aggregate amount of assets (less applicable accumulated depreciation, depletion and amortization and other reserves and other properly deductible items) of the Borrower and its Subsidiaries, *minus* (a) all current liabilities of the Borrower and its Subsidiaries (excluding current maturities of long-term debt) and (b) all goodwill of the Borrower and its Subsidiaries, all of the foregoing determined on a consolidated basis in accordance with GAAP.

“Consolidated Net Worth” means for the Borrower at any date the Net Worth of the Borrower and its Subsidiaries as of such date determined on a consolidated basis in accordance with GAAP.

“Consolidated Total Assets” means, at any date, the aggregate total assets of the Borrower and its Subsidiaries, determined on a consolidated basis as of such date in accordance with GAAP.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. “Controlling” and “Controlled” have meanings correlative thereto.

“Credit Party” means the Administrative Agent, any Issuing Bank, the Swingline Lender or any other Lender and “Credit Parties” shall be the collective reference to all of them.

“Credit Exposure” means, with respect to any Lender at any time, the sum of the

outstanding principal amount of such Lender's Loans, its LC Exposure and its Swingline Exposure at such time.

“Default” means any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“Defaulting Lender” means any Lender that (a) has failed, within three Business Days of the date required to be funded or paid, to (i) fund any portion of its Loans, (ii) fund any portion of its participations in LC Disbursements or Swingline Loans or (iii) pay over to any Credit Party any other amount required to be paid by such Lender hereunder, unless, in the case of clause (i) above, such Lender notifies the Administrative Agent in writing that such failure is the result of such Lender's good faith determination that a condition precedent to funding (specifically identified and including the particular default, if any) has not been satisfied or, in the case of clause (iii) above, such Lender notifies the Administrative Agent in writing that such failure is the result of a good faith dispute with respect to the requirement to pay such amount, (b) has notified the Borrower or any Credit Party in writing, or has made a public statement to the effect, that it does not intend or expect to comply with any of its funding obligations under this Agreement or generally under other agreements in which it commits to extend credit (unless such writing or public statement indicates that such position is based on such Lender's good faith determination that a condition precedent (specifically identified and including the particular default, if any) to funding a loan under any such agreement (including this Agreement cannot be satisfied), (c) has failed, within three Business Days after request by the Borrower or a Credit Party, acting in good faith, to provide a certification in writing from an authorized officer of such Lender that it will comply with its obligations to fund prospective Loans and participations in LC Disbursements and Swingline Loans under this Agreement, provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon Borrower or such Credit Party's receipt of such certification in form and substance satisfactory to the Borrower or such Credit Party, as applicable, and the Administrative Agent, or (d) has become the subject of a Bankruptcy Event.

“Derivatives Obligations” of any Person means all obligations of such Person in respect of any Hedging Agreement.

“Disclosed Matters” means the actions, suits and proceedings and the environmental and intellectual property matters (a) disclosed in (i) the Borrower's report on Form 10-K for the fiscal year ended December 31, 2010, (ii) the Borrower's report on Form 10-Q for the fiscal period ended September 30, 2011, and (iii) the Borrower's reports on Form 8-K filed during the period from and including September 30, 2011 to but excluding the date that is two Business Days prior to the Revolving Effective Date, in each case as filed with the Securities and Exchange Commission, or (b) otherwise disclosed in writing to the Administrative Agent for the benefit of the Lenders prior to the execution and delivery of this Agreement.

“dollars” or “\$” refers to lawful money of the United States of America, except if the term “dollar” is preceded by the name of another country.

“Dollar Equivalent” means, at any time, (a) with respect to any amount denominated in dollars, such amount, and (b) with respect to any amount denominated in any Approved Currency



other than dollars, the equivalent amount thereof in dollars as determined by the Administrative Agent or the applicable Issuing Bank, as the case may be, at such time on the basis of the Spot Rate on any date of determination for the purchase of dollars with such other Approved Currency.

“Environmental Laws” means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Materials or to health and safety matters.

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (c) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan, other than a standard termination under Section 4041(b) of ERISA; (d) the receipt by the Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (e) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (f) the receipt by the Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

“Eurodollar”, when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

“Event of Default” has the meaning assigned to such term in Article VII.

“Excluded Subsidiary Debt” means (i) unsecured Indebtedness of Subsidiaries existing on the Revolving Effective Date and described on Schedule 6.01, (ii) Unsecured Acquisition Debt, (iii) refinancings, extensions, renewals, or refundings of any Indebtedness permitted by clauses (i) and (ii) above, provided that the principal amount thereof is not increased, (iv) intercompany Indebtedness that is owed by a Subsidiary to, and Guarantees of intercompany debt issued by such Subsidiary of debt of, the Borrower or another wholly owned Subsidiary, (v) amounts owing pursuant to Securitization Transactions and (vi) to the extent that a Subsidiary has provided a Guarantee of the Borrower's Indebtedness and other obligations existing pursuant to this Agreement, such Subsidiary's Indebtedness that is pari passu with (or subordinate to) the Indebtedness and other obligations existing pursuant to this Agreement.

“Excluded Taxes” means, with respect to the Administrative Agent, any Lender, any Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of the Borrower hereunder, (a) income or franchise Taxes imposed on (or measured by) its net income and/or net worth by the United States of America, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits Taxes imposed by the United States of America or any similar Tax imposed by any other jurisdiction in which the Borrower is located, (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by the Borrower under Section 2.19(b)), any withholding Tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office), but only to the extent that such Lender is subject to United States withholding Tax at the time such Lender first becomes party to this Agreement, except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to such withholding Tax pursuant to Section 2.17(a), (d) in the case of each Lender (other than an assignee pursuant to a request by Borrower under Section 2.19(b)), any United States withholding Tax imposed on any payment made or to be made by the Borrower, but only to the extent that such Lender is subject to United States withholding Tax at the time such Lender first becomes party to this Agreement, (e) income or franchise Taxes imposed as a result of a present or former connection between a Lender and the jurisdiction imposing such Tax (other than connections arising solely from such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document), (f) Taxes attributable to a Lender's failure to comply with Section 2.17(e) and (g) taxes imposed under FATCA.

“Existing Lender” has the meaning set forth in Section 9.16.

“Existing Revolving Credit Agreement” has the meaning set forth in the introductory

paragraphs hereto.

“Extension Confirmation Date” has the meaning set forth in Section 2.21(b).

“Extension Effective Date” has the meaning set forth in Section 2.21(b).

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (and any amended or successor versions thereof that are substantially comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof.

“Federal Funds Effective Rate” means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“Financial Officer” means the chief financial officer, principal accounting officer, financial vice president, treasurer or controller of the Borrower.

“Fiscal Quarter” means a fiscal quarter of the Borrower, ending on the last day of March, June, September or December of each year.

“Foreign Lender” means any Lender that is organized under the laws of a jurisdiction other than that in which the Borrower is located. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“GAAP” means generally accepted accounting principles in the United States of America.

“Governmental Authority” means the government of the United States of America, any other nation or any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness of the payment thereof, (c) to maintain working capital, equity capital or any other financial

statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; provided, that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“Hedging Agreement” means any rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of the foregoing transactions) or any combination of the foregoing transactions.

“Hybrid Equity Securities” means, on any date (the “determination date”), any securities issued by the Borrower or any of its Subsidiaries or a financing vehicle of the Borrower or any of its Subsidiaries, other than common stock, that meet the following criteria: (a) (i) the Borrower demonstrates that such securities are classified, at the time they are issued, as possessing a minimum of “intermediate equity content” by S&P and “Basket C equity credit” by Moody's (or the equivalent classifications then in effect by such agencies) and (ii) on such determination date such securities are classified as possessing a minimum of “intermediate equity content” by S&P or “Basket C equity credit” by Moody's (or the equivalent classifications then in effect by such agencies) and (b) such securities require no repayments or prepayments and no mandatory redemptions or repurchases, in each case, prior to at least 91 days after the later of the termination of the Commitments and the repayment in full of the obligations of the Borrower under this Agreement. As used in this definition, “mandatory redemption” shall not include conversion of a security into common stock.

“Indebtedness” of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (d) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, provided that the amount of any Indebtedness of such Person which constitutes Indebtedness of such Person solely by reason of this clause (d) shall not for purposes of this Agreement exceed the greater of the book value or the fair market value of the properties subject to such Lien, (e) all Guarantees by such Person of Indebtedness of others, (f) all Capital Lease Obligations of such Person, (g) all obligations of such Person in respect of bankers' acceptances, and (h) all non-contingent obligations (and, for purposes of Section 6.02, all contingent obligations) of such Person

to reimburse any bank or other Person in respect of amounts paid under a letter of credit or similar instrument. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Initial Maturity Date” means December 5, 2016.

“Indemnitee” has the meaning set forth in Section 9.03(b).

“Index Debt” means senior, unsecured, long-term indebtedness for borrowed money of the Borrower that is not guaranteed by any other Person or subject to any other credit enhancement.

“Information Memorandum” means the Confidential Information Memorandum dated November 2011 relating to the Borrower and the Transactions.

“Interest Election Request” means a request by the Borrower to convert or continue a Borrowing in accordance with Section 2.08.

“Interest Payment Date” means (a) with respect to any ABR Loan (other than a Swingline Loan), the last day of each March, June, September and December, (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months' duration each day prior to the last day of such Interest Period that occurs at intervals of three months' duration after the first day of such Interest Period and (c) with respect to any Swingline Loan, the day that such Loan is required to be repaid.

“Interest Period” means with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months thereafter (or, with the consent of each Lender, such other periods for which LIBO Rates are available at the time the Borrowing Request for such Eurodollar Borrowing is made), as the Borrower may elect; provided, that (i) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (ii) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made, and thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Investment Grade Rating” means a rating of senior long-term unsecured debt

securities of the Borrower without any third-party credit enhancement of (i) BBB- or higher by S&P or (ii) Baa3 or higher by Moody's.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance of such Letter of Credit).

“Issuing Bank” means each of JPMorgan Chase Bank, N.A., Citibank, N.A., BNP Paribas, Mizuho Corporate Bank, Ltd. and The Royal Bank of Scotland plc, each in its capacity as an issuer of Letters of Credit hereunder, and each successor in such capacity as provided in Section 2.06(i). Each Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Bank, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

“Joint Lead Arrangers” means, collectively, J.P.Morgan Securities LLC, Citigroup Global Markets Inc., BNP Paribas Securities Corp., Mizuho Corporate Bank, Ltd., and RBS Securities Inc., each in its capacity as a Joint Lead Arranger and Joint Bookrunner hereunder.

“LC Disbursement” means a payment made by an Issuing Bank pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time plus (b) the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of the Borrower at such time. The LC Exposure of any Lender at any time shall be its Applicable Percentage of the total LC Exposure at such time. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.05. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“LC Sublimit” means \$2,500,000,000.

“Lenders” means the Persons listed on Schedule 2.01 and any other Person that shall have become a party hereto pursuant to Section 2.02 or pursuant to an Assignment and Assumption, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term “Lenders” includes the Swingline Lender.

“Letter of Credit” means any letter of credit issued pursuant to this Agreement, including the letters of credit outstanding under the Existing Revolving Credit Agreement to the extent provided in Section 2.06(k).

“LIBO Rate” means, with respect to any Eurodollar Borrowing for any Interest Period, the rate appearing on Reuters BBA Libor Rates Page 3750 (or on any successor or substitute

page of such Service, or any successor to or substitute for such Service, providing rate quotations comparable to those currently provided on such page of such Service, as determined by the Administrative Agent from time to time for purposes of providing quotations of interest rates applicable to dollar deposits in the London interbank market) at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period, as the rate for dollar deposits with a maturity comparable to such Interest Period. In the event that such rate is not available at such time for any reason, then the “LIBO Rate” with respect to such Eurodollar Borrowing for such Interest Period shall be the rate at which dollar deposits of \$5,000,000 and for a maturity comparable to such Interest Period are offered by the principal London office of the Administrative Agent in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period.

“Lien” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

“Loan Documents” means (a) this Agreement, (b) the Notes, if any, (c) the one or more fee letters entered into in connection with or anticipation of this Agreement and (d) any amendment, supplement or other document modifying the foregoing.

“Loans” means the loans made by the Lenders to the Borrower pursuant to this Agreement. Unless the context otherwise requires, the term “Loans” includes the Swingline Loans.

“Material Adverse Effect” means a material adverse effect on (a) the business, assets, operations or condition, financial or otherwise, of the Borrower and the Subsidiaries taken as a whole, or (b) the ability of the Borrower to perform any of its obligations under this Agreement.

“Material Indebtedness” means Indebtedness (other than the Loans, Letters of Credit and Indebtedness that constitutes Project Financing) or Derivatives Obligations of any one or more of the Borrower and its Subsidiaries in an aggregate principal amount exceeding \$100,000,000. For purposes of determining Material Indebtedness, the “principal amount” of the obligations of the Borrower or any Subsidiary in respect of any Hedging Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that the Borrower or such Subsidiary would be required to pay if such Hedging Agreement were terminated at such time.

“Material Subsidiary” means, at any time, each Subsidiary other than (a) any Project Financing Subsidiary and (b) any Subsidiary (i) the Net Tangible Assets of which do not represent 5% or more of Consolidated Net Tangible Assets for the period of four fiscal quarters most recently ended and (ii) that does not own Equity Interests of any Material Subsidiary.

“Maturity Date” means the Initial Maturity Date, as such date may be extended pursuant to Section 2.21 to the corresponding day in each year thereafter; provided that with respect

to any Non-Consenting Lender, the Maturity Date shall not be so extended.

“Moody's” means Moody's Investors Service, Inc.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

“Net Tangible Assets” means, on any date, with respect to any Subsidiary, the aggregate amount of assets (less applicable accumulated depreciation, depletion and amortization and other reserves and other properly deductible items) of such Subsidiary, minus (a) all current liabilities of such Subsidiary (excluding current maturities of long-term debt) and (b) all goodwill of such Subsidiary, all determined in accordance with GAAP.

“Net Worth” of the Borrower means at any time, without duplication, the sum of its capital stock, additional paid in capital, retained earnings, and any other account which, in accordance with GAAP, constitutes stockholders' equity, less treasury stock; provided that “Net Worth” shall not include the liquidation value of any Preferred Equity Interests.

“New Funds Amount” has the meaning set forth in Section 2.02(d)(i).

“Non-Consenting Lenders” has the meaning set forth in Section 2.21(b).

“Notice of Commitment Increase” has the meaning set forth in Section 2.02(b).

“Note” has the meaning set forth in Section 2.10(e).

“Other Taxes” means any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement.

“Participant” has the meaning set forth in Section 9.04(c)(i).

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Plan” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Preferred Equity Interest” means any Equity Interest that, by its terms (or the terms of any security into which it is convertible or for which it is exchangeable) or upon the happening



of any event or circumstance either (a) matures, (b) is redeemable (whether mandatorily or otherwise) at the option of the holder thereof for any consideration other than shares of common stock or (c) is convertible or exchangeable for Indebtedness or other Preferred Equity Interests, in each case, in whole or in part, on or prior to the date that is one year after the earlier of (i) the Maturity Date or (ii) the date on which the Loans have been paid in full, the Commitments have terminated, all Letters of Credit have expired or terminated and all LC Disbursements have been reimbursed.

“Pricing Schedule” means the Pricing Schedule attached hereto as Schedule 1.01.

“Prime Rate” means the rate of interest per annum publicly announced from time to time by JPMorgan Chase Bank, N.A. as its prime rate in effect at its principal office in New York City; each change in the Prime Rate shall be effective from and including the date such change is publicly announced as being effective.

“Project Financing” means any Indebtedness that is incurred to finance or refinance the acquisition, improvement, installation, design, engineering, construction, development, completion, maintenance, operation, securitization or monetization, in respect of all or any portion of any project, any group of projects, or any asset related thereto, and any guaranty with respect thereto, other than such portion of such Indebtedness or guaranty (contingent or otherwise) that is at any time recourse to or obligates the Borrower or any Subsidiary (other than a Project Financing Subsidiary) in any way, or subjects any property or asset of the Borrower or any Subsidiary (other than a Project Financing Subsidiary), directly or indirectly, contingently or otherwise, to the satisfaction thereof (excluding any obligation to make a capital contribution to a Project Financing Subsidiary to the extent not otherwise prohibited hereunder).

“Project Financing Subsidiary” means any Subsidiary of the Borrower whose principal purpose is to incur Project Financing and own and operate its permitted assets or to become a direct or indirect partner, member or other equity participant or owner in a Person so created, and substantially all the assets of such Subsidiary are limited to (a) those assets for which the acquisition, improvement, installation, design, engineering, construction, development, completion, maintenance, operation, securitization or monetization is being financed in whole or in part by one or more Project Financings, or (b) the equity in, Indebtedness or other obligations of, one or more other such Subsidiaries or Persons, or (c) proceeds of a substantially concurrent offering of capital stock of the Borrower, or assets acquired with such proceeds, or (d) capital contributions from minority shareholders other than the Borrower or a Subsidiary, or assets acquired with such capital contributions.

“Property” means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible, including, without limitation, cash, securities, accounts and contract rights.

“Qualified Issuer” means any commercial bank (a) which has capital and surplus in excess of \$250,000,000 and (b) the outstanding long-term debt securities of which are rated at least A by Standard & Poor's Ratings Services or at least A2 by Moody's Investors Service, Inc., or carry an equivalent rating by a nationally recognized rating agency if both of the two named rating agencies

cease publishing ratings of investments.

“Reducing Percentage Lender” has the meaning set forth in Section 2.02(d)(ii).

“Reduction Amount” has the meaning set forth in Section 2.02(d)(iii).

“Register” has the meaning set forth in Section 9.04(b)(iv).

“Related Parties” means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's Affiliates.

“Required Lenders” means, at any time, Lenders having Credit Exposures and unused Commitments representing more than 50% of the sum of the total Credit Exposures and unused Commitments at such time; provided that, for the purpose of determining the Required Lenders needed for any waiver, amendment, modification or consent, any Lender that is the Borrower, or any Affiliate of the Borrower shall be disregarded.

“Responsible Officer” means the Chief Executive Officer, President, Chief Financial Officer, General Counsel, or any Executive Vice President of the Borrower.

“Revolving Effective Date” means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02).

“S&P” means Standard & Poor's Rating Services, a division of McGraw-Hill Companies, Inc.

“Securitization Transaction” means any transaction in which the Borrower or a Subsidiary sells or otherwise transfers any accounts receivable (whether now existing or arising in the future) and any assets related thereto including, without limitation, all books and records relating to such accounts receivable, all collateral securing such accounts receivable, all contracts and all Guarantees or other obligations in respect of such accounts receivable, rights with respect to returned goods the sale or lease of which gave rise to such accounts receivable, insurance thereon, proceeds of all of the foregoing and lockboxes and bank accounts into which collections thereon are deposited, and other assets which are customarily transferred or in respect of which security interests are customarily granted in connection with asset securitization transactions involving accounts receivable (a) to one or more third party purchasers or (b) to a special purpose entity that borrows against such accounts receivable (or undivided interests therein) and related assets or issues securities payable from (or representing interests in) payments in respect of such accounts receivable and related assets or sells such accounts receivable (or undivided interests therein) and related assets to one or more third party purchasers, whether or not amounts received in connection with the sale or other transfer of such accounts receivable and related assets to an entity referred to in clause (a) or (b) above would under GAAP be accounted for as liabilities on a consolidated balance sheet of the Borrower. The amount of any Securitization Transaction shall be deemed at any time to be the aggregate outstanding principal or stated amount of the borrowings, securities or residual obligations under a sale, in each case referred to in clause (b) of the preceding sentence, or if there shall be no

such principal or stated amount, the uncollected amount of the accounts receivable transferred to such third party purchaser(s) pursuant to such Securitization Transaction net of any such accounts receivable that have been written off as uncollectible.

“Spot Rate” for a currency means the rate determined by the applicable Issuing Bank or the Administrative Agent, as appropriate, to be the rate quoted by such Issuing Bank or Administrative Agent, as applicable, acting in such capacity as the spot rate for the purchase by such Issuing Bank or Administrative Agent, as applicable, of such currency with dollars through its principal foreign exchange trading office at approximately 11:00 a.m., New York City time, two Business Days prior to the date as of which the foreign exchange computation is made; provided that the applicable Issuing Bank or the Administrative Agent, as appropriate, may obtain such spot rate from another financial institution designated by such Issuing Bank or Administrative Agent, as applicable, if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; and provided further that the applicable Issuing Bank may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in an Approved Currency other than dollars.

“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject, with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

“subsidiary” means, with respect to any Person (the “parent”) at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

“Subsidiary” means any subsidiary of the Borrower.

“Swingline Exposure” means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Lender at any time shall be its Applicable Percentage of the total Swingline Exposure at such time.

“Swingline Lender” means JPMorgan Chase Bank, N.A., in its capacity as lender

of Swingline Loans hereunder.

“Swingline Loan” means a Loan made pursuant to Section 2.03.

“Swingline Sublimit” means \$150,000,000.

“Syndication Agent” means Citibank, N.A., in its capacity as syndication agent for the Lenders hereunder.

“Taxes” means any and all present or future taxes, levies, imposts, duties, deductions, charges or withholdings imposed by any Governmental Authority.

“Total Capitalization” means, at the date of any determination thereof, the sum of (a) Consolidated Net Debt plus (b) Consolidated Net Worth of the Borrower plus (c) the involuntary liquidation value of any Preferred Equity Interests.

“Transactions” means the execution, delivery and performance by the Borrower of the Loan Documents, the borrowing of Loans, and the issuance of Letters of Credit hereunder.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Alternate Base Rate.

“Unsecured Acquisition Debt” means unsecured Indebtedness of a Person that exists at the time such Person becomes a Subsidiary of the Borrower as a result of an acquisition, merger or other combination, or at the time such Person is merged or consolidated with or into, or otherwise acquired by, a Subsidiary of the Borrower, or unsecured Indebtedness that is assumed in connection with the acquisition of Property; provided that, in each case, such unsecured Indebtedness was not incurred or granted in contemplation of such acquisition, merger, or other combination and provided further that in no event shall such unsecured Indebtedness exceed the value of the Person or Property so acquired.

“Withdrawal Liability” means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

Section 1.02 Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Type (*e.g.*, a “Eurodollar Loan”). Borrowings also may be classified and referred to by Type (*e.g.*, a “Eurodollar Borrowing”).

Section 1.03 Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument

or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

Section 1.04 Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Financial Accounting Standards Board Accounting Standards Codification 825 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any Subsidiary at "fair value", as defined therein.

Section 1.05 Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Equivalent of the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

## ARTICLE II

### THE CREDITS

Section 2.01 Commitments. Subject to the terms and conditions set forth herein, each Lender agrees to make Loans to the Borrower from time to time during the Availability Period in an aggregate principal amount that will not result in (a) such Lender's Credit Exposure exceeding such Lender's Commitment or (b) the sum of the total Credit Exposures exceeding the total Commitments. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Loans.

Section 2.02 Commitment Increase.

(a) Subject to the terms and conditions set forth herein, the Borrower shall have the right, without the consent of the Lenders, to cause, but no more than five times, an increase in the Commitments of the Lenders (a “Commitment Increase”) by adding to this Agreement one or more additional lenders that are not already Lenders hereunder and that are reasonably satisfactory to the Administrative Agent and each Issuing Bank (not to be unreasonably withheld, delayed or conditioned) (each, a “CI Lender”) or by allowing one or more existing Lenders to increase their respective Commitments; provided that (i) no Event of Default shall have occurred and be continuing as of the relevant Commitment Increase Effective Date, (ii) no such Commitment Increase shall be less than \$50,000,000, (iii) the aggregate amount of all such Commitment Increases shall not exceed \$1,500,000,000, (iv) no Lender's Commitment shall be increased without such Lender's prior written consent (which consent may be given or withheld in such Lender's sole and absolute discretion) and (v) if, on the effective date of such increase, any Loans have been funded, then the Borrower shall be obligated to pay any breakage fees or costs that are payable pursuant to Section 2.16 in connection with the reallocation of such outstanding Loans.

(b) The Borrower shall provide the Administrative Agent with written notice (a “Notice of Commitment Increase”) in the form of Exhibit B attached hereto of its intention to increase the Commitments pursuant to this Section 2.02. Each such Notice of Commitment Increase shall specify (i) the proposed effective date of such Commitment Increase (each such date, a “Commitment Increase Effective Date”), which date shall be no earlier than five (5) Business Days after receipt by the Administrative Agent of such Notice of Commitment Increase, (ii) the amount of the requested Commitment Increase (provided that after giving effect to such requested Commitment Increase, the aggregate amount of all Commitment Increases does not exceed the amount set forth in subsection (a)(iii) above), (iii) the identity of each CI Lender or Lender that has agreed in writing to increase its Commitment hereunder, and (iv) the amount of the respective Commitments of the then existing Lenders and the CI Lenders from and after the Commitment Increase Effective Date (as defined below).

(c) On each Commitment Increase Effective Date, to the extent that there are Loans outstanding as of such date, (i) each CI Lender shall, by wire transfer of immediately available funds, deliver to the Administrative Agent such CI Lender's New Funds Amount, which amount, for each such CI Lender, shall constitute Loans made by such CI Lender to the Borrower pursuant to this Agreement on such Commitment Increase Effective Date, (ii) each existing Lender that has agreed to increase its Commitment shall, by wire transfer of immediately available funds, deliver to the Administrative Agent such Lender's New Funds Amount, which amount, for each such Lender, shall constitute Loans made by such Lender to the Borrower pursuant to this Agreement on such Commitment Increase Effective Date, (iii) the Administrative Agent shall, by wire transfer of immediately available funds, pay to each then Reducing Percentage Lender its Reduction Amount, which amount, for each such Reducing Percentage Lender, shall constitute a prepayment by the Borrower pursuant to Section 2.11, ratably in accordance with the respective principal amounts thereof, of the principal amounts of all then outstanding Loans of such Reducing Percentage Lender, and (iv) the Borrower shall be responsible to pay to each Lender any breakage fees or costs that are payable pursuant to Section 2.16 in connection with the reallocation of any outstanding Loans;

provided that, notwithstanding the foregoing, no Letter of Credit may expire beyond the close of business on the date that is five Business Days prior to the earliest Maturity Date applicable to any Lender, unless the amount of such Letter of Credit on the date of issuance, renewal or extension, as applicable, together with the outstanding LC Exposure at such time, is less than or equal to the total Commitments of all Lenders having a later Maturity Date.

(d) For purposes of this Section 2.02 and Exhibit B, the following defined terms shall have the following meanings: (i) "New Funds Amount" means the amount equal to the product of a Lender's increased Commitment or a CI Lender's Commitment (as applicable) represented as a percentage of the aggregate Commitments after giving effect to any Commitment Increase, times the aggregate principal amount of the outstanding Loans immediately prior to giving effect to such Commitment Increase, if any, as of any Commitment Increase Effective Date (without regard to any increase in the aggregate principal amount of Loans as a result of borrowings made after giving effect to such Commitment Increase on such Commitment Increase Effective Date); (ii) "Reducing Percentage Lender" means each then existing Lender immediately prior to giving effect to any Commitment Increase that does not increase its respective Commitment as a result of such Commitment Increase and whose relative percentage of the Commitments shall be reduced after giving effect to such Commitment Increase; and (iii) "Reduction Amount" means the amount by which a Reducing Percentage Lender's outstanding Loans decrease as of any Commitment Increase Effective Date (without regard to the effect of any borrowings made on such Commitment Increase Effective Date after giving effect to the Commitment Increase occurring on such Commitment Increase Effective Date).

(e) Each Commitment Increase shall become effective on its Commitment Increase Effective Date and upon such effectiveness (i) the Administrative Agent shall record in the register each then CI Lender's information as provided in the applicable Notice of Commitment Increase and pursuant to an Administrative Questionnaire that shall be executed and delivered by each CI Lender to the Administrative Agent on or before such Commitment Increase Effective Date, (ii) Schedule 2.01 hereof shall be amended and restated to set forth all Lenders (including any CI Lenders) that will be Lenders hereunder after giving effect to such Commitment Increase (which amended and restated Schedule 2.01 shall be set forth in Annex I to the applicable Notice of Commitment Increase) and the Administrative Agent shall distribute to each Lender (including each CI Lender) a copy of such amended and restated Schedule 2.01, and (iii) each CI Lender identified on the Notice of Commitment Increase for such Commitment Increase shall be a "Lender" for all purposes under this Agreement.

(f) Each Commitment Increase shall be deemed to constitute a representation and warranty by the Borrower on the applicable Commitment Increase Effective Date that (i) the representations and warranties of the Borrower set forth in this Agreement and in the other Loan Documents are true and correct on and as of such Commitment Increase Effective Date, except to the extent any such representations and warranties are expressly limited to an earlier date, in which case, on and as of such Commitment Increase Effective Date, such representations and warranties shall continue to be true and correct as of such specified earlier date, and (ii) at the time of and immediately after giving effect to such Commitment Increase, no Default shall have occurred and be continuing.

Section 2.03 Swingline Loans.

(a) General. Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make Swingline Loans in dollars to the Borrower from time to time during the Availability Period; provided that the aggregate Swingline Exposure (after giving effect to any requested Swingline Loan) shall not exceed the least of (i) the total Commitments, (ii) the excess of the total Commitments over the aggregate amount of the Loans then outstanding, (iii) the Swingline Sublimit or (iv) the amount permitted by Section 2.22(a)(iv)(B); and provided, further, that (after giving effect to any requested Swingline Loan) the total Credit Exposures shall not exceed the total Commitments; and provided, further, that the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Swingline Loans.

(b) Request; Timing; Making of Swingline Loan. To request a Swingline Loan, the Borrower shall notify the Administrative Agent of such request by telephone (confirmed by facsimile), not later than 3:00 p.m., New York City time, on the day of a proposed Swingline Loan. Each such notice shall be irrevocable and shall specify the requested date (which shall be a Business Day) and amount of the requested Swingline Loan. The Administrative Agent will promptly advise the Swingline Lender of any such notice received from the Borrower. The Swingline Lender shall make each Swingline Loan available to the Borrower by means of a credit to the general deposit account of the Borrower with the Swingline Lender (or, in the case of a Swingline Loan made to finance the reimbursement of an LC Disbursement as provided in Section 2.06(e), by remittance to the applicable Issuing Bank) by 4:00 p.m., New York City time, on the requested date of such Swingline Loan. Except as specified in clause (c) below, all payments by the Borrower in respect of a Swingline Loan shall be made to the Swingline Lender.

(c) Participation. The Swingline Lender may by written notice given to the Administrative Agent not later than 10:00 a.m., New York City time, on any Business Day require the Lenders to acquire participations on such Business Day in all or a portion of the Swingline Loans outstanding. Such notice shall specify the aggregate amount of Swingline Loans in which Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each Lender, specifying in such notice such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Lender's Applicable Percentage of such Swingline Loan or Loans. Each Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 shall apply, *mutatis mutandis*, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Lenders. The Administrative



Agent shall notify the Borrower of any participations in any Swingline Loan acquired pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the Borrower (or other party on behalf of the Borrower) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Lenders that shall have made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear; provided that any such payment so remitted shall be repaid to the Swingline Lender or to the Administrative Agent, as applicable, if and to the extent such payment is required to be refunded to the Borrower for any reason. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve the Borrower of any default in the payment thereof.

Section 2.04 Loans and Borrowings.

(a) Each Loan shall be made in dollars as part of a Borrowing consisting of Loans made by the Lenders ratably in accordance with their respective Commitments (or, with respect to the Swingline Loans, made by the Swingline Lender). The failure of any Lender to make any Loan required to be made by it shall not relieve any other Lender of its obligations hereunder; provided that the Commitments of the Lenders are several and no Lender shall be responsible for any other Lender's failure to make Loans as required.

(b) Subject to Section 2.14, each Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as the Borrower may request in accordance herewith. Each Swingline Loan shall be an ABR Loan. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of the Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000. At the time that each ABR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of \$1,000,000 and not less than \$1,000,000; provided that an ABR Borrowing may be in an aggregate amount that is equal to the entire unused balance of the total Commitments or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e). Each Swingline Loan shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000. Borrowings of more than one Type may be outstanding at the same time; provided that there shall not at any time be more than a total of ten Eurodollar Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, the Borrower shall not be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

Section 2.05 Requests for Borrowings. To request a Borrowing (other than a Borrowing for a Swingline Loan), the Borrower shall notify the Administrative Agent of such request by telephone (a) in the case of a Eurodollar Borrowing, not later than 12:00 p.m., New York City time, three Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, not later than 12:00 p.m., New York City time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Borrowing Request in substantially the form of Exhibit C. Each such telephonic and written Borrowing Request shall specify the following information in compliance with Section 2.04:

- (i) the aggregate amount of the requested Borrowing;
- (ii) the date of such Borrowing, which shall be a Business Day;
- (iii) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing;
- (iv) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period"; and
- (v) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.07(a).

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Borrowing, then the Borrower shall be deemed to have selected an Interest Period of one month's duration. Promptly following receipt of a telephonic or written Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

Section 2.06 Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, the Borrower may request the issuance of standby Letters of Credit, denominated in an Approved Currency, in a form reasonably acceptable to the Administrative Agent and the relevant Issuing Bank, at any time and from time to time during the Availability Period; provided that the aggregate LC Exposure (after giving effect to the requested issuance, amendment or extension of a Letter of Credit) shall not exceed the least of (i) the total Commitments, (ii) the excess of the total Commitments over the aggregate amount of the Loans (including Swingline Loans) then outstanding, (iii) the LC Sublimit or (iv) the amount permitted by Section 2.22(a)(iv)(A); and provided, further, that, subject to limitations set forth above, no Issuing Bank shall be obligated to front Letters of Credit to the extent that the LC Exposure associated with Letters of Credit issued by it would exceed the least of (A) an amount equal to one-fifth of the total LC Sublimit and (B) \$500,000,000; and provided, further, that (after giving effect to the requested issuance, amendment or extension of a Letter of Credit) the total Credit Exposures shall not exceed the total Commitments. The Letters of Credit

denominated in an Approved Currency (other than dollars) shall not exceed \$200,000,000, in the aggregate at any one time outstanding; if giving effect to a request for a Letter of Credit to be denominated in an Approved Currency (other than dollars) would cause this limitation to be exceeded, then such Letter of Credit may only be dollar-denominated. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with, the relevant Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control.

(b) Notice of Issuance, Amendment, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment or extension of an outstanding Letter of Credit), the Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the relevant Issuing Bank) to the relevant Issuing Bank and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended or extended, and specifying the date of issuance, amendment or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit (which must be a fixed amount), which Approved Currency shall be the denomination of such Letter of Credit (it being understood that if no denomination is specified, the Letter of Credit shall be dollar-denominated), the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend or extend such Letter of Credit. If requested by the relevant Issuing Bank, the Borrower also shall submit a letter of credit application on its standard form in connection with any request for a Letter of Credit; provided that no provision in such application shall be deemed effective to the extent such provision contains, provides for, or requires, representations, warranties, covenants, security interests, Liens, indemnities, reimbursements of costs or expenses, events of default, remedies, or standards of care or to the extent such provision conflicts or is inconsistent with this Agreement. Following receipt of a notice requesting the issuance of a Letter of Credit (or the amendment or extension of an outstanding Letter of Credit) in accordance with this Section, the Administrative Agent shall advise each Lender of the details thereof. A Letter of Credit shall be issued, amended or extended only if (and upon issuance, amendment or extension of each Letter of Credit the Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment or extension, the limits and sublimits specified in Section 2.06(a) are satisfied. Notwithstanding the foregoing or anything else to the contrary contained herein, no Issuing Bank shall be under any obligation to issue any Letter of Credit if: (A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank (x) shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular, (y) shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Revolving Effective Date, or (z) shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Revolving Effective Date and which such Issuing Bank in good faith deems material to it; provided that, in the cases of

clauses (y) and (z), such Issuing Bank shall have provided written notice to the Borrower of its refusal to issue any Letter of Credit and the specific reasons therefor and the Borrower shall not have compensated such Issuing Bank for the imposition of such restriction, reserve or capital requirement or reimbursed such Issuing Bank for such loss, cost or expense, as applicable; (B) the issuance of such Letter of Credit would violate one or more polices of such Issuing Bank (as consistently applied); or (C) such Letter of Credit is to be denominated in a currency other than an Approved Currency.

(c) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the date that is five Business Days prior to the Maturity Date; provided that, notwithstanding the foregoing, no Letter of Credit may expire beyond the close of business on the date that is five Business Days prior to the earliest Maturity Date applicable to any Lender, unless the amount of such Letter of Credit on the date of issuance, renewal or extension, as applicable, together with the aggregate of the outstanding LC Exposure and Loans at such time, is less than or equal to the total Commitments of all Lenders having a later Maturity Date.

(d) Participation. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the Issuing Bank that issues such Letter of Credit or the Lenders, such Issuing Bank hereby grants to each Lender, and each Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Lender's Applicable Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the relevant Issuing Bank, such Lender's Applicable Percentage of each LC Disbursement made by such Issuing Bank and not reimbursed by the Borrower on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the Borrower for any reason. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit in accordance with this Agreement or the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Reimbursement. If an Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit denominated in an Approved Currency, the Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent in such Approved Currency (except as specified below) an amount equal to such LC Disbursement not later than 2:00 p.m., New York City time, on the date that such LC Disbursement is made, if the Borrower shall have received notice of such LC Disbursement prior to 11:00 a.m., New York City time, on such date, or, if such notice has not been received by the Borrower prior to such time on such date, then not later than 2:00 p.m., New York City time, on (i) the Business Day that the Borrower receives such notice, if such notice is received prior to 11:00 a.m., New York City time, on the day of receipt, or (ii) the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time on the day of receipt; provided that, if such LC Disbursement is not less than \$1,000,000, the Borrower may, subject to the conditions to borrowing set forth herein,

request in accordance with Section 2.03 or Section 2.05 that such payment be financed with an ABR Borrowing (consisting of a Swingline Loan or an ABR Loan, as appropriate) in an amount equal to the Dollar Equivalent of the amount of the LC Disbursement, as determined by the applicable Issuing Bank promptly following determination thereof and, to the extent so financed, the Borrower's obligation to make such payment shall be discharged and replaced by the resulting Swingline Loan or ABR Loan, as appropriate. Notwithstanding the foregoing, any Issuing Bank may, at its option, specify in the applicable notice of LC Disbursement that such Issuing Bank will require reimbursements in dollars; provided that the applicable Issuing Bank shall notify the Borrower of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. If the Borrower fails to make such payment when due, the Administrative Agent shall notify each Lender of the applicable LC Disbursement (expressed in dollars in the amount of the Dollar Equivalent of such LC Disbursement), the payment then due from the Borrower in respect thereof and such Lender's Applicable Percentage thereof. Promptly following receipt of such notice, each Lender shall pay in dollars to the Administrative Agent its Applicable Percentage of the payment then due from the Borrower, in the same manner as provided in Section 2.07 with respect to Loans made by such Lender (and Section 2.07 shall apply, *mutatis mutandis*, to the payment obligations of the Lenders), and the Administrative Agent shall promptly pay in dollars to the relevant Issuing Bank the amounts so received by it from the Lenders. Promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the relevant Issuing Bank or, to the extent that Lenders have made payments pursuant to this paragraph to reimburse such Issuing Bank, then to such Lenders and such Issuing Bank as its interests may appear. Any payment made by a Lender pursuant to this paragraph to reimburse an Issuing Bank for any LC Disbursement (other than the funding of a Swingline Loan or an ABR Loan as contemplated above) shall not constitute a Loan and shall not relieve the Borrower of its obligation to reimburse such LC Disbursement.

(f) Obligations Absolute. The Borrower's obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by any Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, (iv) any adverse change in the relevant exchange rates or in the availability of the relevant Approved Currency to the Borrower or in the relevant currency markets generally; or (v) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the Borrower's obligations hereunder. Neither the Administrative Agent, the Lenders nor the Issuing Banks, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error

in interpretation of technical terms or any consequence arising from causes beyond the control of any Issuing Bank; provided that the foregoing shall not be construed to excuse the relevant Issuing Bank from liability to the Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by applicable law) suffered by the Borrower that are caused by such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of an Issuing Bank (as finally determined by a court of competent jurisdiction), such Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, an Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. The relevant Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. The relevant Issuing Bank shall promptly notify the Administrative Agent and the Borrower by telephone (confirmed by telecopy) of such demand for payment and whether it has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse such Issuing Bank and the Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If an Issuing Bank shall make any LC Disbursement, then, unless the Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the Borrower reimburses such LC Disbursement, at the rate per annum then applicable to ABR Loans; provided that, if the Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.13(c) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the relevant Issuing Bank, except that interest accrued on and after the date of payment by a Lender pursuant to paragraph (e) of this Section to reimburse such Issuing Bank shall be for the account of such Lender to the extent of such payment.

(i) Replacement of an Issuing Bank. An Issuing Bank may be replaced at any time by written agreement among the Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Lenders of any such replacement of an Issuing Bank. At the time any such replacement shall become effective, the Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12(c). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous Issuing Bank, or to such

successor and all previous Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(j) Cash Collateralization. If (i) any Event of Default shall occur and be continuing, then on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Lenders with LC Exposures representing greater than 50% of the total LC Exposure) demanding the deposit of cash collateral pursuant to this paragraph or (ii) the Borrower is required to pay to the Administrative Agent the excess attributable to an LC Exposure pursuant to Section 2.21(b), then the Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Lenders, an amount in cash equal to the LC Exposure as of such date plus any accrued and unpaid interest and fees thereon; provided that the obligation to deposit such cash collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the Borrower described in clause (h) or (i) of Article VII. As collateral security for the payment and performance of the obligations of the Borrower under this Agreement, the Borrower hereby grants to the Administrative Agent, for the benefit of each Issuing Bank and the Lenders, a first priority security interest in such account and all amounts and other property from time to time deposited or held in such account, and all proceeds thereof, and any substitutions and replacements therefor. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse ratably the Issuing Banks for LC Disbursements for which they have not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Lenders with LC Exposure representing greater than 50% of the total LC Exposure), be applied to satisfy other obligations of the Borrower under this Agreement. If the Borrower is required to provide an amount of cash collateral hereunder as a result of the occurrence of an Event of Default, and the Borrower is not otherwise required to pay to the Administrative Agent the excess attributable to an LC Exposure pursuant to Section 2.21(b), such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three Business Days after all Events of Default have been cured or waived.

(k) Outstanding Letters of Credit. On the Revolving Effective Date, each of the letters of credit listed on Schedule 2.06 shall be deemed to have been issued as Letters of Credit under this Agreement by the Issuing Bank specified on Schedule 2.06, without payment of any fees otherwise due upon the issuance of a Letter of Credit, and such Issuing Bank shall be deemed, without further action by any party hereto, to have sold to each Lender, and each Lender shall be deemed, without further action by any party hereto, to have purchased from such Issuing Bank, a

participation, to the extent of such Lender's Applicable Percentage, in such Letter of Credit.

Notwithstanding the foregoing, it is acknowledged that under the Existing Revolving Credit Agreement, Bank of America, N.A. (for purposes of this clause (k), "BANA"), in its capacity as a letter of credit issuer under the Existing Revolving Credit Agreement, issued and, as of the Revolving Effective Date, has outstanding a letter of credit (for purposes of this clause (k), the "BANA Letter of Credit") under the Existing Revolving Credit Agreement. BANA is not a party to this Agreement in any capacity and the BANA Letter of Credit shall not be deemed to have been issued as a Letter of Credit under this Agreement. Each Lender party hereto authorizes the Administrative Agent to enter into, on behalf of each Lender, an agreement with BANA pursuant to which BANA agrees that such BANA Letter of Credit is not to be deemed a Letter of Credit for any purpose under this Agreement, in the form that the Administrative Agent deems appropriate.

(l) Exchange Rates; Currency Equivalents. The applicable Issuing Bank or the Administrative Agent shall determine the Spot Rates as of any date of determination to be used for calculating Dollar Equivalent amounts with respect to the issuance, amendment, extension or increase of any Letter of Credit and the LC Exposure denominated in Approved Currencies other than dollars. Such Spot Rates shall become effective as of such date of determination and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next date of determination. The applicable amount of any currency for purposes of any calculation involving the Letters of Credit shall be such Dollar Equivalent amount as so determined by the applicable Issuing Bank or the Administrative Agent, as appropriate.

Section 2.07 Funding of Borrowings.

(a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 2:00 p.m., New York City time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders; provided that Swingline Loans shall be made as provided in Section 2.03. The Administrative Agent will make such Loans available to the Borrower by promptly crediting the amounts so received, in like funds, to an account of the Borrower designated by the Borrower in the applicable Borrowing Request; provided that ABR Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.06(e) shall be remitted by the Administrative Agent to the relevant Issuing Bank.

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed time of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to



the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the interest rate applicable to such Borrowing. If such Lender pays such amount to the Administrative Agent, then such amount shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

Section 2.08 Interest Elections.

(a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section. The Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. This Section 2.08 shall not apply to Swingline Borrowings, which may not be converted or continued.

(b) To make an election pursuant to this Section, the Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.05 if the Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information in compliance with Section 2.04:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to

be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period".

If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If the Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the Borrower, then, so long as an Event of Default is continuing (i) no outstanding Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

Section 2.09 Termination and Reduction of Commitments. (a) Unless previously terminated, the Commitments shall terminate on the Maturity Date.

(b) The Borrower may at any time terminate, or from time to time reduce, the Commitments; provided that (i) each reduction of the Commitments shall be in an amount that is an integral multiple of \$1,000,000 and not less than \$5,000,000 and (ii) the Borrower shall not terminate or reduce the Commitments if, after giving effect to any concurrent prepayment of the Loans in accordance with Section 2.11, the sum of the Credit Exposures would exceed the total Commitments.

(c) The Borrower shall notify the Administrative Agent of any election to terminate or reduce the Commitments under paragraph (b) of this Section at least three Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Lenders of the contents thereof. Each notice delivered by the Borrower pursuant to this Section shall be irrevocable; provided that a notice of termination of the Commitments delivered by the Borrower may state that such notice is conditioned upon the occurrence of identified events, in which case such notice may be revoked by the Borrower (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Commitments shall be permanent and may not be reinstated except pursuant to Section 2.02. Each reduction of the Commitments shall be made ratably among the Lenders in accordance with their respective Commitments.

Section 2.10 Repayment of Loans; Evidence of Debt. (a) The Borrower hereby

unconditionally promises to pay (i) to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan on the Maturity Date and (ii) to the Swingline Lender (except to the extent the Lenders have purchased participations in the applicable Swingline Loan, in which case all payments shall be made to the Administrative Agent for the account of such Lenders, as specified in the seventh sentence of Section 2.03(c)) the then unpaid principal amount of each Swingline Loan on the earlier of the Maturity Date and the first date after such Swingline Loan is made that is the 15th or the last day of a calendar month and is at least two Business Days after such Swingline Loan is made; provided that on each date that a Borrowing (not consisting of Swingline Loans) is made, the Borrower shall repay all Swingline Loans then outstanding.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(c) The Administrative Agent shall maintain accounts in which it shall record (i) the amount of each Loan made hereunder, the Type thereof and the Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be *prima facie* evidence of the existence and amounts of the obligations recorded therein; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

(e) Any Lender may request that Loans made by it be evidenced by a promissory note. In such event, the Borrower shall prepare, execute and deliver to such Lender a promissory note, dated the Revolving Effective Date, payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and otherwise substantially in the form of Exhibit D hereto (a "Note"). Thereafter, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

Section 2.11 Prepayment of Loans. (a) The Borrower shall have the right at any time and from time to time to prepay any Borrowing in whole or in part, subject to prior notice in accordance with paragraph (b) of this Section.

(b) The Borrower shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by telephone (confirmed by telecopy) of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Borrowing, not later than 2:00 p.m., New York City time, three Business Days before the date of prepayment, (ii) in the case of prepayment of an ABR Borrowing, not later than 2:00 p.m., New York City time, on the date of

prepayment or (iii) in the case of prepayment of a Swingline Loan, not later than 2:00 p.m., New York City time, on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Commitments as contemplated by Section 2.09, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.09. Promptly following receipt of any such notice relating to a Borrowing, the Administrative Agent shall advise the Lenders of the contents thereof. Each partial prepayment of any ABR Borrowing shall be in a minimum amount of \$1,000,000 with additional increments of \$1,000,000. Each partial prepayment of any Eurodollar Borrowing shall be in a minimum amount of \$5,000,000 with additional increments of \$1,000,000. Each partial prepayment of any Swingline Borrowing shall be in a minimum amount of \$1,000,000 with additional increments of \$1,000,000. Each prepayment of any Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.13 and any break funding costs pursuant to Section 2.16.

Section 2.12 Fees. (a) The Borrower agrees to pay to the Administrative Agent for the account of each Lender a facility fee, which shall accrue at the Applicable Rate on the daily amount of the Commitment of such Lender (whether used or unused) during the period from and including the Revolving Effective Date to but excluding the date on which such Commitment terminates; provided that, if such Lender continues to have any Credit Exposure after its Commitment terminates, then such facility fee shall continue to accrue on the daily amount of such Lender's Credit Exposure from and including the date on which its Commitment terminates to but excluding the date on which such Lender ceases to have any Credit Exposure. Accrued facility fees shall be payable in arrears on the last day of March, June, September and December of each year and on the date on which the Commitments terminate, commencing on the first such date to occur after the date hereof; provided that any facility fees accruing after the date on which the Commitments terminate shall be payable on demand. All facility fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) (Reserved).

(c) The Borrower agrees to pay (i) to the Administrative Agent for the account of each Lender a participation fee with respect to such Lender's participations in Letters of Credit, which shall accrue at the same Applicable Rate used to determine the interest rate applicable to Eurodollar Loans on the average daily amount of such Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Revolving Effective Date to but excluding the later of the date on which such Lender's Commitment terminates and the date on which such Lender ceases to have any LC Exposure, and (ii) to each Issuing Bank a fronting fee, which shall accrue at the rate of 0.20% per annum on the average daily amount of the LC Exposure associated with Letters of Credit issued by such Issuing Bank (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Revolving Effective Date to but excluding the later of the date of termination of the Commitments and the date on which there ceases to be any LC Exposure, as well as such Issuing

Bank's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued through and including the last day of March, June, September and December of each year shall be payable on the third Business Day following such last day, commencing on the first such date to occur after the Revolving Effective Date; provided that all such fees shall be payable on the date on which the Commitments terminate and any such fees accruing after the date on which the Commitments terminate shall be payable on demand. Any other fees payable to any Issuing Bank pursuant to this paragraph shall be payable within 10 days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(d) The Borrower agrees to pay to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Borrower and the Administrative Agent.

(e) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent (or to each Issuing Bank, in the case of fees payable to them) for distribution, in the case of facility fees and participation fees, to the Lenders. Fees payable that have been paid shall not be refundable under any circumstances.

Section 2.13 Interest. (a) The Loans comprising each ABR Borrowing and each Swingline Borrowing shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising each Eurodollar Borrowing shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee or other amount payable by the Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2.00% plus the rate otherwise applicable to such Loan as provided in the preceding paragraphs of this Section or (ii) in the case of any other amount, 2.00% plus the rate applicable to ABR Loans as provided in paragraph (a) of this Section.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and upon termination of the Commitments; provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Loan (other than Swingline Loans) prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate

Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBO Rate or LIBO Rate shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

Borrowing: Section 2.14 Alternate Rate of Interest. If prior to the commencement of any Interest Period for a Eurodollar

(a) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period; or

(b) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or the LIBO Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period;

then the Administrative Agent shall give notice thereof to the Borrower and the Lenders by telephone or telecopy as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (i) any Interest Election Request that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective, and (ii) if any Borrowing Request requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing; provided that if the circumstances giving rise to such notice affect only one Type of Borrowings, then the other Type of Borrowings shall be permitted.

Section 2.15 Increased Costs. (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or any Issuing Bank;

(ii) subject any Lender or any Issuing Bank to any Taxes (other than (A) Indemnified Taxes imposed on or with respect to payments made under this Agreement, or (y) Taxes described in clauses (b) through (f) of the definition of Excluded Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or any Issuing Bank or the London interbank market any other condition affecting this Agreement or Eurodollar Loans made by such Lender or any Letter of Credit or participation therein (excluding for purposes of this subsection (iii) any Taxes);

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or such Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or such Issuing Bank hereunder (whether of principal, interest or otherwise), then the Borrower will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts

as will compensate such Lender or such Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or any Issuing Bank determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or such Issuing Bank's capital or on the capital of such Lender's or such Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Bank's policies and the policies of such Lender's or such Issuing Bank's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company for any such reduction suffered; provided, that such Lender or such Issuing Bank is generally seeking, or intends generally to seek, compensation from similarly situated borrowers under similar credit facilities (to the extent such Lender or Issuing Bank has the right under such similar credit facilities to do so) with respect to such Change in Law regarding capital requirements.

(c) A certificate of a Lender or an Issuing Bank setting forth in reasonable detail the basis for, the calculation of and the amount or amounts necessary to compensate such Lender or such Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay to such Lender or such Issuing Bank, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof. In determining such amount, such Lender agrees to act in good faith and to use reasonable averaging and attribution methods.

(d) Failure or delay on the part of any Lender or any Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or such Issuing Bank's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender or an Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 180 days prior to the date that such Lender or such Issuing Bank, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such Issuing Bank's intention to claim compensation therefor; provided, further, that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 2.16 Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.11(b) and is revoked in accordance therewith), or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period



applicable thereto as a result of a request by the Borrower pursuant to Section 2.19, then, in any such event, the Borrower shall compensate each Lender (other than, in the case of a claim for compensation based on the failure to borrow as specified in clause (c) above, any Lender whose failure to make a Loan required to be made by it hereunder has resulted in such failure to borrow) for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of any Lender setting forth in reasonable detail the basis for and any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

Section 2.17 Taxes. (a) Any and all payments by or on account of any obligation of the Borrower hereunder shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided that if the Borrower shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, Lender or Issuing Bank (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions and (iii) the Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

(b) In addition, the Borrower shall pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) The Borrower shall indemnify the Administrative Agent, each Lender, and each Issuing Bank, within 15 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent, such Lender, or such Issuing Bank, as the case may be, on or with respect to any payment by or on account of any obligation of the Borrower hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate setting forth in reasonable detail the basis for and the amount of such payment or liability delivered to the Borrower by a Lender or an Issuing Bank, or by the Administrative Agent on its own behalf or on behalf of a Lender or an Issuing Bank, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other

Taxes by the Borrower to a Governmental Authority, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) (i) Each Lender shall deliver to the Borrower and to the Administrative Agent, when reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable laws or by the taxing authorities of any jurisdiction that are reasonably requested by the Borrower as will permit the Borrower or the Administrative Agent, as the case may be, to determine (A) whether or not payments made hereunder or under any other Loan Document are subject to Taxes, (B) if applicable, the required rate of withholding or deduction, and (C) such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to such Lender by the Borrower as the case may be, pursuant to this Agreement or otherwise to establish such Lender's status for withholding Tax purposes in the applicable jurisdictions; provided that the delivery of any documentation described in this Section 2.17(e)(i) shall not be required if in the Lender's reasonable judgment the completion, execution or delivery of such documentation would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

A. any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to the Borrower and the Administrative Agent (in such number of copies as shall be reasonably requested by the recipient) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent) executed originals of Internal Revenue Service Form W-9; and

B. each Foreign Lender that is entitled under the Code or any applicable treaty to an exemption from or reduction of withholding Tax with respect to payments hereunder or under any other Loan Document shall deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

(1) executed originals of Internal Revenue Service Form W-8BEN claiming eligibility for benefits of an income Tax treaty to which the United States is a party,

(2) executed originals of Internal Revenue Service Form W-8ECI,

(3) executed originals of Internal Revenue Service Form W-8IMY and all required supporting documentation, or

(4) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of the Borrower or either Parent within the meaning of Section 881(c)(3)(B) of the Code, or (C) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code and (y) executed originals of Internal Revenue Service Form W-8BEN.

(iii) If a payment made to a Lender under any Loan Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent, at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent, such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with its or their obligations under FATCA, to determine that such Lender has or has not complied with such Lender's obligations under FATCA and, as necessary, to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (iii) “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

(iv) Each Lender agrees that if any form of certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) If the Administrative Agent or a Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this Section 2.17, it shall pay over such refund to the Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower under this Section 2.17 with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that the Borrower, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This Section shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other

information relating to its taxes which it deems confidential) to the Borrower or any other Person.

Section 2.18 Payments Generally; Pro Rata Treatment; Sharing of Setoffs.(a) Except with respect to Excluded Taxes, the Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, Section 2.16 or Section 2.17, or otherwise) prior to 2:00 p.m., New York City time, on the date when due, in immediately available funds, without deduction, setoff or counterclaim (other than any deduction or setoff in respect of Excluded Taxes as explicitly described in such Sections). Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at its offices at 270 Park Avenue, New York, New York, except payments to be made directly to each Issuing Bank or the Swingline Lender as expressly provided herein and except that payments pursuant to Section 2.15, Section 2.16, Section 2.17 and Section 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder shall be made in dollars.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied (i) first, towards payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, towards payment of principal and unreimbursed LC Disbursements then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and unreimbursed LC Disbursements then due to such parties.

(c) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or participations in LC Disbursements or Swingline Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans and participations in LC Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and participations in LC Disbursements and Swingline Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or

sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the Issuing Banks hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the Issuing Banks, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the Issuing Banks, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.03(c), Section 2.06(d) or (e), Section 2.07(b), Section 2.18(d) or Section 9.03(c), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

Section 2.19 Mitigation Obligations: Replacement of Lenders. (a) If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or Section 2.17, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender requests compensation under Section 2.15, or if the Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, or if any Lender is a Defaulting Lender, or if any Lender fails to execute and deliver any amendment, consent or waiver to any Loan Document requested by the Borrower by the date specified by the Borrower (or gives the Borrower or the

Administrative Agent written notice prior to such date of its intention not to do so), or if any Lender delivers a notice to the Borrower and/or the Administrative Agent pursuant to Section 2.20, or if any Lender shall fail to agree to extend the Maturity Date pursuant to Section 2.21, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that (i) the Borrower shall have received the prior written consent of the Administrative Agent (and, if a Commitment is being assigned, each Issuing Bank and the Swingline Lender), which consent (or consents) shall not unreasonably be withheld or delayed, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee or the Borrower, as applicable, and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.15 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments.

Section 2.20 Illegality. Notwithstanding any other provision of this Agreement, in the event that it becomes unlawful for any Lender or its applicable lending office to honor its obligation to make or maintain Eurodollar Loans either generally or having a particular Interest Period hereunder, then (a) such Lender shall promptly notify the Borrower and the Administrative Agent thereof and such Lender's obligation to make such Eurodollar Loans shall be suspended (the "Affected Loans") until such time as such Lender may again make and maintain such Eurodollar Loans and (b) all Affected Loans which would otherwise be made by such Lender shall be made instead as ABR Loans (and, if such Lender so requests by notice to the Borrower and the Administrative Agent, all Affected Loans of such Lender then outstanding shall be automatically converted into ABR Loans on the date specified by such Lender in such notice) and, to the extent that Affected Loans are so made as (or converted into) ABR Loans, all payments of principal which would otherwise be applied to such Lender's Affected Loans shall be applied instead to its ABR Loans.

Section 2.21 Extension of Maturity Date.

(a) Not earlier than 75 days prior to, nor later than 30 days prior to, the Initial Maturity Date and each anniversary of the Initial Maturity Date, the Borrower may, upon notice to the Administrative Agent (which shall promptly notify the Lenders), request a one-year extension of the Maturity Date then in effect. Within 15 days of delivery of such notice, each Lender shall notify the Administrative Agent whether or not it consents to such extension (which consent may be given or withheld in such Lender's sole and absolute discretion). Any Lender not responding within the above time period shall be deemed not to have consented to such extension. The Administrative Agent shall promptly notify the Borrower and the Lenders of the Lenders' responses.

(b) The Maturity Date shall be extended only if the Required Lenders (calculated excluding any Defaulting Lender and after giving effect to any replacements of Lenders permitted herein) have consented thereto (the Lenders that so consent being the "Consenting Lenders" and

the Lenders that do not consent being the “Non-Consenting Lenders”). If so extended, the Maturity Date, as to the Consenting Lenders, shall be extended to the same date in the year following the Maturity Date then in effect (such existing Maturity Date being the “Extension Effective Date”). The Administrative Agent and the Borrower shall promptly confirm to the Lenders such extension, specifying the date of such confirmation (the “Extension Confirmation Date”), the Extension Effective Date, and the new Maturity Date (after giving effect to such extension). As a condition precedent to such extension, the Borrower shall deliver to the Administrative Agent a certificate of the Borrower dated as of the Extension Confirmation Date signed by a Responsible Officer of the Borrower (i) certifying and attaching the resolutions adopted by the Borrower approving or consenting to such extension and (ii) certifying that, (A) before and after giving effect to such extension, the representations and warranties contained in Article III made by it are true and correct on and as of the Extension Confirmation Date, except to the extent that such representations and warranties specifically refer to an earlier date, (B) before and after giving effect to such extension no Default exists or will exist as of the Extension Confirmation Date, and (C) since December 31, 2010, no event, development or circumstance that has had or could reasonably be expected to have a Material Adverse Effect has occurred. The Borrower shall prepay any Loans outstanding on the Extension Effective Date (and pay any additional amounts required pursuant to Section 2.16) to the extent necessary to keep outstanding Loans ratable with any revised and new Applicable Percentages of all the Lenders effective as of the Extension Effective Date; and if, after giving effect to such prepayment, the total Credit Exposures exceeds the total Commitments then in effect as a result of an LC Exposure, then the Borrower will pay to the Administrative Agent on behalf of the Lenders an amount equal to such excess to be held as cash collateral as provided in Section 2.06(j). In addition, each Consenting Lender shall automatically (without any further action) and ratably acquire on the Extension Effective Date the Non-Consenting Lenders' participations in Letters of Credit, in an amount equal to such Consenting Lender's Applicable Percentage of the amount of such participations.

Section 2.22 Defaulting Lenders.

(a) Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(i) fees payable to such Defaulting Lender shall cease to accrue on the daily amount of the Commitment of such Defaulting Lender pursuant to Section 2.12(a);

(ii) the Commitment and Credit Exposure of such Defaulting Lender shall not be included in determining whether the Required Lenders have taken or may take any action hereunder (including any consent to any amendment, waiver or other modification pursuant to Section 9.02 or any consent to an extension of the Maturity Date pursuant to Section 2.21), provided that in no event shall (A) such Defaulting Lender's Commitment be increased or extended without its consent and (B) the principal amount of, or interest or fees payable on, Loans or LC Disbursements be reduced or excused or the scheduled date of payment be postponed as to such Defaulting Lender without such Defaulting Lender's consent (except that fees shall be cease to accrue for the account of such Defaulting Lender to the extent

specified in this Section 2.22 without such Defaulting Lender's consent);

(iii) if any Swingline Exposure or LC Exposure exists at the time a Lender becomes a Defaulting Lender then:

A. all or any part of the Swingline Exposure and LC Exposure of such Defaulting Lender shall be reallocated among the Lenders that are not Defaulting Lenders (for purposes of this Section 2.22, the “non-Defaulting Lenders”) in accordance with their respective Applicable Percentages but only to the extent that (x) the sum of all non-Defaulting Lenders' Credit Exposures plus such Defaulting Lender's Swingline Exposure plus such Defaulting Lender's LC Exposure does not exceed the total of all non-Defaulting Lenders' Commitments and (y) the conditions set forth in Section 4.02 are satisfied at such time;

B. if the reallocation described in clause (iii)(A) above cannot, or can only partially, be effected, the Borrower shall within one Business Day following notice by the Administrative Agent (x) first, prepay such Defaulting Lender's Swingline Exposure (after giving effect to any partial reallocation pursuant to clause (iii)(A) above) and (y) second, cash collateralize, for the benefit of the Issuing Banks, the Borrower's obligations corresponding to such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (iii)(A) above) in accordance with the procedures set forth in Section 2.06(j) for so long as such LC Exposure is outstanding;

C. if the Borrower cash collateralizes any portion of such Defaulting Lender's LC Exposure pursuant to clause (iii)(B) above, the Borrower shall not be required to pay any fees to such Defaulting Lender pursuant to Section 2.12(c) with respect to such Defaulting Lender's LC Exposure during the period such Defaulting Lender's LC Exposure is cash collateralized;

D. if the LC Exposure of the non-Defaulting Lenders is reallocated pursuant to clause (iii)(A) above, then the fees payable to such non-Defaulting Lenders pursuant to Section 2.12(c) shall be adjusted in accordance with such non-Defaulting Lenders' LC Exposure after giving effect to such reallocation and, to the extent of such reallocation, fees under Section 2.12(c) shall no longer accrue for the benefit of such Defaulting Lender; and

E. if all or any portion of such Defaulting Lender's LC Exposure is neither reallocated nor cash collateralized pursuant to clause (iii)(A) or clause (iii)(B) above, then, without prejudice to any rights or remedies of any Issuing Bank or any non-Defaulting Lender hereunder, all fees that otherwise would have been payable to such Defaulting Lender pursuant to Section 2.12(c) with respect to such Defaulting Lender's LC Exposure shall be payable to the Issuing Banks (ratably in proportion to the amount of Letters of Credit issued by each Issuing Bank) until and to the extent that such LC Exposure is reallocated and/or cash collateralized; and



(iv) so long as a Lender is a Defaulting Lender, the Swingline Lender shall not be required to fund any Swingline Loan and no Issuing Bank shall be required to issue, amend or increase any Letter of Credit, unless it is satisfied that the related exposure and such Defaulting Lender's then outstanding LC Exposure will be 100% covered by the Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrower in accordance with Section 2.22(a)(iii), and participating interests in any newly made Swingline Loan or any newly issued or increased Letter of Credit shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.22(a)(iii)(A) (and such Defaulting Lender shall not participate therein). For the avoidance of doubt, (A) with respect to Letters of Credit requested at a time when a Lender is a Defaulting Lender, to the extent such Defaulting Lender's obligations under Section 2.06 are reallocated to other non-Defaulting Lenders in accordance with such non-Defaulting Lenders' respective Applicable Percentages (to the extent, after giving effect to the issuance of such Letter of Credit, that the sum of all non-Defaulting Lenders' Credit Exposures *plus* such Defaulting Lender's Swingline Exposure *plus* such Defaulting Lender's LC Exposure does not exceed the total of all non-Defaulting Lenders' Commitments), the existence of such Defaulting Lender shall not affect the obligation of any Issuing Bank to issue Letters of Credit up to the LC Sublimit, as reduced by such Defaulting Lender's Applicable Percentage (without taking into consideration any reallocation described in this Section 2.22) of the LC Sublimit or (B) with respect to Swingline Loans requested at a time when a Lender is a Defaulting Lender, to the extent such Defaulting Lender's obligations under Section 2.03 are reallocated to other non-Defaulting Lenders in accordance with such non-Defaulting Lenders' respective Applicable Percentages (to the extent, after giving effect to such Swingline Loan, that the sum of all non-Defaulting Lenders' Credit Exposures *plus* such Defaulting Lender's Swingline Exposure *plus* such Defaulting Lender's LC Exposure does not exceed the total of all non-Defaulting Lenders' Commitments), the existence of such Defaulting Lender shall not affect the obligation of the Swingline Lender to make Swingline Loans up to the Swingline Sublimit, as reduced by such Defaulting Lender's Applicable Percentage (without taking into consideration any reallocation described in this Section 2.22).

(b) (Reserved)

(c) In the event that the Administrative Agent, the Borrower, the Swingline Lender and each Issuing Bank each agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Swingline Exposure and LC Exposure of the Lenders shall be readjusted to reflect the inclusion of such Lender's Commitment and on such date such Lender shall purchase at par such of the Loans of the other Lenders (other than Swingline Loans) as the Administrative Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Applicable Percentage; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender.

## ARTICLE III

### REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants to the Lenders that:

Section 3.01 Organization; Powers. Each of the Borrower and its Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 3.02 Authorization; Enforceability. The Transactions are within the Borrower's corporate powers and have been duly authorized by all necessary corporate and, if required, stockholder action. The Loan Documents have been duly executed and delivered by the Borrower and constitute legal, valid and binding obligations of the Borrower, enforceable in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Section 3.03 Governmental Approvals; No Conflicts. The Transactions (a) do not require the Borrower or any Subsidiary to obtain any consent or approval of, or make any registration or filing with, or request any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect (except for any reports required to be filed by the Borrower with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934), (b) will not result in a violation by the Borrower or any Subsidiary of any law or regulation or the charter, by-laws or other organizational documents of the Borrower or any of its Subsidiaries or any order of any Governmental Authority, (c) will not violate or result in a default under any material indenture, agreement or other instrument binding upon the Borrower or any of its Subsidiaries or its assets, or give rise to a right thereunder to require any material payment to be made by the Borrower or any of its Subsidiaries, and (d) will not result in the creation or imposition of any Lien on any asset of the Borrower or any of its Subsidiaries.

Section 3.04 Financial Condition. The Borrower has heretofore furnished to the Lenders its consolidated balance sheet and statements of income, stockholder's equity and cash flows (i) as of and for the fiscal years ended December 31, 2010, and December 31, 2009, reported on by KPMG LLP, independent public accountants, and (ii) as of and for the Fiscal Quarter and the portion of the fiscal year ended September 30, 2011, certified by its chief financial officer. Such financial statements present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in clause (ii) above.

Section 3.05 Environmental Matters. Except for the Disclosed Matters and except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, neither the Borrower nor any of its Subsidiaries (a) has failed to comply with any applicable Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any applicable Environmental Law, (b) has become subject to any Environmental Liability, (c) has received notice of any claim with respect to any Environmental Liability or (d) knows of any basis for any Environmental Liability.

Section 3.06 No Default. No Default has occurred and is continuing.

Section 3.07 Investment Company Status. Neither the Borrower nor any of its Subsidiaries is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

Section 3.08 Taxes. Each of the Borrower and its Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves with respect thereto in accordance with GAAP or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

Section 3.09 ERISA. Each ERISA Affiliate has fulfilled its obligations under the minimum funding standards of ERISA and the Code with respect to each Plan and is in compliance in all material respects with the presently applicable provisions of ERISA and the Code with respect to each Plan. No ERISA Affiliate has (i) sought a waiver of the minimum funding standard under Section 412 of the Code in respect of any Plan, (ii) failed to make any contribution or payment to any Plan or Multiemployer Plan or in respect of any Benefit Arrangement, or made any amendment to any Plan or Benefit Arrangement, which has resulted or could reasonably be expected to result in the imposition of a Lien or the posting of a bond or other security under ERISA or the Code or (iii) incurred any liability under Title IV of ERISA other than a liability to the PBGC for premiums due but not delinquent under Section 4007 of ERISA.

Section 3.10 Disclosure. Neither the Information Memorandum nor any of the other reports, financial statements, certificates or other written information (other than information of a global economic or industry nature) furnished by or on behalf of the Borrower to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other written information so furnished) contained as of the date such reports, financial statements, certificates or other written information were so furnished, any untrue statement of a material fact or omitted to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to (i) projections, estimates, pro forma financial information, engineering reports and forward-looking statements (within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934) contained in the materials referenced above, the Borrower represents only that such information was prepared in good faith based upon assumptions believed by it to be reasonable at the time and (ii) financial statements, the

Borrower represents only that such financial statements were prepared as represented in Section 3.04 and as required by Sections 5.01(a) and (b), as applicable.

**ARTICLE IV**  
**CONDITIONS**

Section 4.01 Revolving Effective Date. The obligations of the Lenders to make Loans and of the Issuing Banks to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) The Administrative Agent (or its counsel) shall have received from each party hereto either (i) a counterpart of this Agreement signed on behalf of such party or (ii) written evidence satisfactory to the Administrative Agent (which may include telecopy, facsimile or other electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement.

(b) The Administrative Agent shall have received a favorable written opinion (addressed to the Administrative Agent and the Lenders and dated the Revolving Effective Date) of (i) Jay Browning, in-house counsel of the Borrower, providing the opinions set forth in Exhibit E and (ii) Baker Botts L.L.P., counsel for the Borrower, providing the opinions set forth in Exhibit F, and each such opinion covering such other matters relating to the Borrower or the Transactions as the Required Lenders shall reasonably request. The Borrower hereby requests each such counsel to deliver its applicable opinion to the Administrative Agent and the Lenders.

(c) The Administrative Agent shall have received a certificate of the Borrower attaching such documents and certificates as the Administrative Agent may reasonably request relating to the organization, existence and good standing of the Borrower, the authorization of the Transactions and any other legal matters relating to the Borrower, this Agreement or the Transactions, all in form and substance satisfactory to the Administrative Agent.

(d) The Administrative Agent shall have received the financial statements referred to in Section 3.04.

(e) The Administrative Agent shall have received a certificate, dated the Revolving Effective Date and signed by a Responsible Officer of the Borrower, certifying (which statements shall constitute a representation and warranty made by the Borrower to the Lenders hereunder on the Revolving Effective Date) that, as of the Revolving Effective Date, (i) there are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any Responsible Officer of the Borrower, threatened against or affecting the Borrower or any of its Subsidiaries (A) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (B) that involve the Loan Documents or the Transactions; and (ii) since December 31, 2010, there has been no material adverse change in the business, financial position, or results of

operations of the Borrower together with its Subsidiaries on a consolidated basis.

(f) The Administrative Agent shall have received a certificate, dated the Revolving Effective Date and signed by a Responsible Officer of the Borrower, confirming compliance, as of the Revolving Effective Date, with the conditions set forth in paragraphs (a) and (b) of Section 4.02.

(g) The Administrative Agent shall have received all fees and other amounts due and payable on or prior to the Revolving Effective Date, including, to the extent invoiced, reimbursement or payment of all out-of-pocket expenses required to be reimbursed or paid by the Borrower hereunder.

The Administrative Agent shall notify the Borrower and the Lenders of the Revolving Effective Date, and such notice shall be conclusive and binding. Notwithstanding the foregoing, the obligations of the Lenders to make Loans and of the Issuing Banks to issue Letters of Credit hereunder shall not become effective unless each of the foregoing conditions contained in this Section 4.01 is satisfied (or waived pursuant to Section 9.02) at or prior to 5:00 p.m., New York City time, on December 31, 2011 (and, in the event such conditions are not so satisfied or waived, the Commitments shall terminate at such time).

Section 4.02 Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of each Issuing Bank to issue, amend or extend any Letter of Credit, is subject to the satisfaction of the following conditions:

(a) The representations and warranties of the Borrower set forth in this Agreement and in the other Loan Documents shall be true and correct on and as of the date of such Borrowing or the date of issuance, amendment or extension of such Letter of Credit, as applicable, except to the extent any such representations and warranties are expressly limited to an earlier date, in which case, on and as of the date of such Borrowing or the date of issuance, amendment or extension of such Letter of Credit, as applicable, such representations and warranties shall continue to be true and correct as of such specified earlier date.

(b) At the time of and immediately after giving effect to such Borrowing or the issuance, amendment or extension of such Letter of Credit, as applicable, no Default shall have occurred and be continuing.

(c) The Administrative Agent shall have received, as applicable, a Borrowing Request in accordance with Section 2.05, a request for a Swingline Loan pursuant to Section 2.03 or a request for a Letter of Credit pursuant to Section 2.06.

(d) In the case of the issuance, amendment, extension or increase of a Letter of Credit to be denominated in an Approved Currency other than dollars, there shall not have occurred any change in national or international financial, political or economic conditions or currency exchange rates or exchange controls that in the reasonable opinion of the Administrative Agent or the applicable Issuing Bank would make it impracticable for such issuance, amendment, extension or increase to be denominated in the relevant Approved Currency.

Each Borrowing and each issuance, amendment or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrower on the date thereof as to the matters specified in paragraphs (a) and (b) of this Section.

## ARTICLE V

### AFFIRMATIVE COVENANTS

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees payable hereunder shall have been paid in full and all Letters of Credit shall have expired or terminated and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lenders that:

Section 5.01 Financial Statements and Other Information. The Borrower will furnish to the Administrative Agent:

(a) within 65 days after the end of each fiscal year of the Borrower, its audited consolidated balance sheet and related statements of income, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all reported on by KPMG LLP or other independent public accountants of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, except for deviations from the application of GAAP concurred with by the Borrower's independent public accountants;

(b) within 45 days after the end of each of the first three Fiscal Quarters of each fiscal year of the Borrower, its consolidated balance sheet and related statements of income, stockholders' equity and cash flows as of the end of and for such Fiscal Quarter and the then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, except for deviations from the application of GAAP concurred with by the Borrower's independent public accountants, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with any delivery of financial statements under clause (a) or (b) above, a certificate of a Financial Officer of the Borrower (i) certifying as to whether a Default has occurred and is continuing and, if a Default has occurred and is continuing, specifying the details thereof and any action taken or proposed to be taken with respect thereto, and (ii) setting forth reasonably detailed calculations demonstrating compliance with Section 6.01;

(d) promptly after the same become publicly available, notice of all registration statements or reports filed by the Borrower or any Subsidiary with the Securities and Exchange

Commission, or any Governmental Authority succeeding to any or all of the functions of said Commission, on Form S-1, S-3, S-4, 10-K, 10-Q, 8-K or 12b-25, and notice of any financial statements, reports, notices or proxy statements distributed by the Borrower to its shareholders generally, as the case may be; and

(e) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent or any Lender through the Administrative Agent may reasonably request.

Documents required to be delivered pursuant to Section 5.01(a), Section 5.01(b) or Section 5.01(d) (to the extent any such documents are included in materials otherwise filed with the Securities and Exchange Commission) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at [www.valero.com](http://www.valero.com); or (ii) on which such documents are posted on the Borrower's behalf on the website of the Securities and Exchange Commission or any other Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that the Borrower shall notify the Administrative Agent, which shall then promptly notify each Lender (by telecopier or electronic mail) of the posting of any such documents, and the Borrower shall provide to the Administrative Agent by electronic mail electronic versions (*i.e.*, soft copies) of such documents. Notwithstanding anything contained herein, in every instance the Borrower shall be required to provide paper copies of the compliance certificate required by Section 5.01(c) to the Administrative Agent, which shall then promptly furnish such compliance certificate to the Lenders. Except for such compliance certificates, the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

Section 5.02 Notices of Material Events. The Borrower will furnish to the Administrative Agent, which shall then promptly furnish to each Lender, prompt written notice of the following:

(a) the occurrence of any Default of which any Responsible Officer of the Borrower obtains knowledge; and

(b) if and when any ERISA Affiliate (i) gives or is required to give notice to the PBGC of any "reportable event" (as defined in Section 4043 of ERISA) with respect to any Plan which could reasonably be expected to constitute grounds for a termination of such Plan under Title IV of ERISA, or knows that the plan administrator of any Plan has given or is required to give notice of any such reportable event, a copy of the notice of such reportable event given or required to be given to the PBGC; (ii) receives notice of complete or partial withdrawal liability under Title IV of ERISA or notice that any Multiemployer Plan is in reorganization, is insolvent or has been terminated, a copy of such notice; (iii) receives notice from the PBGC under Title IV of ERISA of an intent to terminate, impose liability (other than for premiums under Section 4007 of ERISA) in

respect of, or appoint a trustee to administer any Plan, a copy of such notice; (iv) applies for a waiver of the minimum funding standard under Section 412 of the Code, a copy of such application; (v) gives notice of intent to terminate any Plan under Section 4041(c) of ERISA, a copy of such notice and other information filed with the PBGC; (vi) gives notice of withdrawal from any Plan pursuant to Section 4063 of ERISA, a copy of such notice; or (vii) fails to make any payment or contribution to any Plan or Multiemployer Plan or in respect of any Benefit Arrangement or makes any amendment to any Plan or Benefit Arrangement which has resulted or could reasonably be expected to result in the imposition of a Lien or the posting of a bond or other security, a certificate of a Financial Officer of the Borrower setting forth details as to such occurrence and action, if any, which the Borrower or applicable ERISA Affiliate is required or proposes to take. Each notice delivered under this Section shall be accompanied by a statement of a Financial Officer or other executive officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

Section 5.03 Existence; Conduct of Business. The Borrower will, and will cause each of its Material Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges and franchises necessary or desirable in the normal conduct of its business; provided that the foregoing shall not prohibit any merger or consolidation of the Borrower permitted under Section 6.03 or any merger, consolidation, liquidation or dissolution of any Subsidiary that is not otherwise prohibited by the terms of this Agreement; and provided, further, that neither the Borrower nor any of its Subsidiaries shall be required to preserve, renew or keep in full force and effect any right, license, permit, privilege or franchise to the extent that the failure to do so would not reasonably be expected to have a Material Adverse Effect.

Section 5.04 Payment of Obligations. The Borrower will, and will cause each of its Subsidiaries to, pay or discharge, before the same shall become delinquent or in default, its obligations, including liabilities for Taxes, that, if not paid, could reasonably be expected to result in a Material Adverse Effect, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, and (b) the Borrower or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP.

Section 5.05 Maintenance of Properties; Insurance. The Borrower will, and will cause each of its Material Subsidiaries to, (a) keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted, and (b) maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations (including, without limitation, by the maintenance of adequate self-insurance reserves to the extent customary among such companies).

Section 5.06 Books and Records; Inspection Rights. The Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and account in which complete and accurate entries are made of its financial and business transactions to the extent required by GAAP and applicable law. The Borrower will, and will cause each of its Subsidiaries to, permit any representatives designated by the Administrative Agent or any Lender, at such Administrative



Agent's or Lender's expense, upon reasonable prior notice and subject to any applicable restrictions or limitations on access to any facility or information that is classified or restricted by contract or by law, regulation or governmental guidelines, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested; provided that advance notice of any discussion with such independent accountants shall be given to the Borrower and, so long as no Event of Default shall have occurred and be continuing, the Borrower shall have the opportunity to be present at any such discussion. The Administrative Agent and each Lender agree to keep all information obtained by them pursuant to this Section confidential in accordance with Section 9.12.

Section 5.07 Compliance with Laws. The Borrower will, and will cause each of its Subsidiaries to, comply, in all material respects with all applicable laws, ordinances, rules, regulations, and requirements of Governmental Authorities (including, without limitation, applicable Environmental Laws and ERISA and the rules and regulations thereunder), except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

Section 5.08 Use of Proceeds. The proceeds of the Loans will be used for general corporate purposes, including the refinancing of existing Indebtedness of the Borrower. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X. Letters of Credit will be issued only for general corporate purposes.

## ARTICLE VI

### NEGATIVE COVENANTS

Until the Commitments have expired or terminated and the principal of and interest on each Loan and all fees payable hereunder have been paid in full and all Letters of Credit have expired or terminated and all LC Disbursements shall have been reimbursed, the Borrower covenants and agrees with the Lenders that:

Section 6.01 Indebtedness.

(a) The Borrower will not permit Adjusted Consolidated Net Debt at any time to exceed 60% of Total Capitalization.

(b) At no time shall the aggregate of the following exceed 15% of Consolidated Net Tangible Assets: (i) secured Indebtedness and Derivative Obligations of the Borrower and its Subsidiaries (provided that, for purposes of the calculation in this Section 6.01(b)(i), (A) Indebtedness of the Borrower and its Subsidiaries that is secured by a Lien that is permitted by Section 6.02 (other than clause (I) of such Section 6.02) and (B) Liens arising as a result of customary netting and offset provisions in Hedging Agreements, shall be disregarded), *plus* (ii) unsecured Indebtedness of the Subsidiaries of the Borrower (provided that, for purposes of the calculation in this Section 6.01(b)(ii), Indebtedness that is Excluded Subsidiary Debt shall be disregarded).

(c) The Borrower will not permit Indebtedness of the Borrower or its Subsidiaries in respect of Securitization Transactions to exceed \$1,500,000,000, in the aggregate at any time outstanding.

Section 6.02 Liens. The Borrower will not, and will not permit any of its Subsidiaries to, create, assume or suffer to exist any Lien to secure payment of any Indebtedness or any Derivatives Obligations on any Property now owned or hereafter acquired by it, except for:

(a) Liens in favor of the Administrative Agent securing Indebtedness or other obligations existing pursuant to this Agreement;

(b) Liens created by Capital Lease Obligations, provided that the Liens created by any such Capital Lease Obligations attach only to the Property leased to the Borrower or one of its Subsidiaries pursuant thereto and general intangibles and proceeds related thereto, and improvements, accessories and upgrades to the Property leased pursuant thereto;

(c) purchase-money Liens and Liens on Property acquired, constructed or improved by the Borrower or any Subsidiary (including such Liens securing Indebtedness incurred within 180 days of the date on which such Property was acquired or the date of completion of such construction or improvement), provided that all such Liens attach only to the Property purchased, constructed or improved with the proceeds of the Indebtedness secured thereby and improvements, accessions, general intangibles and proceeds related thereto;

(d) Liens on Property of a Person which exist at the time such Person becomes a Subsidiary of the Borrower as a result of an acquisition, merger or other combination, or at the time such Person is merged or consolidated with or into, or otherwise acquired by, the Borrower or a Subsidiary (including improvements, accessions, general intangibles and proceeds related thereto), which Liens were not granted in contemplation of such acquisition, merger, or other combination and which Liens attach only to the Property described in this clause (d);

(e) any Lien existing on any Property prior to the acquisition thereof by the Borrower or a Subsidiary (including improvements, accessions, general intangibles and proceeds related thereto), which Liens were not granted in contemplation of such acquisition and which Liens attach only to the Property described in this clause (e);

(f) Liens on Property of a non-wholly owned Subsidiary to secure obligations of such Subsidiary to the Borrower or to a wholly owned Subsidiary; provided, however, that the obligations so secured may not be assigned, sold or otherwise transferred to a Person other than the Borrower or another wholly owned Subsidiary unless such Liens are otherwise permitted hereunder;

(g) Liens arising in connection with statutory or contractual setoff provisions granted or arising in the ordinary course of business in favor of banks, brokers, or other creditors;

(h) Liens customarily granted on accounts receivable and related assets in connection with Securitization Transactions to the extent Indebtedness in respect of such Securitization Transactions is permitted under Section 6.01(c);

(i) any Lien on Property of a Subsidiary of the Borrower to the extent that (A) such Subsidiary has provided a Guarantee of the Borrower's Indebtedness and other obligations existing under this Agreement, (B) the Indebtedness of the Subsidiary of the Borrower that is secured by such Lien is pari passu with (or subordinate to) the Indebtedness and other obligations existing pursuant to this Agreement and (C) any Property that is subject to a Lien in support of such Indebtedness is also subject to a pari passu (or higher priority) Lien in favor of the Administrative Agent securing Indebtedness or other obligations existing pursuant to this Agreement;

(j) Liens securing Indebtedness existing on the Revolving Effective Date and listed on Schedule 6.02(j);

(k) any Lien arising out of refinancing, extending, renewing or refunding (or successively refinancing, extending, renewing or refunding) any Indebtedness secured by any Lien permitted by any of the foregoing clauses of this Section, provided that the principal amount of such Indebtedness is not increased and such Indebtedness is not secured by any additional Property; and

(l) Liens not otherwise permitted by the foregoing clauses of this Section 6.02 securing Indebtedness and Derivative Obligations, provided such Indebtedness and Derivative Obligations are permitted under Section 6.01(b).

Section 6.03 Fundamental Changes. (a) The Borrower will not merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with the Borrower, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or substantially all of the Borrower's assets, whether now owned or hereafter acquired (including stock of its Subsidiaries), or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Default shall have occurred and be continuing (i) any Person may merge into the Borrower in a transaction in which the Borrower is the surviving corporation, and (ii) any Person may merge with the Borrower as long as the surviving entity, if other than the Borrower, is of an Investment Grade Rating equal to or higher than the Borrower's rating and so long as the surviving entity assumes, pursuant to the terms of such transaction, each of the obligations of the Borrower under the Transactions and such assumption is evidenced by an agreement executed and delivered to the Lenders within 30 days of such transaction in a form reasonably satisfactory to the Required Lenders. Without limiting the generality of the foregoing, the transfer of more than 50% of the Borrower's Consolidated Total Assets shall be deemed, for the purposes of this Section 6.03(a), a transfer of all or substantially all of the assets of the Borrower.

(b) The Borrower will not, and will not permit any of its Material Subsidiaries to, engage to any material extent in any business other than businesses of the type conducted by the Borrower and its Subsidiaries on the Revolving Effective Date and businesses reasonably related thereto.

Section 6.04 Hedging Agreements. The Borrower will not, and will not permit any of its Subsidiaries to, enter into any Hedging Agreement, other than Hedging Agreements entered into in the ordinary course of business.

Section 6.05 Transactions with Affiliates. The Borrower will not, and will not permit any of its Subsidiaries to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except in the ordinary course of business at prices and on terms and conditions not less favorable to the Borrower or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, provided that the foregoing restriction shall not apply to:

- (a) transactions between or among the Borrower and its Subsidiaries or between or among Subsidiaries;
- (b) transactions pursuant to any contract or agreement in effect on the date hereof, as the same may be amended, modified or replaced from time to time, so long as any such contract or agreement as so amended, modified or replaced is, taken as a whole, no less favorable to the Borrower and its Subsidiaries in any material respect than the contract or agreement in effect on the date hereof; and
- (c) transactions pursuant to which (i) taxes are allocated among the Borrower and its Affiliates in any manner consistent with Section 1552 (or any successor provision) of the Code, (ii) general and administrative expenses are allocated among the Borrower and its Affiliates in any manner consistent with Section 482 (or any successor provision) of the Code, and (iii) interest is charged or credited to Affiliates in any reasonable manner not inconsistent with the Code.

## ARTICLE VII

### EVENTS OF DEFAULT

If any of the following events ("Events of Default") shall occur:

- (a) the Borrower shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;
- (b) the Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under the Loan Documents, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five Business Days;
- (c) any representation or warranty made or deemed made by or on behalf of the Borrower or any Subsidiary in or in connection with the Loan Documents or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with the Loan Documents or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made;
- (d) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02, Section 5.03 (with respect to the Borrower's existence) or

Section 5.08 or in Article VI;

(e) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in the Loan Documents (other than those specified in clause (a), (b) or (d) of this Article), and such failure shall continue unremedied for a period of 30 days after notice thereof from the Administrative Agent to the Borrower (which notice will be given at the request of any Lender);

(f) the Borrower or any Subsidiary shall fail to make any payment in excess of \$1,000,000 in the aggregate (whether of principal, interest or fees) in respect of any Material Indebtedness, when and as the same shall become due and payable (after giving effect to any applicable notice requirement or grace period);

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity; provided that this clause (g) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other similar relief in respect of the Borrower or any Material Subsidiary or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Material Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) the Borrower or any Material Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief with respect to itself or its debts under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Article, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Material Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding provided such petition on its face is sufficient such that admission of the material allegations therein provides a basis for granting the relief requested, (v) make a general assignment for the benefit of creditors or (vi) take any corporate action to authorize any of the foregoing;

(j) the Borrower or any Material Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(k) one or more judgments for the payment of money in an aggregate amount in excess of \$100,000,000 (to the extent not covered by independent third party insurance as to which the respective insurer does not dispute coverage and is not subject to an insolvency proceeding) shall be rendered against the Borrower, any Subsidiary or any combination thereof and the same

shall remain undischarged for a period of 60 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower or any Subsidiary to enforce any such judgment;

(l) an ERISA Event shall have occurred that, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect; or

(m) a Change in Control shall occur;

then, and in every such event (other than an event with respect to the Borrower described in clause (h) or (i) of this Article), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrower, take either or both of the following actions, at the same or different times: (i) terminate the Commitments, and thereupon the Commitments shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any event with respect to the Borrower described in clause (h) or (i) of this Article, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrower accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

#### **ARTICLE VIII THE ADMINISTRATIVE AGENT**

Each of the Lenders and the Issuing Banks hereby irrevocably appoints the Administrative Agent as its agent and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof, together with such actions and powers as are reasonably incidental thereto.

The bank serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and such bank and its Affiliates may accept deposits from, lend money to and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if it were not the Administrative Agent hereunder.

The Administrative Agent shall not have any duties or obligations except those expressly set forth herein. Without limiting the generality of the foregoing, (a) the Administrative Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (b) the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers

expressly contemplated hereby that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02), and (c) except as expressly set forth herein, the Administrative Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Subsidiaries that is communicated to or obtained by the bank serving as Administrative Agent or any of its Affiliates in any capacity. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary under the circumstances as provided in Section 9.02) or in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until written notice thereof is given to the Administrative Agent by the Borrower or a Lender, and the Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement, (ii) the contents of any certificate, report or other document delivered hereunder or in connection herewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement or any other agreement, instrument or document, or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing believed by it to be genuine and to have been signed or sent by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to be made by the proper Person, and shall not incur any liability for relying thereon. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

The Administrative Agent may perform any and all its duties and exercise its rights and powers by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all its duties and exercise its rights and powers through their respective Related Parties. The exculpatory provisions of the preceding paragraphs shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

Subject to the appointment and acceptance of a successor Administrative Agent as provided in this paragraph, the Administrative Agent may resign at any time by notifying the Lenders, the Issuing Banks and the Borrower. Upon any such resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative

Agent may, on behalf of the Lenders and the Issuing Banks, appoint a successor Administrative Agent which shall be a bank with an office in New York, New York, or an Affiliate of any such bank. Upon the acceptance of its appointment as Administrative Agent hereunder by a successor, such successor shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations hereunder. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the Administrative Agent's resignation hereunder, the provisions of this Article and Section 9.03 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while it was acting as Administrative Agent.

None of the Joint Lead Arrangers, Syndication Agent or Co-Documentation Agents shall have any duties, responsibilities or liabilities under this Agreement and the other Loan Documents other than the duties, responsibilities and liabilities assigned to such entities in their capacities as Lenders (or Issuing Banks, if applicable) hereunder.

Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any related agreement or any document furnished hereunder or thereunder.



**ARTICLE IX**  
**MISCELLANEOUS**

Section 9.01 Notices.

- (a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile, as follows:
- (i) if to the Borrower, to it at Valero Energy Corporation, One Valero Way, San Antonio, Texas 78249, Attention of Donna M. Titzman, Treasurer (Facsimile No. (210) 345-2267);
  - (ii) if to the Administrative Agent or to JPMorgan Chase Bank, N.A., as an Issuing Bank, the Swingline Lender or a Lender, to JPMorgan Chase Bank, N.A., Loan and Agency Services, 1111 Fannin Street, 10th Floor, Houston, Texas 77002, Attention of Nathan Lorensen (Facsimile No. (713) 427-6307), with a copy to JPMorgan Chase Bank, N.A., 712 Main Street, 12th Floor, Houston, Texas 77002, Attention of Muhammad Hasan (Facsimile No. (713) 216-4117);
  - (iii) if to Citibank, N.A. (or any Affiliate), as an Issuing Bank or a Lender, to Citibank, N.A., 811 Main Street, Houston, Texas 77002, Attention of Nannette Dockal (Facsimile No. (713) 481-0245);
  - (iv) if to BNP Paribas, as an Issuing Bank or a Lender, to BNP Paribas, 525 Washington Blvd, Jersey City, New Jersey 07310, Attention of Robert Bruce (Facsimile No. (201) 850-4021) with a copy to the attention of Maria Albuquerque (Facsimile No. (201) 850-4021);
  - (v) if to Mizuho Corporate Bank, Ltd., as an Issuing Bank or a Lender, to Mizuho Corporate Bank, Ltd., 1800 Plaza Ten, Harborside Financial Ctr., Jersey City, New Jersey 07311, Attention of Maxim Lipovetsky (Facsimile No. (201) 626-9941) with a copy to the attention of Nicole Ferrara using the same address and facsimile number; and
  - (vi) if to The Royal Bank of Scotland plc, as an Issuing Bank to RBS Global Banking & Markets, RBS Americas HQ, 600 Washington Boulevard, Stamford, Connecticut, 06901, Attention of Richard Emmich (Facsimile No. (203) 873-3569) with a copy to RBS Global Banking & Markets, Castlerock, 600 Washington Boulevard, Stamford, Connecticut, 06901, Attention of Marchette Major (Facsimile No. (203) 873-3569); or, if to The Royal Bank of Scotland plc, as a Lender, to Credit Administration, RBS Global Banking & Markets, 600 Washington Blvd, Stamford, Connecticut, 06901, Attention of Donald Hart (Facsimile No. (203) 873-4059); and
  - (vii) if to any other Lender, to it at its address (or facsimile number) set forth in

its Administrative Questionnaire.

(b) Electronic Communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including email and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article II by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Notices and other communications (i) sent to an email address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, (ii) posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its email address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor and (iii) transmitted by telecopier or facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient).

(c) Change of Address. Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

Section 9.02 Waivers; Amendments. (a) No failure or delay by the Administrative Agent, any Issuing Bank or any Lender in exercising any right or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Banks and the Lenders hereunder are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of this Agreement or consent to any departure by the Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b), (c) or (d) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Default, regardless of whether the Administrative Agent, any Lender or any Issuing Bank may have had notice or knowledge of such Default at the time.

(b) No provision contained in Article III, V, VI or VII hereof, and none of the

definitions of any defined terms related to such provisions, may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower, and the Required Lenders or by the Borrower and the Administrative Agent with the consent of the Required Lenders.

(c) Except as provided for in Section 9.02(d), neither this Agreement or the Notes nor any provision of either of the foregoing may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrower and the Required Lenders or by the Borrower and the Administrative Agent with the consent of the Required Lenders.

(d) Notwithstanding anything to the contrary contained in paragraphs (b) and (c) above, no such agreement or agreements referred to in such paragraphs shall (i) increase or extend the Commitment of any Lender without the written consent of such Lender, (ii) reduce the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender affected thereby, (iii) postpone the scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration or termination of any Commitment, without the written consent of each Lender affected thereby, (iv) change Section 2.09(c), Section 2.18(b) or Section 2.18(c) in a manner that would alter the pro rata treatment of Lenders or pro rata sharing of payments required thereby, without the written consent of each Lender, (v) change Section 2.21, Section 4.01, Section 4.02 or any of the provisions of this Section or the definition of "Required Lenders" or the definition of "Approved Currency" or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender or (vi) amend, modify or otherwise change Section 2.22 without the written consent of the Administrative Agent, the Swingline Lender, each Issuing Bank and the Required Lenders. In addition, no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, the Swingline Lender or any Issuing Bank hereunder without the prior written consent of the Administrative Agent, the Swingline Lender or such Issuing Bank, as the case may be.

Section 9.03 Expenses; Indemnity; Damage Waiver. (a) The Borrower shall pay (i) all reasonable out of pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of a law firm, as counsel for the Administrative Agent, in connection with the syndication of the credit facilities provided for herein and the preparation and administration of this Agreement, (ii) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of a law firm, as counsel for the Administrative Agent, in connection with any amendments, modifications or waivers of the provisions hereof (in the case of clauses (i) and (ii), whether or not the transactions contemplated hereby or thereby shall be consummated), (iii) all reasonable out-of-pocket expenses incurred by each Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit issued by it or any demand for payment thereunder, (iv) all reasonable out-of-pocket expenses incurred by the Swingline Lender in connection with making any Swingline Loan or any demand for payment thereunder and (v) all

out-of-pocket expenses incurred by the Administrative Agent, any Issuing Bank, the Swingline Lender or any Lender, including the reasonable fees, charges and disbursements of any counsel for the Administrative Agent, any Issuing Bank, the Swingline Lender or any Lender, in connection with the enforcement or protection of its rights in connection with this Agreement, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) The Borrower shall indemnify the Administrative Agent, the Joint Lead Arrangers, each Issuing Bank, the Swingline Lender and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnatee”) against, and hold each Indemnatee harmless from, any and all losses, claims, damages, liabilities and related expenses, including settlement costs and the reasonable fees, charges and disbursements of any counsel for any Indemnatee, incurred by or asserted against any Indemnatee arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement or any agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by any Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnatee is a party thereto; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnatee.

(c) To the extent that the Borrower fails to pay any amount required to be paid by it to the Administrative Agent, any Joint Lead Arranger, the Swingline Lender or any Issuing Bank under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent, such Joint Lead Arranger, the Swingline Lender or such Issuing Bank, as the case may be, such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent, such Joint Lead Arranger, the Swingline Lender or such Issuing Bank in its capacity as such.

(d) To the extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnatee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof.

- (e) All amounts due under this Section shall be payable promptly after written demand therefor.

Section 9.04 Successors and Assigns. (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of any Issuing Bank that issues any Letter of Credit), except that (i) other than as permitted in Section 6.03, the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by the Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of any Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Banks, the Swingline Lender and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld) of:

A. the Borrower, provided that no consent of the Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default has occurred and is continuing, any other assignee;

B. the Administrative Agent, provided that no consent of the Administrative Agent shall be required for an assignment of any Commitment to an assignee that is a Lender with a Commitment immediately prior to giving effect to such assignment;

C. each Issuing Bank; and

D. the Swingline Lender.

(b) Assignments shall be subject to the following additional conditions:

A. except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than \$10,000,000 unless each of the Borrower and the Administrative Agent otherwise consent, provided that no such consent of the Borrower shall be required if an Event of Default has occurred and is continuing;

B. each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

C. the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500 (which, for the avoidance of doubt, shall not be for the account of the Borrower, other than in respect of an assignment initiated by the Borrower pursuant to Section 2.19(b));

D. the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire; and

E. no assignment shall be made to a Defaulting Lender.

For the purposes of this Section 9.04(b), the term "Approved Fund" has the following meaning:

"Approved Fund" means any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Section 2.15, Section 2.16, Section 2.17 and Section 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent, the Issuing Banks and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding

notice to the contrary. The Register shall be available for inspection by the Borrower, any Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.06(d) or (e), Section 2.07(b), Section 2.18(d) or Section 9.03(c), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) (i) Any Lender may, without the consent of the Borrower, the Administrative Agent, the Swingline Lender or any Issuing Bank, sell participations to one or more banks or other entities (other than Competitors) (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrower, the Administrative Agent, the Swingline Lender, the Issuing Banks and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first sentence of Section 9.02(d) that affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrower agrees that each Participant shall be entitled to the benefits of Section 2.15, Section 2.16 and Section 2.17 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section.

(ii) A Participant shall not be entitled to receive any greater payment under Section 2.15 or Section 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.17 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.17(e) as though it were a Lender.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

Section 9.05 Survival. All covenants, agreements, representations and warranties made by the Borrower herein and in the certificates or other instruments delivered in connection with or pursuant to this Agreement shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of this Agreement and the making of any Loans and the issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, any Issuing Bank or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated. The provisions of Section 2.15, Section 2.16, Section 2.17 and Section 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof.

Section 9.06 Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 9.07 Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.



Section 9.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to setoff and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of the Borrower against any of and all the obligations of the Borrower that are due and payable at such time held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.22 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Banks, and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Each Lender agrees to promptly notify the Borrower after any such setoff and application by it or any of its Affiliates, provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of each Lender under this Section are in addition to and shall not be affected by any other rights and remedies (including other rights of setoff) which such Lender may have.

Section 9.09 Governing Law; Jurisdiction; Consent to Service of Process. (a) This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) The Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the nonexclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the extent permitted by law, in such Federal court. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Section is intended to waive the right of any party to remove any such action or proceeding commenced in any such New York State court to an appropriate New York Federal court to the extent the basis for such removal exists under applicable law. Nothing in this Agreement shall affect any right that the Administrative Agent, any Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against the Borrower or its properties in the courts of any jurisdiction.

(c) The Borrower hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

Section 9.10 Waiver of Jury Trial. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 9.11 Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 9.11 Confidentiality. (a) Each of the Administrative Agent, the Issuing Banks and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (i) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors, including any credit insurance provider relating to the Borrower and its obligations (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (ii) to the extent requested by any regulatory authority or self-regulatory authority, (iii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (iv) to any other party to this Agreement, (v) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (vi) subject to an agreement containing provisions substantially the same as those of this Section, to (1) any assignee of or Participant in, or any prospective assignee of or prospective Participant in, any of its rights or obligations under this Agreement or (2) any actual or prospective counterparty (or its advisors) to any swap, securitization or derivative transaction relating to the Borrower and its obligations under this Agreement, (vii) with the consent of the Borrower or (viii) to the extent such Information (1) becomes publicly available other than as a result of a breach of this Section or (2) becomes available to the Administrative Agent, any Issuing Bank or any Lender on a nonconfidential basis from a source other than the Borrower. For the purposes of this Section, "Information" means all information received from or on behalf of the Borrower relating to the Borrower and its Subsidiaries or their respective businesses, other than any such information that is available to the Administrative Agent, any Issuing Bank or any Lender on a nonconfidential basis prior to disclosure by or on behalf of the Borrower. Any Person required to maintain the confidentiality of Information as provided in this Section shall be

considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

(b) Each Lender acknowledges that Information as defined in Section 9.12(a) furnished to it pursuant to this agreement may include material non-public information concerning the Borrower and its Related Parties or their respective securities, and confirms that it has developed compliance procedures regarding the use of material non-public information and that it will handle such material non-public information in accordance with those procedures and applicable law, including federal and state securities laws.

(c) All information, including requests for waivers and amendments, furnished by the Borrower or the Administrative Agent pursuant to, or in the course of administering, this Agreement will be syndicate-level information, which may contain material non-public information about the Borrower and its Related Parties or its securities. Accordingly, each Lender represents to the Borrower and the Administrative Agent that it has identified in its Administrative Questionnaire a credit contact who may receive information that may contain material non-public information in accordance with its compliance procedures and applicable law.

Section 9.13 Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under applicable law (collectively the “Charges”), shall exceed the maximum lawful rate (the “Maximum Rate”) which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with applicable law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Effective Rate to the date of repayment, shall have been received by such Lender.

Section 9.14 USA PATRIOT Act Each Lender that is subject to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”) hereby notifies the Borrower that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Act.

Section 9.15 Amendment and Restatement. This Agreement shall be deemed to restate and amend the Existing Revolving Credit Agreement in its entirety, and all of the terms and provisions hereof shall supersede the terms and conditions thereof. The parties hereto further agree that this Agreement, each Borrowing and each issuance, amendment or extension of a Letter of Credit shall serve to extend, renew and continue, but not to extinguish or novate, the “Borrowings” and “Letters of Credit” under the Existing Revolving Credit Agreement and the corresponding promissory notes and to amend, restate and supersede, but not to extinguish or cause to be novated

the Indebtedness under, the Existing Revolving Credit Agreement. The Borrower hereby agrees that, upon the effectiveness of this Agreement, the “Loans” made and outstanding under the Existing Revolving Credit Agreement and all accrued and unpaid interest thereon shall be deemed to be Loans outstanding under and payable by this Agreement and all “Letters of Credit” issued and outstanding under the Existing Revolving Credit Agreement, if any, shall be deemed to be issued and outstanding as Letters of Credit hereunder.

Section 9.16 Assignment and Reallocation of Commitments, Etc. On the Revolving Effective Date, each of the lenders under the Existing Revolving Credit Agreement (each, an “Existing Lender”) hereby sells, assigns, transfers and conveys to the Lenders hereto, and each of the Lenders hereto hereby purchases and accepts, so much of the aggregate commitments under, and loans and, as further specified in Section 2.06(k), participations in letters of credit outstanding under, the Existing Revolving Credit Agreement such that, immediately after giving effect to the effectiveness of this Agreement (including any increase of the commitments effectuated hereby), the Applicable Percentage of each Lender to this Agreement and the portion of the relevant Commitment of each Lender, shall be as set forth on Schedule 2.01 hereto. The foregoing assignments, transfers and conveyances are without recourse to any Existing Lender and without any warranties whatsoever by the Administrative Agent, any Issuing Bank or any Existing Lender as to title, enforceability, collectability, documentation or freedom from liens or encumbrances, in whole or in part, other than that the warranty of any such Existing Lender that it has not previously sold, transferred, conveyed or encumbered such interests. The Existing Lenders and the Lenders shall, if appropriate, make all appropriate adjustments in payments under the Existing Revolving Credit Agreement, the “Notes” and the other “Loan Documents” thereunder for periods prior to the adjustment date among themselves, but in no event shall any such adjustment of Eurodollar Loans (a) constitute a payment or prepayment of all or a portion of any Eurodollar Loans or (b) entitle any Lender to any reimbursement under Section 2.16 hereof.

*(Signature Pages Begin Next Page)*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

VALERO ENERGY CORPORATION, a Delaware corporation, as Borrower

By: \_\_\_\_\_

Name: Donna M. Titzman

Title: Vice President and Treasurer

JPMORGAN CHASE BANK, N.A., as the Administrative Agent, the Swingline  
Lender, an Issuing Bank and a Lender,

By: \_\_\_\_\_  
Name: Robert Traband  
Title: Managing Director

[and other lenders]

We have omitted the Schedules to the Agreement from this Exhibit. We will furnish a copy of these Schedules to the Commission upon request.

FORM OF  
ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (the “Assignment and Assumption”) is dated as of the Effective Date set forth below (the “Effective Date”) and is entered into by and between [*Insert name of Assignor*] (the “Assignor”) and [*Insert name of Assignee*] (the “Assignee”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, the “Credit Agreement”), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including any letters of credit and guarantees included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the “Assigned Interest”). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: \_\_\_\_\_

2. Assignee: \_\_\_\_\_  
[and is an Affiliate/Approved Fund of [*identify Lender*]<sup>1</sup>

3. Credit Agreement: The \$3,000,000,000 5-Year Amended and Restated Revolving Credit Agreement dated as of December 5, 2011 among Valero Energy Corporation, the Lenders parties thereto, JPMorgan Chase Bank, N.A., as Administrative Agent, Swingline Lender and an Issuing Bank and the other Persons from time to time party thereto.

<sup>1</sup> Select as applicable.

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4. Assigned Interest:

Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/Loans Assigned	Percentage Assigned of Commitment/Loans <sup>2</sup>
\$	\$	%
\$	\$	%
\$	\$	%

Effective Date: \_\_\_\_\_, 20\_\_ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

*(Signatures begin on following page)*

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<sup>2</sup> Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

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The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By: \_\_\_\_\_

Name:

Title:

ASSIGNEE

[NAME OF ASSIGNEE]

By: \_\_\_\_\_

Name:

Title:

*(Consents begin on following page)*

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Consented to and Accepted:

JPMORGAN CHASE BANK, N.A., as  
[Administrative Agent,]<sup>3</sup> Swingline Lender  
and Issuing Bank

By: \_\_\_\_\_  
Name:  
Title:

CITIBANK, N.A.,  
as an Issuing Bank

By: \_\_\_\_\_  
Name:  
Title:

BNP PARIBAS,  
as an Issuing Bank

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

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<sup>3</sup> To be added only if the consent of the Administrative Agent is required by the terms of the Credit Agreement (See Section 9.04(b) of the Credit Agreement).

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MIZUHO CORPORATE BANK, LTD.,  
as an Issuing Bank

By: \_\_\_\_\_  
Name:  
Title:

THE ROYAL BANK OF SCOTLAND PLC,  
as an Issuing Bank

By: \_\_\_\_\_  
Name:  
Title: Authorised Signatory

[If additional Issuing Banks, add additional signature blocks for consent]

[Consented to:]<sup>4</sup>

VALERO ENERGY CORPORATION,  
as Borrower

By: \_\_\_\_\_  
Name:  
Title:

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<sup>4</sup> To be added only if the consent of the Borrower is required by the terms of the Credit Agreement. (See Section 9.04(b) of the Credit Agreement).

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STANDARD TERMS AND CONDITIONS FOR  
ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it satisfies the requirements, if any, specified in the Credit Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.01 thereof, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, and (v) if it is a Foreign Lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

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3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

*(End of Annex 1)*

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FORM OF  
NOTICE OF COMMITMENT INCREASE

[Date]

JPMorgan Chase Bank, N.A.  
1111 Fannin Street, 10th Floor  
Houston, Texas, 77002  
Attention: Loan and Agency Services, Nathan Lorensen

With a copy to:

JPMorgan Chase Bank, N.A.  
712 Main Street, 12th Floor  
Houston, Texas 77002  
Attention: Muhammad Hasan

Ladies and Gentlemen:

The undersigned, Valero Energy Corporation (the "Borrower"), refers to the \$3,000,000,000 5-Year Amended and Restated Revolving Credit Agreement dated as of December 5, 2011 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement", with terms defined in the Credit Agreement and not otherwise defined herein being used herein as therein defined) among the Borrower, JPMorgan Chase Bank, N.A., as Administrative Agent, Swingline Lender and an Issuing Bank, the Lenders and other Persons from time to time party thereto. The Borrower hereby notifies you, pursuant to Section 2.02 of the Credit Agreement, that it has arranged for the aggregate amount of the Commitments under the Credit Agreement to be increased by adding to the Credit Agreement the CI Lenders referenced below and/or by allowing one or more existing Lenders to increase their respective Commitments. With respect thereto, the Borrower sets forth below the information relating to such proposed Commitment Increase as required by Section 2.02(b) of the Credit Agreement:

- (a) the effective date of such increase of aggregate amount of the Lenders' Commitments is \_\_\_\_\_ (herein, the "Commitment Increase Effective Date");<sup>1</sup>
- (b) the amount of the requested increase of the Commitments is \$ \_\_\_\_\_;

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<sup>1</sup> The Commitment Increase Effective Date shall be no earlier than five Business Days after receipt by the Administrative Agent of this notice.

- (c) the CI Lenders that have agreed with the Borrower to provide their respective Commitments are \_\_\_\_\_ [INSERT NAMES OF THE CI LENDERS];
- (d) the existing Lenders that have agreed with the Borrower to increase their respective Commitments are \_\_\_\_\_ [INSERT NAMES OF THE LENDERS]; and
- (e) set forth on Annex I attached hereto is the amount of the respective Commitments of each Lender and each CI Lender, after giving effect to the aggregate Commitment increase hereunder, including the Commitments of all Reducing Percentage Lenders, all CI Lenders and all existing Lenders increasing their respective Commitments as of the Commitment Increase Effective Date.

Delivery of an executed counterpart of this Notice of Commitment Increase by telecopier or facsimile shall be effective as delivery of an original executed counterpart of this Notice of Commitment Increase.

Very truly yours,

**VALERO ENERGY CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

On \_\_\_\_\_<sup>2</sup>, *acknowledged by:*

**JPMORGAN CHASE BANK, N.A.**,  
as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
<sup>2</sup> Insert date that Administrative Agent acknowledges receipt of this notice.

REVISED SCHEDULE OF COMMITMENTS  
AS OF THE COMMITMENT INCREASE EFFECTIVE DATE

[Insert revised schedule]



FORM OF  
BORROWING REQUEST

JPMorgan Chase Bank, N.A., as Administrative Agent  
for the Lenders parties  
to the Credit Agreement  
referred to below  
1111 Fannin Street, 10th Floor  
Houston, Texas, 77002  
Attention: Loan and Agency Services, Nathan Lorensen

With a copy to:

JPMorgan Chase Bank, N.A.  
712 Main Street, 12th Floor  
Houston, Texas 77002  
Attention: Muhammad Hasan

[Date]

Reference: Valero Energy Corporation

Ladies and Gentlemen:

The undersigned, VALERO ENERGY CORPORATION, refers to the \$3,000,000,000 5-Year Amended and Restated Revolving Credit Agreement dated as of December 5, 2011 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement," with terms defined therein and not otherwise defined herein being used herein as therein defined), among the undersigned, JPMorgan Chase Bank, N.A., as Administrative Agent, Swingline Lender and an Issuing Bank, the Lenders and other Persons from time to time party thereto, and the undersigned hereby gives you notice, irrevocably, pursuant to Section 2.05 of the Credit Agreement, that the undersigned hereby requests a Borrowing under the Credit Agreement, and with respect thereto sets forth below the information relating to such Borrowing (the "Proposed Borrowing") as required by Section 2.05 of the Credit Agreement:

- (i) The aggregate amount of the Proposed Borrowing is \$ \_\_\_\_\_.
- (ii) The Business Day of the Proposed Borrowing is \_\_\_\_\_.
- (iii) The Type of the Proposed Borrowing is [an ABR Borrowing] [a Eurodollar Borrowing].
- (iv) The Interest Period for each Eurodollar Borrowing made as part of the Proposed Borrowing is [\_\_\_\_\_ month[s]].

(v) The Borrower's transit routing and bank account for loan funding is

\_\_\_\_\_.

Very truly yours,

VALERO ENERGY CORPORATION

By: \_\_\_\_\_

Name:

Title:

## FORM OF PROMISSORY NOTE

\$ \_\_\_\_\_

New York, New York

December 5, 2011

FOR VALUE RECEIVED, the undersigned, VALERO ENERGY CORPORATION, a Delaware corporation (the "Borrower"), hereby unconditionally promises to pay to the order of \_\_\_\_\_ (the "Lender") at the office of JPMorgan Chase Bank, N.A., located at 1111 Fannin Street, 10th Floor, Houston, Texas 77002, in lawful money of the United States of America and in same day funds, on the Initial Maturity Date (or such later Maturity Date as the Lender has consented to in writing) the principal amount of (a) \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), or, if less, (b) the aggregate unpaid principal amount of all Loans made by the Lender to the Borrower pursuant to the Credit Agreement, as hereinafter defined. The Borrower further agrees to pay interest in like money at such office on the unpaid principal amount hereof from time to time outstanding at the rates and on the dates specified in the Credit Agreement.

The holder of this Note is authorized to, and prior to any transfer hereof shall, endorse on the schedules attached hereto and made a part hereof or on a continuation thereof which shall be attached hereto and made a part hereof the date, Type and amount of each Loan made pursuant to the Credit Agreement and the date and amount of each payment or prepayment of principal thereof, each continuation thereof, each conversion of all or a portion thereof to another Type and, in the case of a Eurodollar Loan, the length of each Interest Period with respect thereto. The failure to make any such endorsement shall not affect the obligations of the Borrower in respect of such Loan.

This Note (a) is one of the Notes referred to in the \$3,000,000,000 5-Year Amended and Restated Revolving Credit Agreement, dated as of December 5, 2011 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Valero Energy Corporation, JPMorgan Chase Bank, N.A., as Administrative Agent, Swingline Lender and an Issuing Bank, the Lenders and other Persons from time to time party thereto, (b) is subject to the provisions of the Credit Agreement and (c) is subject to optional and mandatory prepayment in whole or in part as provided in the Credit Agreement.

Reference is made to the Credit Agreement for provisions for the acceleration of the maturity hereof.

All parties now and hereafter liable with respect to this Note, whether maker, principal, surety, guarantor, endorser or otherwise, hereby waive presentment, demand, protest, notice of intent to accelerate, notice of acceleration and all other notices of any kind except those expressly required under the Credit Agreement.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

THIS NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

VALERO ENERGY CORPORATION

By: \_\_\_\_\_  
Name:  
Title:





Exhibit E  
FORM OF LEGAL OPINION OF JAY BROWNING, BORROWER'S IN-HOUSE COUNSEL

[DATE]

To the Lenders and the Administrative  
Agent Referred to Below  
c/o JPMorgan Chase Bank, N.A.,  
as Administrative Agent  
270 Park Avenue  
New York, New York 10017

Ladies and Gentlemen:

I am Senior Vice President - Corporate Law and Secretary of Valero Energy Corporation, a Delaware corporation (the "Borrower") and have acted as counsel for Borrower in connection with the \$3,000,000,000 5-Year Amended and Restated Revolving Credit Agreement dated as of December 5, 2011 (the "Credit Agreement"), among the Borrower, the banks and other financial institutions identified therein as Lenders, JPMorgan Chase Bank, N.A., as Administrative Agent, and the other agents party thereto. Terms defined in the Credit Agreement are used herein with the same meanings.

I, or individuals under my direction, have examined originals or copies, certified or otherwise identified to my satisfaction, of such documents, corporate records, certificates of public officials and other instruments and have conducted such other investigations of fact and law as I have deemed necessary or advisable for purposes of this opinion.

As to matters of fact material to this opinion, I have relied on certificates of public officials and certificates of officers of the Borrower and I have made such inquiry of officers of the Borrower as I have deemed necessary or appropriate in connection with the matters set forth in this opinion.

As a basis for this opinion, I have assumed that (i) each of the Loan Documents and all other documents and certificates examined by me have been duly authorized, executed and delivered by each party thereto, other than the Borrower, (ii) all signatures other than those of the Borrower are authentic, all documents submitted to me as originals are authentic, and all documents submitted to me as certified or photostatic copies conform to authentic or original documents, (iii) each party to the Loan Documents, other than the Borrower, has been duly formed, and is validly existing and in good standing under the laws of the jurisdiction in which it is formed, (iv) each party to the Loan Documents, other than the Borrower, has all requisite power and authority to enter into and perform each of the Loan Documents to which it is a party and (v) each such document is or evidences the legal, valid and binding obligation of such parties thereto (other than the Borrower).

Upon the basis of the foregoing, I am of the opinion that:

1. Each of the Borrower and its Material Subsidiaries (a) is a corporation, limited liability company or partnership duly organized or formed, as applicable, validly existing and in good standing under the laws of the jurisdiction in which it was organized or formed, as applicable, (b) has all corporate, limited liability company or partnership, as applicable, power and authority to carry on its business as now conducted and (c) except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

2. The Transactions are within the Borrower's corporate powers and have been duly authorized by all necessary corporate and, if required, stockholder action. The Loan Documents have been duly executed and delivered by the Borrower and constitute legal, valid and binding obligations of the Borrower, enforceable in accordance with their terms, subject to bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or other laws affecting creditors' rights generally, general principles of equity, regardless of whether considered in a proceeding in equity or at law, and an implied covenant of good faith and fair dealing.

3. In any action or proceeding arising out of or relating to the Credit Agreement in any court of the State of Texas or in any federal court sitting in the State of Texas, such court would recognize and give effect to the provisions of Section 9.09(a) of the Credit Agreement wherein the parties thereto agree that the Credit Agreement shall be governed by the laws of the State of New York.

4. The Transactions (a) do not require the Borrower or any Subsidiary to obtain any consent or approval of, or make any registration or filing with, or request any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect (except for any reports required to be filed by the Borrower with the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934), (b) will not result in a violation by the Borrower or any Subsidiary of any applicable law or regulation or the charter, by-laws or other organizational documents of the Borrower or any of its Subsidiaries or any order of any Governmental Authority, (c) will not violate or result in a default under any material indenture, agreement or other instrument binding upon the Borrower or any of its Subsidiaries or its assets, and (d) will not result in the creation or imposition of any Lien on any asset of the Borrower or any of its Subsidiaries.

5. There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to my knowledge, threatened against or affecting the Borrower or any of its Subsidiaries (a) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect (other than the Disclosed Matters) or (b) that involve the Loan Documents or the Transactions.



6. Neither the Borrower nor any of its Subsidiaries is an “investment company” as defined in, or subject to regulation under, the Investment Company Act of 1940, as amended.

I am a member of the Bar of the State of Texas and the foregoing opinions are limited to the laws of the State of Texas, the statutory laws and regulations of the United States of America and the General Corporation Law of the State of Delaware, and in each case, exclusive of municipal, local and county ordinances, laws, rules and regulations. The foregoing opinions are limited in all respects to such laws in existence as of the date hereof, and I undertake no obligation or responsibility to update or supplement this opinion in response to subsequent changes in the law or future events affecting the transactions contemplated by the Credit Agreement.

The opinions expressed herein are subject to the following further assumptions, qualifications, limitations and comments:

a. For purposes of the opinions herein expressed, except for the opinion given in paragraph 3 regarding the enforceability of the choice of law provision of the Credit Agreement, I have assumed that the laws of the State of New York are the same as the laws of the State of Texas in all relevant respects.

b. No opinion is expressed as to whether a court would grant specific performance or any other equitable remedy with respect to the Credit Agreement, or whether a court would grant a particular remedy sought under the Credit Agreement as opposed to another remedy provided therein or at law or in equity.

c. No opinion is expressed as to the validity, binding effect, enforceability or legality of any provision of the Credit Agreement which purports to grant the Administrative Agent the right to accelerate the obligations owned by any non-consenting Lender.

d. No opinion is expressed as to the enforceability of provisions in the Credit Agreement, if any, that purport to: (i) grant rights of indemnification; (ii) provide that any provision therein is severable from any other provision; (iii) restrict access to legal or equitable remedies; (iv) establish evidentiary standards for suits or proceedings to enforce any agreements or evidentiary standards relating to any powers granted thereunder; (v) waive or affect any rights or demands or notices; (vi) waive either illegality as a defense to the performance of contract obligations or any other defense to such performance which cannot, as a matter of law, be effectively waived; (vii) ratify actions to be taken in the future; (viii) provide for self-help, subrogation, delay or omission to enforce rights or remedies; (ix) provide rights or remedies to third parties; (x) bestow subject matter or in personam jurisdiction on any court or to determine the sufficiency or effectiveness of any service of process or similar judicial procedure; or (xi) provide rights of set-off.

This opinion is rendered solely to you in connection with the above matter, and may not be relied on by you for any other purpose or relied upon by any other Person (other than your successors who are not Governmental Authorities and your permitted assigns who become Lenders) without my prior written consent, and is not to be used, circulated, quoted, relied upon, published or otherwise referred to or disseminated (other than to any permitted assign, or any prospective assignee under the Credit Agreement) for any other purpose without my prior written consent;

provided that, copies of this opinion may be included with copies of documents to be furnished to Participants or prospective Participants and may be furnished to the regulatory authorities having supervisory authority over the addressees hereof, for the purpose of confirming the existence of this opinion, as may be expressly required by law or court proceedings, and as otherwise expressly permitted pursuant to Section 9.12 of the Credit Agreement.

Very truly yours,

Jay D. Browning

Exhibit F  
FORM OF LEGAL OPINION OF BAKER BOTTS, L.L.P., BORROWER'S COUNSEL

[DATE]

To the Lenders and the Administrative  
Agent Referred to Below  
c/o JPMorgan Chase Bank, N.A.,  
as Administrative Agent  
270 Park Avenue  
New York, New York 10017

Ladies and Gentlemen:

We have acted as special counsel to Valero Energy Corporation, a Delaware corporation (the "Borrower"), in connection with the preparation, execution and delivery of the \$3,000,000,000 5-Year Amended and Restated Revolving Credit Agreement, dated as of December 5, 2011 (the "Credit Agreement"), among the Borrower, the Lenders party thereto, JPMorgan Chase Bank, N.A., as Administrative Agent ("Agent"), and others as agents, and in connection with the execution and delivery pursuant thereto of the Notes dated the date hereof.

This opinion is delivered to you pursuant to Section 4.01(b)(ii) of the Credit Agreement. Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

In arriving at the opinion expressed below, we have examined the following documents:

- (a) a counterpart of the Credit Agreement signed by the Borrower, the Administrative Agent and the Lenders;
- (b) Notes signed by the Borrower dated the date hereof payable to the order of each Lender party to the Credit Agreement that has requested a Note; and
- (c) a copy of the opinion letter of Jay D. Browning, Senior Vice President - Corporate Law and Secretary of the Borrower, addressed to you and dated the date hereof.

In rendering the opinion expressed below, we have assumed, with your permission, without independent investigation or inquiry, (a) the authenticity of all documents submitted to us as originals, (b) the genuineness of all signatures on all documents that we examined and (c) the conformity to authentic originals of documents submitted to us as certified, conformed or photostatic copies.

Insofar as our opinion expressed below relates to the matters set forth in the above-mentioned opinion letter of Jay D. Browning, we have assumed without independent investigation the correctness of the matters set forth in such opinions, and our opinion is subject to the assumptions, qualifications and limitations set forth in such opinion letter.

Based upon the foregoing, and subject to the qualifications and comments set forth below, we are of the opinion that, insofar as the law of the State of New York is concerned, each of the Credit Agreement and the Notes dated the date hereof constitutes a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except as affected by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing.

Our opinion is subject to the following qualifications: We express no opinion with respect to the validity or enforceability of the following provisions to the extent that they are contained in the Loan Documents: (i) provisions releasing, exculpating or exempting a party from, or requiring indemnification or contribution of a party for, liability for its own negligence or to the extent that the same are inconsistent with the public policy underlying any law, rule or regulation; (ii) provisions purporting to waive, subordinate, or not give effect to rights to notice, demands, legal defenses or other rights or benefits that cannot be waived, subordinated, or rendered ineffective under applicable law; (iii) provisions purporting to waive remedies inconsistent with applicable law; (iv) provisions relating to powers of attorney, severability or set-offs; (v) provisions restricting access to courts or purporting to affect the jurisdiction or venue of courts (other than the courts of the State of New York with respect to Loan Documents governed by the State of New York); (vi) provisions purporting to exclude all conflicts-of-law rules; (vii) provisions setting out methods or procedures for service of process; (viii) provisions pursuant to which a party agrees that a judgment rendered by a court or other tribunal in one jurisdiction may be enforced in any other jurisdiction and (ix) provisions providing that decisions by a party are conclusive or may be made in its sole discretion.

We are members of the Bar of the State of New York and we do not express any opinion herein concerning any law other than the law of the State of New York.

This opinion letter is rendered as of the date set forth above and we expressly disclaim any obligation to update this letter after the date hereof.

This opinion has been rendered solely for your benefit in connection with the Credit Agreement and the transactions contemplated thereby and may not be relied upon by you for any other purpose, or relied upon by any other Person, firm or corporation (other than any Person who becomes a Lender after the date hereof) without our prior written consent.

Very truly yours,

**VALERO ENERGY CORPORATION AND SUBSIDIARIES**  
**STATEMENTS OF COMPUTATIONS OF RATIOS OF EARNINGS TO FIXED CHARGES**  
(Millions of Dollars)

	<b>Year Ended December 31,</b>				
	<u><b>2011</b></u>	<u><b>2010</b></u>	<u><b>2009</b></u>	<u><b>2008</b></u>	<u><b>2007</b></u>
<b>Earnings:</b>					
Income (loss) from continuing operations before income tax expense (benefit), excluding income from equity investee	\$ 3,322	\$ 1,481	\$ (334)	\$ 268	\$ 6,202
<b>Add:</b>					
Fixed charges	735	743	701	626	631
Amortization of capitalized interest	23	20	18	17	13
Distributions from equity investee	—	10	—	—	—
<b>Less:</b>					
Interest capitalized	(152)	(90)	(105)	(92)	(101)
<b>Total earnings</b>	<u><b>\$ 3,928</b></u>	<u><b>\$ 2,164</b></u>	<u><b>\$ 280</b></u>	<u><b>\$ 819</b></u>	<u><b>\$ 6,745</b></u>
<b>Fixed charges:</b>					
Interest expense, net	\$ 401	\$ 484	\$ 416	\$ 360	\$ 357
Interest capitalized	152	90	105	92	101
Rental expense interest factor (a)	182	169	180	174	173
<b>Total fixed charges</b>	<u><b>\$ 735</b></u>	<u><b>\$ 743</b></u>	<u><b>\$ 701</b></u>	<u><b>\$ 626</b></u>	<u><b>\$ 631</b></u>
<b>Ratio of earnings to fixed charges</b>	<u><b>5.3 x</b></u>	<u><b>2.9 x</b></u>	<b>(b)</b>	<u><b>1.3 x</b></u>	<u><b>10.7 x</b></u>

(a) The interest portion of rental expense represents one-third of rents, which is deemed representative of the interest portion of rental expense.

(b) For the year ended December 31, 2009, earnings were insufficient to cover fixed charges by \$421 million. The deficiency included the effect of a \$222 million pre-tax impairment loss resulting from the permanent cancellation of certain capital projects classified as "construction in progress" as a result of the unfavorable impact of the economic slowdown on refining industry fundamentals during the year. The deficiency was also partially attributable to a \$120 million loss contingency accrual related to our dispute of a turnover tax on export sales in Aruba.

Exhibit 21.01

Valero Energy Corporation and Subsidiaries  
as of February 17, 2012

<u>Name of Entity</u>	<u>State of Incorporation/Organization</u>
AUTOTRONIC SYSTEMS, INC.	Delaware
BIG DIAMOND, INC.	Texas
BIG DIAMOND NUMBER 1, INC.	Texas
CANADIAN ULTRAMAR COMPANY	Nova Scotia
CANALUX L.P.	Newfoundland and Labrador
COLONNADE VERMONT INSURANCE COMPANY	Vermont
DIAMOND ALTERNATIVE ENERGY, LLC	Delaware
DIAMOND ALTERNATIVE ENERGY OF CANADA INC.	Canada
DIAMOND GREEN DIESEL HOLDINGS LLC	Delaware
DIAMOND GREEN DIESEL LLC	Delaware
DIAMOND K RANCH LLC	Texas
DIAMOND OMEGA COMPANY, L.L.C.	Delaware
DIAMOND SHAMROCK ARIZONA, INC.	Delaware
DIAMOND SHAMROCK REFINING COMPANY, L.P.	Delaware
DIAMOND SHAMROCK STATIONS, INC.	Delaware
DIAMOND UNIT INVESTMENTS, L.L.C.	Delaware
DSRM NATIONAL BANK	U.S.A.
EASTVIEW FUEL OILS LIMITED	Ontario
EMERALD MARKETING, INC.	Texas
GOLDEN EAGLE ASSURANCE LIMITED	British Columbia
HUNTWAY REFINING COMPANY	Delaware
KINROSS CELLULOSIC ETHANOL LLC	Delaware
MAINLINE PIPELINES LIMITED	England and Wales
MICHIGAN REDEVELOPMENT GP, LLC	Delaware
MICHIGAN REDEVELOPMENT, L.P.	Delaware
MRP PROPERTIES COMPANY, LLC	Michigan
NATIONAL CONVENIENCE STORES INCORPORATED	Delaware
NECHES RIVER HOLDING CORP.	Delaware
OCEANIC TANKERS AGENCY LIMITED	Quebec
PORT ARTHUR COKER COMPANY L.P.	Delaware
PREMCO USA INC.	Delaware
PROPERTY RESTORATION, L.P.	Delaware
ROBINSON OIL COMPANY (1987) LIMITED	Nova Scotia
SABINE RIVER HOLDING CORP.	Delaware
SABINE RIVER LLC	Delaware
SIGMOR BEVERAGE, INC.	Texas
SIGMOR CORPORATION	Delaware
SIGMOR NUMBER 5, INC.	Texas
SIGMOR NUMBER 43, INC.	Texas

SIGMOR NUMBER 79, INC.	Texas
SIGMOR NUMBER 80, INC.	Texas
SIGMOR NUMBER 103, INC.	Texas
SIGMOR NUMBER 105, INC.	Texas
SIGMOR NUMBER 119, INC.	Texas
SIGMOR NUMBER 178, INC.	Texas
SIGMOR NUMBER 196, INC.	Texas
SIGMOR NUMBER 238, INC.	Texas
SIGMOR NUMBER 259, INC.	Texas
SIGMOR NUMBER 422, INC.	Texas
SKIPPER BEVERAGE COMPANY, INC.	Texas
SUNBELT REFINING COMPANY, L.P.	Delaware
SUNSHINE BEVERAGE CO.	Texas
TEXOIL LIMITED	Ireland
THE PREMCOR PIPELINE CO.	Delaware
THE PREMCOR REFINING GROUP INC.	Delaware
THE SHAMROCK PIPE LINE CORPORATION	Delaware
TOC-DS COMPANY	Delaware
ULTRAMAR ACCEPTANCE INC.	Canada
ULTRAMAR ENERGY INC.	Delaware
ULTRAMAR INC.	Nevada
ULTRAMAR LTD.	Canada
ULTRAMAR SERVICES INC.	Canada
VALERO ARUBA ACQUISITION COMPANY I, LTD.	Virgin Islands (U.K.)
VALERO ARUBA FINANCE INTERNATIONAL, LTD.	Virgin Islands (U.K.)
VALERO ARUBA HOLDING COMPANY N.V.	Aruba
VALERO ARUBA HOLDINGS INTERNATIONAL, LTD.	Virgin Islands (U.K.)
VALERO ARUBA MAINTENANCE/OPERATIONS COMPANY N.V.	Aruba
VALERO CALIFORNIA RETAIL COMPANY	Delaware
VALERO CAMBRIA LLC	Delaware
VALERO CANADA FINANCE, INC.	Delaware
VALERO CANADA L.P.	Newfoundland
VALERO CAPITAL CORPORATION	Delaware
VALERO CARIBBEAN SERVICES COMPANY	Delaware
VALERO CLAIMS MANAGEMENT, INC.	Texas
VALERO COKER CORPORATION ARUBA N.V.	Aruba
VALERO CUSTOMS & TRADE SERVICES, INC.	Delaware
VALERO DIAMOND, L.P.	Texas
VALERO DIAMOND METRO, INC.	Michigan
VALERO ENERGY ARUBA II COMPANY	Cayman Islands
VALERO ENERGY CORPORATION (parent)	Delaware
VALERO ENERGY (IRELAND) LIMITED	Ireland
VALERO ENERGY LTD	England and Wales
VALERO EQUITY SERVICES LTD	England and Wales
VALERO FINANCE L.P. I	Newfoundland

VALERO FINANCE L.P. II	Newfoundland
VALERO FINANCE L.P. III	Newfoundland
VALERO GRAIN MARKETING, LLC	Texas
VALERO HOLDCO UK LTD	United Kingdom
VALERO HOLDINGS, INC.	Delaware
VALERO INTERNATIONAL HOLDINGS, INC.	Nevada
VALERO LUX COMPANY I S.à r.l.	Luxembourg
VALERO LUX COMPANY II S.à r.l.	Luxembourg
VALERO MARKETING & SUPPLY-ARUBA N.V.	Aruba
VALERO MARKETING AND SUPPLY COMPANY	Delaware
VALERO MARKETING AND SUPPLY INTERNATIONAL LTD.	Cayman Islands
VALERO MISSION COMPANY, LLC	Delaware
VALERO MKS LOGISTICS, L.L.C.	Delaware
VALERO MOSELLE COMPANY S.à r.l.	Luxembourg
VALERO NEDERLAND COÖPERATIEF U.A.	The Netherlands
VALERO NEW AMSTERDAM B.V.	The Netherlands
VALERO OMEGA COMPANY, L.L.C.	Delaware
VALERO OPERATIONS SUPPORT, LTD	England and Wales
VALERO PAYMENT SERVICES COMPANY	Virginia
VALERO PEMBROKESHIRE LLC	Delaware
VALERO POWER MARKETING COMPANY	Delaware
VALERO REFINING AND MARKETING COMPANY	Delaware
VALERO REFINING COMPANY-ARUBA N.V.	Aruba
VALERO REFINING COMPANY-CALIFORNIA	Delaware
VALERO REFINING COMPANY-OKLAHOMA	Michigan
VALERO REFINING COMPANY-TENNESSEE, L.L.C.	Delaware
VALERO REFINING-MERAUX LLC	Delaware
VALERO REFINING-NEW ORLEANS, L.L.C.	Delaware
VALERO REFINING-TEXAS, L.P.	Texas
VALERO RENEWABLE FUELS COMPANY, LLC	Texas
VALERO RETAIL HOLDINGS, INC.	Delaware
VALERO SECURITY SYSTEMS, INC.	Delaware
VALERO SERVICES, INC.	Delaware
VALERO TERMINALING AND DISTRIBUTION COMPANY	Delaware
VALERO TEXAS POWER MARKETING, INC.	Delaware
VALERO UK LTD	United Kingdom
VALERO ULTRAMAR HOLDINGS INC.	Delaware
VALERO UNIT INVESTMENTS, L.L.C.	Delaware
VALERO WEST WALES LLC	Delaware
VALLEY SHAMROCK, INC.	Texas
VEC TRUST I	Delaware
VEC TRUST III	Delaware
VEC TRUST IV	Delaware
VRG PROPERTIES COMPANY	Delaware
VTD PROPERTIES COMPANY	Delaware



Consent of Independent Registered Public Accounting Firm

The Board of Directors  
of Valero Energy Corporation and subsidiaries:

We consent to the incorporation by reference in the registration statements, as amended, on Form S-3 (Registration No. 333-157867) and Form S-8 (Registration Nos. 333-174721, 333-31709, 333-31721, 333-31723, 333-31727, 333-81858, 333-106620, 333-118731, 333-125082, 333-129032 and 333-136333) of Valero Energy Corporation and subsidiaries (the Company), of our reports dated February 24, 2012, with respect to the consolidated balance sheets of Valero Energy Corporation and subsidiaries as of December 31, 2011 and 2010, and the related consolidated statements of income, equity, cash flows, and comprehensive income for each of the years in the three-year period ended December 31, 2011, and the effectiveness of internal control over financial reporting as of December 31, 2011, which reports appear in the December 31, 2011 annual report on Form 10-K of the Company. Our report dated February 24, 2012, on the effectiveness of internal control over financial reporting as of December 31, 2011, contains an explanatory paragraph that states that management has excluded the internal control over financial reporting of Valero Energy Ltd and its subsidiaries (VEL) and Valero Refining-Meraux LLC (Meraux) from its assessment of the effectiveness of the Company's internal control over financial reporting as of December 31, 2011. Our audit of internal control over financial reporting of the Company also excluded an evaluation of the internal control over financial reporting of VEL and Meraux.

/s/ KPMG LLP

San Antonio, Texas  
February 24, 2012

**CERTIFICATION PURSUANT TO SECTION 302  
OF THE SARBANES-OXLEY ACT OF 2002**

I, William R. Klesse, certify that:

1. I have reviewed this annual report on Form 10-K of Valero Energy Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 24, 2012

/s/ William R. Klesse

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William R. Klesse  
Chief Executive Officer and President

**CERTIFICATION PURSUANT TO SECTION 302  
OF THE SARBANES-OXLEY ACT OF 2002**

I, Michael S. Ciskowski, certify that:

1. I have reviewed this annual report on Form 10-K of Valero Energy Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 24, 2012

/s/ Michael S. Ciskowski

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Michael S. Ciskowski  
Executive Vice President and Chief Financial Officer

CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Valero Energy Corporation (the Company) on Form 10-K for the year ended December 31, 2011, as filed with the Securities and Exchange Commission on the date hereof (the Report), I, William R. Klesse, Chief Executive Officer and President of the Company, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ William R. Klesse

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William R. Klesse

Chief Executive Officer and President

February 24, 2012

A signed original of the written statement required by Section 906 has been provided to Valero Energy Corporation and will be retained by Valero Energy Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

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CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of Valero Energy Corporation (the Company) on Form 10-K for the year ended December 31, 2011, as filed with the Securities and Exchange Commission on the date hereof (the Report), I, Michael S. Ciskowski, Executive Vice President and Chief Financial Officer of the Company, hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Michael S. Ciskowski

Michael S. Ciskowski

Executive Vice President and Chief Financial Officer

February 24, 2012

A signed original of the written statement required by Section 906 has been provided to Valero Energy Corporation and will be retained by Valero Energy Corporation and furnished to the Securities and Exchange Commission or its staff upon request.

# VALERO ENERGY CORPORATION

## Audit Committee Pre-Approval Policy

### **I. Statement of Principles**

Pursuant to Section 10A of the Securities Exchange Act of 1934, as amended by Section 202 of the Sarbanes-Oxley Act of 2002 (“SOX Act”), the Audit Committee of the board of directors (the “Audit Committee”) of Valero Energy Corporation (the “Company”) is required to pre-approve the audit and non-audit services performed by the Company's independent auditor to assure that the provision of such services does not impair the auditor's independence. The SEC's rules establish two approaches for pre-approving services. The two approaches are not mutually exclusive:

- the Audit Committee may pre-approve each particular service on a case-by-case basis (“ *separate pre-approval*”), and
- the Audit Committee may adopt a pre-approval policy that is detailed as to the particular types of services that may be provided by the independent auditor without consideration by the Audit Committee on a case-by-case basis (“ *policy-based pre-approval*”).

The Audit Committee believes that a combination of these approaches will provide an effective and efficient procedure to pre-approve services performed by the independent auditor. Therefore, unless a type of service has received policy-based pre-approval (as specifically identified in the appendices to this policy), it will require separate pre-approval by the Audit Committee.

The appendices to this policy contain lists of services that have received policy-based pre-approval of this Audit Committee in the following categories (categorized in accordance with the SEC's rules):

- Audit Services
- Audit-Related Services
- Tax Services
- All Other Services

### **II. Term of Pre-Approvals**

The term of the policy-based pre-approvals stated in the appendices to this policy is the period from January 1, 2012 to January 31, 2015, unless the Audit Committee specifically provides for a different period. The Audit Committee will review and pre-approve the services that may be provided by the independent auditor. The Audit Committee will revise the list of policy-based pre-approved services from time to time as the Committee deems necessary or appropriate.

### III. Delegation

In accordance with the SOX Act and SEC rules, the Audit Committee hereby delegates to its Chairman the authority to grant separate pre-approvals of services and fees in accordance with this policy. The Audit Committee may further delegate pre-approval authority from time to time to one or more of its other members in its discretion. Any committee member to whom pre-approval authority is delegated shall report any pre-approval decisions to the full Audit Committee at its next meeting. The Audit Committee does not delegate its responsibilities to pre-approve services to any member of the Company's management.

### IV. Services for which *Separate Pre-Approval* is Required

The terms and fees for the following services of the independent auditor require *separate* pre-approval by the Audit Committee:

- the annual financial statement audit, including all audits, reviews, procedures and other services required to be performed by the independent auditor to form an opinion on the Company's consolidated financial statements, and
- the annual audit of the Company's internal control over financial reporting, including all services required to be performed by the independent auditor to issue its report on the effectiveness of the Company's internal control over financial reporting.

The Audit Committee will monitor these engagements as it deems appropriate, and will approve, if necessary, any changes in terms, conditions and fees resulting from changes in engagement scope, changes in the Company's structure or other matters.

### V. Services for which *Policy-Based Pre-Approval* is Available

#### A. **Audit Services**

The Audit Committee may grant *policy-based* pre-approval for Audit Services other than the services described in Section IV above. These Audit Services are generally services that only the Company's independent auditor reasonably can provide, and include:

- services associated with SEC registration statements (*e.g.*, comfort letters, consents), periodic reports and other documents filed with the SEC or other documents issued in connection with securities offerings,
- statutory audits or financial audits for subsidiaries or affiliates of the Company.

The Audit Committee has given policy-based pre-approval for the Audit Services listed in Appendix A. All other Audit Services must be separately pre-approved by the Audit Committee.

## **B. Audit-Related Services**

Audit-Related Services are assurance and related services that are reasonably related to the performance of the annual audit or quarterly review of the Company's financial statements or that are traditionally performed by the independent auditor. The Audit Committee may grant policy-based pre-approval for Audit-Related Services. These services would include:

- employee benefit plan audits, and
- due diligence services related to proposed mergers and acquisitions.

The Audit Committee believes that the provision of the Audit-Related Services listed in [Appendix B](#) does not impair the independence of the auditor, and has given policy-based pre-approval for the Audit-Related Services listed in [Appendix B](#). All other Audit-Related Services must be separately pre-approved by the Audit Committee.

## **C. Tax Services**

The Audit Committee believes that the independent auditor can provide Tax Services to the Company such as tax compliance, tax planning and tax advice without impairing the auditor's independence. However, the Audit Committee will not permit the retention of the independent auditor in connection with a transaction initially recommended by the independent auditor, the purpose of which may be tax avoidance and the tax treatment of which may not be supported in the U.S. Internal Revenue Code and related regulations or in the tax laws and regulations of any jurisdiction in which the Company is subject to taxation. In addition, the independent auditor may not provide any tax services to the Company that are deemed to be incompatible with auditor independence per standards promulgated by the Public Company Accounting Oversight Board ("PCAOB").

The Audit Committee has given policy-based pre-approval for the Tax Services listed in [Appendix C](#). All other Tax Services must be separately pre-approved by the Audit Committee, including Tax Services related to large and complex transactions and Tax Services proposed to be provided by the independent auditor to any executive officer or director of the Company, in his or her individual capacity, when such services are paid for by the Company.

## **D. All Other Services**

The Audit Committee may grant policy-based pre-approval for those permissible non-audit services classified as All Other Services that it believes are routine, recurring services that would not impair the independence of the auditor. The Audit Committee has given policy-based pre-approval for the All Other Services listed in [Appendix D](#). Any permissible All Other Services that are not listed in [Appendix D](#) must be separately pre-approved by the Audit Committee.

## **VI. Prohibited Services**

A list of the SEC's prohibited non-audit services is attached to this policy as [Appendix E](#). The list sets forth the several services that the SOX Act and the SEC have specifically identified as services that



may not be performed by the Company's independent auditor. The Audit Committee will consult the SEC's rules and relevant guidance, with the assistance of counsel when necessary or appropriate, to determine whether any proposed service by the independent auditor falls within any category of prohibited non-audit services.

In addition, the independent auditor may not provide any service or product to the Company for a *contingent fee* (as defined and interpreted by the SEC pursuant to Rule 2-01(c)(5) of Regulation S-X) or a commission, or pursuant to an agreement (written or otherwise) by the Company to pay a "value added" fee based on the results of the independent auditor's performance of a service.

## **VII. Pre-Approval Fee Levels**

Pre-approval fee levels for all services to be provided by the independent auditor have been established by the Audit Committee. All services that have received policy-based pre-approval are subject to the annual pre-approval fee levels set forth in the appendices to this policy. Any proposed services exceeding these amounts will require separate pre-approval by the Audit Committee or by any person to whom pre-approval authority is granted under Section III above. Unused pre-approval amounts from one year may not be carried forward to the next year.

## **VIII. Procedures**

Requests or applications to provide services that require separate approval by the Audit Committee must be submitted to the Audit Committee by both the independent auditor and the Company's Chief Financial Officer (or his designee), and must be consistent with the SEC's rules on auditor independence. In connection with the Audit Committee's consideration of any proposed service, the independent auditor, at the Committee's request, will provide to the Audit Committee detailed documentation regarding the specific services to be provided so that the Committee can make a well-reasoned assessment of the impact of the service on the auditor's independence.

The Audit Committee hereby designates the Company's Vice President of Internal Audit (the "Monitor") to monitor the performance of all services provided by the independent auditor and to determine whether such services are in compliance with this policy. The Monitor will report to the Audit Committee on a periodic basis the results of his monitoring.

**Pre-Approved AUDIT SERVICES**

<b><u>Service</u></b>
assistance with and review of documents filed with the SEC including registration statements, reports on Forms 10-K and 10-Q, and other documents
services associated with other documents issued in connection with securities offerings ( e.g., comfort letters, consents)
assistance in responding to SEC comment letters
statutory audits ( e.g., FERC and insurance audits) and financial audits for subsidiaries of the Company, to include services normally provided by the Company's independent auditor in connection with statutory and regulatory filings
certificates, letters and opinions issued to regulators, agencies and other third-parties ( e.g., insurance, banking, environmental) regarding the Company's assets and/or operations that only the Company's independent auditors reasonably can provide
consultations concerning principles of accounting and/or financial reporting treatment under standards or interpretations by the SEC, PCAOB, FASB or other regulatory or standard-setting bodies necessary to reach an audit judgment and/or opinion on the Company's financial statements
<b><u>Annual pre-approval fee limit for Audit Services (other than services pertaining to registration statements or prospectuses in connection with securities offerings)</u></b>
\$500,000
<b><u>Annual pre-approval fee limit for Audit Services pertaining to registration statements or prospectuses in connection with securities offerings</u></b>
\$250,000 per registration statement or prospectus

**Pre-Approved AUDIT-RELATED SERVICES**

<b><u>Service</u></b>
due diligence services pertaining to potential business acquisitions or dispositions
financial statement audits of employee benefit plans
accounting consultations and audits in connection with acquisitions
consultations concerning principles of accounting and/or financial reporting treatment under standards or interpretations by the SEC, PCAOB, FASB or other regulatory or standard-setting bodies <i>outside</i> those consultations necessary to perform an audit or review of Valero's financial statements in accordance with generally accepted auditing standards
<b><u>Annual pre-approval fee limit for Audit-Related Services</u></b>
\$500,000

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**Pre-Approved TAX SERVICES**

<b><u>Service</u></b>
<i>Note:</i> The following are subject to the terms of subsection C. of Section V. of this policy.
U.S. federal, state and local tax compliance, including the preparation of original and amended tax returns and claims for refunds
U.S. federal, state and local tax planning and advice, including assistance with tax audits and appeals (but expressly excluding advocacy or litigation services), tax advice related to mergers and acquisitions, tax advice relating to employee benefit plans, and requests for rulings or technical advice from taxing authorities
review of Canadian federal and provincial income tax returns
Canadian federal and provincial tax planning and advice, including assistance with tax audits and appeals (but expressly excluding advocacy or litigation services), and advice relating to the tax effects of certain employee benefit arrangements
review of federal, state, local and international income, franchise, and other tax returns
<b><u>Annual pre-approval fee limit for Tax Services</u></b>
\$250,000

**Pre-Approved ALL OTHER SERVICES**

<u>Services</u>
none
<u>Annual pre-approval fee limit for All Other Services</u>
\$ 0

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**Prohibited Non-Audit Services**

- Bookkeeping or other services related to the accounting records or financial statements of the audit client\*
- Financial information systems design and implementation\*
- Appraisal or valuation services, fairness opinions or contribution-in-kind reports\*
- Actuarial services\*
- Internal audit outsourcing services\*
- Management functions
- Human resources
- Broker-dealer, investment adviser or investment banking services
- Legal services
- Expert services unrelated to the audit

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\* Provision of these non-audit services may be permitted if it is reasonable to conclude that the results of these services will not be subject to audit procedures. Materiality is not an appropriate basis upon which to overcome the rebuttable presumption that prohibited services will be subject to audit procedures.

