



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

March 22, 2024

Richard J. Walsh  
Valero Energy Corporation

Re: Valero Energy Corporation (the "Company")  
Incoming letter dated January 4, 2024

Dear Richard J. Walsh:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Warren Wilson College for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal requests that the Company adopt a 1.5° C-aligned, near-term emissions reduction target that does not include the use of carbon offsets and avoided emissions.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal seeks to micromanage the Company. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative basis for omission upon which the Company relies.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfm/2023-2024-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Luke Morgan  
As You Sow



**Richard J. Walsh**  
*Senior Vice President, General Counsel and Secretary*  
Valero Energy Corporation

January 4, 2024

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
100 F Street, N.E.  
Washington, D.C. 20549

RE: Valero Energy Corporation 2024 Annual Meeting of Shareholders  
Proposal of As You Sow, on behalf of Warren Wilson College

Ladies and Gentlemen:

I am submitting this letter on behalf of Valero Energy Corporation, a Delaware corporation (“Valero”), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Valero is seeking to omit a shareholder proposal and supporting statement (the “Proposal”) that it received from As You Sow, on behalf of Warren Wilson College (collectively referred to as the “Proponent”), from inclusion in the proxy materials to be distributed by Valero in connection with its 2024 annual meeting of shareholders (the “2024 proxy materials”). Copies of the Proposal and related relevant correspondence received from the Proponent are attached hereto as Exhibit A. For the reasons stated below, we respectfully request that the Staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission (the “Commission”) not recommend action against Valero if Valero omits the Proposal from the 2024 proxy materials.

Valero currently intends to file its 2024 definitive proxy materials on or about March 26, 2024. In accordance with the Staff’s instructions published in November 2023, we are submitting this letter and its attachments through the Commission’s website. A copy of this letter and its attachments are also being sent to the Proponent as notice of Valero’s intent to omit the Proposal from the 2024 proxy materials. We will promptly forward to the Proponent any response received from the Staff to this request that the Staff transmits by email only to Valero. Further, we take this opportunity to remind the Proponent that under the applicable rules, if the Proponent submits correspondence to the Staff regarding the Proposal, a copy of that correspondence should be concurrently furnished to the undersigned on behalf of Valero.

## **The Proposal**

The text of the resolution in the Proposal states: “BE IT RESOLVED: Shareholders request that Valero adopt a 1.5°C-aligned, near-term emissions reduction target that does not include the use of carbon offsets and avoided emissions.”

## **Basis for Exclusion**

For the reasons described in this letter, we respectfully request that the Staff concur in Valero’s view that it may exclude the Proposal from the 2024 proxy materials pursuant to:

- Rule 14a-8(i)(10) because Valero has substantially implemented the Proposal; and
- Rule 14a-8(i)(7) because it deals with a matter relating to Valero’s ordinary business operations.

## **Analysis**

### **Rule 14a-8(i)(10) – Substantial Implementation**

Rule 14a-8(i)(10) permits a company to exclude a shareholder proposal if the company has already substantially implemented the proposal. The Commission adopted the “substantially implemented” standard in 1983 after determining that the “previous formalistic application” of Rule 14a-8(i)(10) defeated its purpose, which is to “avoid the possibility of shareholders having to consider matters which already have been favorably acted upon by the management.” *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983) (the “1983 Release”) and Exchange Act Release No. 34-12598 (July 7, 1976). Accordingly, the actions requested by a proposal need not be “fully effected” provided that they have been “substantially implemented” by the company. *See* the 1983 Release.

Applying this standard, the Staff has consistently permitted the exclusion of a proposal under Rule 14a-8(i)(10) when it has determined that the company’s policies, practices and procedures compare favorably with the guidelines of the proposal. *See Devon Energy Corporation* (Apr. 1, 2020); *Exxon Mobil Corporation* (Mar. 20, 2020); *Visa, Inc.* (Oct. 11, 2019); *AutoZone, Inc.* (Oct. 9, 2019); *United Cont’l Holdings, Inc.* (Apr. 13, 2018); *eBay Inc.* (Mar. 29, 2018); *Kewaunee Scientific Corp.* (May 31, 2017); *Wal-Mart Stores, Inc.* (Mar. 16, 2017); *Dominion Resources, Inc.* (Feb. 9, 2016); *Walgreen Co.* (Sept. 26, 2013); *Texaco, Inc. (recon. granted* Mar. 28, 1991).

In addition, the Staff has permitted exclusion under Rule 14a-8(i)(10) where a company already addressed the underlying concerns and satisfied the essential objectives of a proposal, even if the proposal had not been implemented exactly as proposed by the proponent. In *Hess Corporation* (Apr. 11, 2019), for example, the proposal requested that the company issue a report on how it could reduce its carbon footprint in alignment with greenhouse gas (“GHG”) reductions

necessary to achieve the goals of the Paris Agreement. The company argued, among other things, that its sustainability report and response to the CDP climate change survey, both available on the company's website, substantially implemented the proposal. Because the materials referred to by the company covered most, though not all, of the issues raised by the proposal, the Staff concluded that the company's public disclosures "[c]ompared favorably with the guidelines of the [p]roposal" and that the company had therefore substantially implemented the proposal. In *IDACORP, Inc.* (Apr. 1, 2022), the proposal requested a report disclosing short, medium and long term GHG targets aligned with the Paris Agreement's goal of maintaining global temperature rise at 1.5°C, and progress made in achieving them, covering the company's full scope of operational and product related emissions. The company argued that it had already publicly disclosed its short, medium and long term GHG emissions, along with updates on its progress, and the Staff concurred in the exclusion of the proposal under Rule 14a-8(i)(10). *See also, e.g., Exxon Mobil Corporation* (Apr. 3, 2019) (same); *PNM Resources, Inc.* (Mar. 6, 2020) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report describing the company's risks in relation to the global response to climate change, where the company had already disclosed potential risks associated with its assets, including its natural gas generation assets); *Dunkin' Brands Group, Inc.* (Mar. 6, 2019) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report on the feasibility of integrating sustainability metrics into the performance quotas of senior executives of the company's compensation plans, where the company already integrated sustainability goals and metrics into its executive compensation program and provided disclosure regarding these matters in its annual proxy statement, as well as its biannual CSR report); *MGM Resorts Int'l* (Feb. 28, 2012) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report on the company's sustainability policies and performance and recommending the use of the Governance Reporting Initiative Sustainability Guidelines, where the company published an annual sustainability report that did not use the Governance Reporting Initiative Sustainability Guidelines or include all of the topics covered therein); *Wal-Mart Stores, Inc.* (Mar. 30, 2010) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting that the company adopt six principles for national and international action to stop global warming, where the company published a report that set forth only four principles that covered most, but not all, of the issues raised by the proposal); *Alcoa Inc.* (Feb. 3, 2009) (permitting exclusion under Rule 14a-8(i)(10) of a proposal requesting a report that describes how the company's actions to reduce its impact on global climate change may have altered the current and future global climate, where the company published general reports on climate change, sustainability and emissions data on its website).

Here, as in the examples of excluded proposals cited above, the Proposal is excludable from the 2024 proxy materials because Valero has substantially implemented the Proposal, the essential objective of which is the adoption of a near-term GHG emissions reduction target that has been found to be 1.5°C-aligned. While the text of the resolution in the Proposal states that it is requesting "a 1.5°C-aligned, near-term emissions reduction **target that does not include the use of carbon offsets and avoided emissions,**" its supporting statement also specifically notes that this should be done at "Board discretion." (Emphasis added.) Notwithstanding the Proposal's criticisms of avoided emissions from low-carbon fuels and carbon capture and sequestration, and its reference to a target that does not include either of these items, if the Proposal's invocation of

“Board discretion” in the supporting statement in fact affords Valero’s board of directors (“Board”) and its management the discretion to consider those methods of reducing GHG emissions, then the essential objective of the Proposal must be for Valero to adopt a near-term GHG emissions reduction target that has been found to be 1.5°C-aligned. Such an interpretation of the essential objective of the Proposal is also supported by the lengthy “Whereas” clause that precedes that Proposal’s resolution, which recital asserts that it is “imperative that companies ensure corporate reduction strategies result in actual emission reductions that align with 1.5°C.”

As an initial matter, it should be noted that Valero’s GHG emissions reduction targets do not use “carbon offsets,” only avoided emissions (also referred to as displacements) from the production of low-carbon fuels, the blending of or credits from low-carbon fuels, and carbon capture and sequestration. As discussed further below, Valero’s existing GHG emissions reduction targets in line with its business strategy (i) have been and are considered by the Board, (ii) were found by an independent third-party expert to be aligned with 1.5°C emissions reduction goals, (iii) are informed by Valero’s business strategy and the approaches used and acknowledged by multiple influential advisory groups, government authorities, and other third parties, as well as its shareholders, and (iv) consist of enterprise-wide projects to reduce emissions through efficiency improvements, growth of ethanol and renewable diesel production, blending of low-carbon fuels, and emissions reductions through carbon capture and sequestration and other low-carbon projects.

Valero has already set and published GHG emissions reduction targets and a 2050 long-term ambition, as described in its 2023 ESG Report, published in the environmental, social, and governance (“ESG”) section of Valero’s investor website (the “2023 ESG Report”), which was reviewed with the Sustainability and Public Policy Committee of the Board.<sup>1</sup> While the Proposal requires only the adoption of a “near-term” target, the 2023 ESG Report goes further by providing a comprehensive overview of Valero’s 2025 and 2035 GHG emissions reduction targets. Specifically, the 2023 ESG Report discloses Valero’s (i) target to reduce and displace 63% of global refinery Scope 1 and 2 emissions by 2025, and (ii) target to reduce and displace 100% of its global refinery Scope 1 and 2 GHG emissions by 2035.<sup>2</sup> Additionally, Valero goes even further than the request made in the Proposal by also disclosing its 2050 ambition to reduce and displace GHG emissions by more than 45 million metric tons CO<sub>2e</sub>.<sup>3</sup>

As disclosed in Valero’s 2022 TCFD Report, published in the ESG section of Valero’s investor website (the “2022 TCFD Report”), which was also reviewed and discussed with the Sustainability and Public Policy Committee of Valero’s Board, Valero’s GHG emissions reduction targets in line with its business strategy have been independently found by a third-party expert to

---

<sup>1</sup> Valero’s full 2023 ESG Report is available at:  
[https://s23.q4cdn.com/587626645/files/doc\\_downloads/esg\\_reports/2023/2023-esg-report-final-082123-pages.pdf](https://s23.q4cdn.com/587626645/files/doc_downloads/esg_reports/2023/2023-esg-report-final-082123-pages.pdf)

<sup>2</sup> See the 2023 ESG Report at pages 16-17.

<sup>3</sup> See *Id.*

be 1.5°C-aligned.<sup>4</sup> In 2022, HSB Solomon Associates LLC (“Solomon”), a leading refining benchmarking data provider and advisory firm, conducted an independent scenario analysis of Valero based on the assumptions developed by the International Energy Agency’s (“IEA”) Net Zero by 2050 Scenario (the “NZE 2050 Scenario”).<sup>5</sup> Among Solomon’s independent conclusions, which are set forth in the 2022 TCFD Report, were that under the NZE 2050 Scenario as applied by Solomon: (i) “Valero’s overall refining portfolio would be resilient in the low-carbon marketplace” envisioned by the NZE 2050 Scenario, and (ii) “Valero’s strategy of continuing to operate one of the most competitive and efficient refining fleets would be aligned with the net zero goals of the Paris Agreement.”<sup>6</sup> The NZE 2050 Scenario focuses on an extremely ambitious transition to a lower-carbon economy, is described as a 1.5°C scenario, and is aligned with the Paris Agreement.<sup>7</sup> The NZE 2050 Scenario reaches worldwide net zero emissions by 2050 and is a compilation of 18 IEA scenarios that also limit warming to 1.5°C.<sup>8</sup> Importantly, Valero published its 2022 TCFD Report in response to its negotiation of the withdrawal of a proposal from As You Sow (the lead Proponent) that requested such a report be conducted and published applying the assumptions of the IEA’s NZE 2050 Scenario.

Valero’s GHG emissions reduction targets in line with its business strategy therefore already provide a comprehensive roadmap of its plans for achieving near-term GHG emissions reductions and have been found by an independent third-party expert to be 1.5°C-aligned. As a result, Valero has already addressed the essential objective of the Proposal.

Even if the three bullet point suggestions included within the Proposal’s supporting statement are also deemed to be essential elements of the Proposal, which Valero does not believe is the case, Valero has still also substantially implemented each of these suggestions. The first of the three suggestions in the Proposal’s supporting statement suggests that Valero “disclose a timeline for setting near-term 1.5°C-aligned emission reduction goals.” This suggestion has already been substantially implemented because, as discussed above, Valero has already set and disclosed GHG emissions reduction targets in line with its business strategy that provide a comprehensive roadmap of its plans for achieving near-term GHG emissions reductions and were found by an independent third-party expert to be 1.5°C-aligned.

---

<sup>4</sup> Valero’s full 2022 report based on the recommendations of the Task Force on Climate-related Financial Disclosures (“TCFD”) is available at:  
[https://s23.q4cdn.com/587626645/files/doc\\_downloads/esg\\_reports/2023/2022-tcf-report-and-scenario-analysis-jan-2023-amendment-pages.pdf](https://s23.q4cdn.com/587626645/files/doc_downloads/esg_reports/2023/2022-tcf-report-and-scenario-analysis-jan-2023-amendment-pages.pdf)

<sup>5</sup> See International Energy Agency (2021), Net Zero by 2050. A Roadmap for the Global Energy Sector, IEA, Paris, last updated July 2021 (3<sup>rd</sup> version).

<sup>6</sup> See the 2022 TCFD Report at pages 5, 14-15, and 30.

<sup>7</sup> See *Id.* at pages 14-15.

<sup>8</sup> See *Id.*

The second of the three suggestions in the Proposal’s supporting statement suggests that Valero “[c]onsider approaches used by advisory groups such as the Science Based Targets initiative.” Valero has also already substantially implemented this suggestion.

In establishing, disclosing, and continuing to utilize Valero’s current GHG emissions reduction targets in line with its business strategy, Valero already considers the approaches of multiple influential advisory groups, government authorities, and other third parties, as well as its shareholders. For instance, key aspects of Valero’s low-carbon fuels strategy and many of its GHG emissions disclosures, including its GHG emissions reduction targets and 2050 ambition, were based on and/or informed by multiple other influential third-party sources that are cited in its 2023 ESG Report, including (i) the GHG Protocol, and the GHG Protocol for Project Accounting, (ii) the Argonne National Laboratory GREET3.0 2021 (ethanol) and 2019 (biodiesel) models and published papers, (iii) studies on light and heavy duty vehicle life cycle emissions by the Southwest Research Institute, (iv) the Environmental Protection Agency’s (“EPA”) current and well established GHG reporting obligations under U.S. 40 CFR Part 98 (Subpart MM), and (v) the California Air Resources Board’s CA-GREET3.0 model used by California’s Low Carbon Fuel Standard.<sup>9</sup>

Additionally, low-carbon fuels and carbon capture and sequestration, which are key components of Valero’s low-carbon fuels strategy and its GHG emissions reductions targets, are viewed by the both the United Nations (“U.N.”) Intergovernmental Panel on Climate Change (“IPCC”)<sup>10</sup> and IEA<sup>11</sup> as critical to 1.5°C-aligned, net zero by 2050 ambitions. Furthermore, the U.N. Climate Change Conference (“COP28”) resulted in a multilateral agreement, published on December 13, 2023, that “[r]ecognizes the need for deep, rapid and sustained reductions in greenhouse gas emissions in line with 1.5°C pathways,” and explicitly calls for contributions thereto through several different global efforts including, among others, (i) “utilizing zero- and low-carbon fuels,” and (ii) “[a]ccelerating zero- and low-emission technologies, including, inter alia, renewables, nuclear, abatement and removal technologies such as carbon capture and utilization and storage, particularly in hard-to-abate sectors, and low-carbon hydrogen production.”<sup>12</sup> The COP28 agreement also explicitly “[r]ecognizes that transitional fuels can play a role in facilitating the energy transition while ensuring energy security.”<sup>13</sup> The COP28 conference was attended by some 85,000 participants, and nearly 200 countries, including the

---

<sup>9</sup> See Valero’s 2023 ESG Report at pages 77-78.

<sup>10</sup> See IPCC, 2022: Climate Change 2022: Mitigation of Climate Change. Contribution of Working Group III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [P.R. Shukla, J. Skea, R. Slade, A. Al Khourdajie, R. van Diemen, D. McCollum, M. Pathak, S. Some, P. Vyas, R. Fradera, M. Belkacemi, A. Hasija, G. Lisboa, S. Luz, J. Malley, (eds.)]. Cambridge University Press, Cambridge, UK and New York, NY, USA. doi: 10.1017/9781009157926.

<sup>11</sup> See IEA (2022), World Energy Outlook 2022, IEA, Paris <https://www.iea.org/reports/world-energy-outlook-2022>, License: CC BY 4.0 (report); CC BY NC SA 4.0 (Annex A).

<sup>12</sup> See the COP28 agreement, available at: [https://unfccc.int/sites/default/files/resource/cma2023\\_L17\\_adv.pdf](https://unfccc.int/sites/default/files/resource/cma2023_L17_adv.pdf) at paragraph 28.

<sup>13</sup> See *Id.* at paragraph 29.

United States and the European Union, were represented.<sup>14</sup> Additionally, the U.S. Department of Energy recently published a report on pathways to decarbonize chemicals and refining, which describes phased approaches for refiners to achieve net zero by leveraging technologies such as clean hydrogen, carbon capture and sequestration, and bio-based feedstocks/low-carbon fuels, among others.<sup>15</sup> The use of approaches by these influential organizations and initiatives that explicitly place importance on low-carbon fuels and carbon capture and sequestration projects has informed and reaffirmed Valero's views with respect to the continued advisability and meaningful nature of its current low-carbon fuels strategy and GHG emissions reduction targets. Low-carbon fuels, carbon capture and sequestration, and other low-carbon projects are also supported and incentivized by the regulations, policies, and standards of various other government authorities around the world, including (i) at the U.S. Federal level, through the U.S. Inflation Reduction Act of 2022 signed into law by President Biden in 2022<sup>16</sup> and the EPA's Renewable Fuel Standard Program, among other actions, (ii) at the U.S. state level, through California's Low Carbon Fuel Standard, among other actions, and (iii) by various foreign jurisdictions, through the Canada Clean Fuel Regulations and the U.K's Renewable Energy Directive II, among other actions.<sup>17</sup> Valero's disclosures have made clear that the approaches of such influential government authorities through the foregoing regulations, policies, and standards have informed Valero's strategy, low-carbon investments and projects, and belief that its low-carbon fuels and strategy can play an important role in helping achieve GHG emissions reduction targets in a reliable manner.<sup>18</sup>

It should also be noted that while the Proposal specifically suggests that Valero consider the approach of the Science Based Targets initiative (the "SBTi"), there are currently no SBTi standards or guidance for the oil and gas sector that are even available. The SBTi has explicitly stated that it "has stopped accepting commitments or targets from companies in the oil and gas sector" until it completes the development (currently expected in late 2024) of an Oil and Gas Standard that "will address a gap in the SBTi's sector-specific standards by allowing companies in this highly impactful sector to set targets" and "will establish the minimum criteria required for companies to set science-based targets that are aligned with a 1.5°C level of ambition."<sup>19</sup> Nonetheless, Valero's efforts compare favorably with the Proposal's request because Valero has already disclosed the independent conclusions of GHD Services Inc., a leading professional services company with expertise in GHG emissions measurement, reduction, reporting,

---

<sup>14</sup> See <https://unric.org/en/climate-highlights-of-cop28/>

<sup>15</sup> See The U.S. Department of Energy's Pathways to Commercial Liftoff: Chemicals & Refining, available at: <https://liftonn.energy.gov/wp-content/uploads/2023/09/20230921-Pathways-to-Commercial-Liftoff-Chemicals-Refining.pdf>

<sup>16</sup> See <https://www.whitehouse.gov/briefing-room/statements-releases/2022/08/19/fact-sheet-the-inflation-reduction-act-supports-workers-and-families/>

<sup>17</sup> See Valero's 2023 ESG Report at pages 9 and 13.

<sup>18</sup> See Valero's Annual Report on Form 10-K for the year ended December 31, 2022, available at: <https://www.sec.gov/ix?doc=/Archives/edgar/data/1035002/000103500223000027/vlo-20221231.htm> at pages 1-5 and 25-28.

<sup>19</sup> See the SBTi's Oil and Gas Standard Development Terms and Reference, available at: <https://sciencebasedtargets.org/resources/files/Oil-and-Gas-TOR.pdf#page=9&zoom=100,72,168>



verification, and validation, that the calculation methodologies for Valero's 2035 GHG emissions reduction target is both science based and conforms with acceptable engineering practices.<sup>20</sup>

Moreover, Valero's GHG emissions disclosures and targets are also influenced by input and feedback from our shareholders. As disclosed in our proxy statement for the 2023 annual meeting of shareholders, during the consistent and strong engagements and dialogue that Valero has had with its shareholders, many shareholders have expressed that they value that Valero is one of only a few companies to provide a clear roadmap for achieving aggressive GHG emissions reduction goals through its 2025 and 2035 GHG emissions reduction targets, and that they consider Valero's low-carbon fuels strategy to be well developed and one of the most comprehensive among its peers. At both the 2022 and 2023 annual meetings of shareholders, Valero's shareholders voted to reject a shareholder proposal that in each case would have required Valero to issue different GHG emissions reduction targets than Valero's 2025 and 2035 targets. Therefore, the Proposal risks the possibility that Valero's shareholders will have to consider a matter which has not only already been favorably acted upon by Valero's management, but that has also already been considered and voted upon by Valero's shareholders at its last two annual meetings.

The third and final suggestion included in Proposal's supporting statement suggests that Valero "include an enterprise-wide climate transition plan to achieve 1.5°C-aligned emission reductions." Valero has also already substantially implemented this suggestion.

As noted in Valero's proxy statement for its 2022 annual meeting of shareholders, Valero's low-carbon strategy is its business strategy; it is part of Valero's executive compensation program, all-employee bonus program, growth capital allocation, and comprehensive GHG emissions goals.<sup>21</sup> Valero has also described in detail its enterprise-wide strategy and progress regarding its GHG emissions reduction targets in its public disclosures. The 2023 ESG Report (i) notes that Valero believes its 2025 and 2035 targets and 2050 ambition reflect Valero's current business strategy, and (ii) highlights aspects of how Valero integrates climate-related risks and opportunities in its businesses and strategy, including the assessment of climate-related risks by Valero's management team in connection with Valero's annual strategic planning cycle, the minimum after-tax internal rate of return threshold to which Valero has held low-carbon and other projects, its low-carbon innovation, and the significant investments into high-return, low-carbon projects that Valero has made.<sup>22</sup> The 2023 ESG Report also describes Valero's progress towards achieving its emissions reduction targets: such report discloses, for example, that Valero (i) achieved its 2025 GHG emissions reduction target in 2022, three years ahead of schedule, and (ii) is on track to achieve its 2035 GHG emissions reduction target.<sup>23</sup> Furthermore, the 2023 ESG Report includes

---

<sup>20</sup> See the validation statement issued in 2023 by GHD Services Inc. on Valero's 2035 GHG emissions reduction target, available at: [https://s23.q4cdn.com/587626645/files/doc\\_downloads/2023/07/ghd-2035-target-validation-statement.pdf](https://s23.q4cdn.com/587626645/files/doc_downloads/2023/07/ghd-2035-target-validation-statement.pdf)

<sup>21</sup> See Valero's proxy statement filed with the Commission on March 17, 2022, available at: <https://www.sec.gov/Archives/edgar/data/1035002/000103500222000014/valero2022proxy.htm> at pages 93-94.

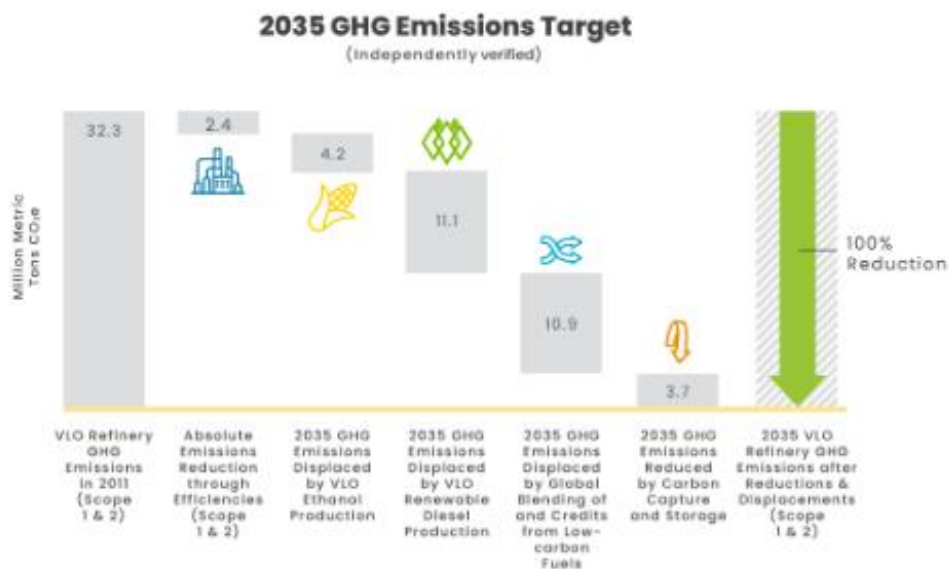
<sup>22</sup> See Valero's 2023 ESG Report at pages 8-13 and 78.

<sup>23</sup> See *Id.* at page 19.

disclosure on Valero’s 2050 ambition to reduce and displace GHG emissions by more than 45 million metric tons CO<sub>2</sub>e.<sup>24</sup>

In addition to the independent conclusions from Solomon noted above, the 2022 TCFD Report also provides disclosures on certain climate-related aspects of Valero’s enterprise-wide governance, strategy, risk management, and performance metrics and targets, including how Valero’s low-carbon projects and overall business strategy are aligned with its 2025 and 2035 GHG emissions reduction targets.<sup>25</sup> Moreover, Valero’s proxy statement for its 2023 annual meeting of shareholders further describe (i) Valero’s enterprise-wide strategy of running the most resilient refining assets, growing Valero’s low-carbon fuels production, and meeting its aggressive GHG emissions reduction targets by leveraging resilience and Valero’s low-carbon fuels strategy, and (ii) how Valero was a first mover into low-carbon fuels and today is one of the world’s leading low-carbon innovators.<sup>26</sup>

Furthermore, the first column in the waterfall chart of our 2035 target that is provided below already shows Valero’s realistic absolute Scope 1 and 2 GHG emissions-reduction plans in line with its business strategy that do not take into account carbon offsets or avoided emissions.<sup>27</sup>



As a result, there would be scant, if any, additional information for Valero to disclose given its current disclosures. Any such additional information and disclosures could only be provided if

<sup>24</sup> See *Id.* at page 17.

<sup>25</sup> See the 2022 TCFD Report at pages 4-5.

<sup>26</sup> See Valero’s proxy statement filed with the Commission on March 22, 2023, available at: <https://www.sec.gov/ix?doc=/Archives/edgar/data/1035002/000103500223000040/vlo-20230322.htm> at pages 102-103.

<sup>27</sup> See Valero’s 2023 ESG Report at page 16.

Valero were to drastically change its current business strategy and seek GHG emissions reductions from further refinery closures, asset sales, or production curtailment, which Valero has determined is currently inadvisable and/or unrealistic and not part of its current strategy.

While the “whereas” clause of the Proposal acknowledges Valero’s 2035 GHG emissions reduction target, it unjustifiably states that “it is unclear to investors how Valero is avoiding ‘double counting’” in using avoided emissions as part of such target and that “such disclosure gaps hinder investors from accurately assessing Valero’s exposure to climate-related financial risk.” The assertions in this statement are mistaken and contradicted by Valero’s disclosures. Valero’s 2023 ESG Report contains extensive notes detailing the calculations, methodologies, and assumptions utilized with respect to Valero’s GHG emissions disclosures and targets, and even specifically describes how “[w]hen calculating the avoided emissions from blending *and to avoid double counting*, our low-carbon fuel production that contributes to our blending obligation is excluded.”<sup>28</sup> (Emphasis added.) Valero takes the accuracy and reliability of its GHG emissions disclosures and targets very seriously, and has obtained third-party assurance on each of the components of its GHG emission reduction targets, and its 2035 GHG emissions reduction target has been independently validated and independently found to be science-based and in conformance with acceptable engineering practices.<sup>29</sup> Moreover, the Proposal’s mistaken assertion also directly belies the results and disclosure of Valero’s 2022 TCFD Report using the IEA’s NZE 2050 Scenario, which, ironically, was conducted and published in response to the negotiation of a shareholder proposal from As You Sow (the lead Proponent) several years ago that requested such a report, in part, to help shareholders assess Valero’s exposure to climate-related financial risk.

Although Valero’s 2025 and 2035 targets include avoided emissions/displacements, such targets are in line with its business strategy and, taken as a whole, provide a comprehensive roadmap of its plans for achieving near-term GHG emissions reductions. Ironically, as discussed further below, a target that does not allow for avoided emissions/displacements from low-carbon fuels or carbon capture and sequestration would actually be inconsistent with the Paris Agreement and the COP28 agreement.<sup>30</sup> As discussed above, in order for a proposal to be excludable under Rule 14a-8(i)(10), the actions requested by the proposal need not be “fully effected” provided that they have been “substantially implemented” by the company. *See* the 1983 Release.

As disclosed in the 2023 ESG Report and the 2022 TCFD Report, Valero has satisfied the Proposal’s essential objective of setting a near-term GHG emissions reduction target that has been found to be 1.5°C-aligned and thus substantially implemented the Proposal. Therefore, even though the Proposal may not be implemented exactly as proposed by the Proponent, Valero

---

<sup>28</sup> *See* Valero’s 2023 ESG Report at pages 77-78.

<sup>29</sup> *See* the third-party validation and verification statements available under the “Other Reports” heading of the ESG section of Valero’s investor website, available at: <https://investorvalero.com/esg/default.aspx#reports-presentations>

<sup>30</sup> *See* IEA (2022), World Energy Outlook 2022, IEA, Paris <https://www.iea.org/reports/world-energy-outlook-2022>, License: CC BY 4.0 (report); CC BY NC SA 4.0 (Annex A); *see also* the COP28 agreement, available at: [https://unfccc.int/sites/default/files/resource/cma2023\\_L17\\_adv.pdf](https://unfccc.int/sites/default/files/resource/cma2023_L17_adv.pdf) at paragraph 28.

believes that, as in *IDACORP, Inc.* (Apr. 1, 2022), *Hess Corporation* (Apr. 11, 2019), and *Exxon Mobil Corporation* (Mar. 20, 2020), its policies, practices and public disclosures compare favorably with those requested by the Proposal and that Valero has addressed the essential objective of the Proposal.

Accordingly, consistent with these and the other precedent described above, Valero believes that the Proposal may be excluded from the 2024 proxy materials pursuant to Rule 14a-8(i)(10).

### **Rule 14a-8(i)(7) – Ordinary Business Operations**

*The Proposal Inappropriately Limits the Discretion of Management Through Micromanagement of the Specific Methodologies for Achieving a Near-Term GHG Emissions Reduction Target that Has Been Found to be 1.5°C-Aligned and By Directly Inserting Shareholders into Valero’s Day-To-Day Business.*

As discussed above, Valero believes that it has substantially implemented the Proposal by satisfactorily addressing the Proposal’s essential objective. However, to the extent an essential element of the Proposal is construed to impose specific methodologies for determining GHG emissions reduction targets by requiring Valero to exclude the impact of certain specified emissions reduction strategies (namely, avoided emissions from low-carbon fuels and carbon capture and sequestration) from its targets, then the Proposal is excludable from the 2024 proxy materials under Rule 14a-8(i)(7) because it seeks to micromanage Valero in relation to matters squarely within the realm of ordinary business operations best overseen by management. In other words, while Valero believes that it has substantially implemented the Proposal by satisfactorily addressing the essential objective thereof, if it has not, then it is only because the Proposal’s lone reference to “Board discretion” in the supporting statement does not in fact afford the Board and management discretion as to whether to include avoided emissions in Valero’s GHG emissions reduction targets, and therefore is excludable under Rule 14a-8(i)(7) because it seeks to micromanage Valero’s ordinary business operations.

Rule 14a-8(i)(7) permits a company to exclude a shareholder proposal if the proposal deals with a matter relating to the company’s ordinary business operations. The general policy underlying the “ordinary business” exclusion is “to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting.” See Exchange Act Release No. 34-40018 (May 21, 1998) (the “1998 Release”). This general policy reflects two central considerations: (i) “[c]ertain tasks are so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight,” and (ii) the “degree to which the proposal seeks to ‘micromanage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” The 1998 Release notes that examples of the first central consideration include “decisions on production quality and quantity, and the retention

of suppliers” and that the second key consideration “may come into play in a number of circumstances, such as where the proposal ... seeks to impose specific time-frames or methods for implementing complex policies.”

In Staff Legal Bulletin 14L (Nov. 3, 2021) (“SLB 14L”), the Staff explained that when evaluating whether a proposal seeks to “micromanage” the company, it will focus on “the level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management.” As an example, the Staff cited its letter to ConocoPhillips, dated March 19, 2021, in which the company was denied no-action relief for a proposal requesting that the company set targets covering the GHG emissions of the company’s operations and products, explaining specifically that the proposal did *not* impose a specific method for setting emission reduction targets. The Staff also stated that it would not concur in the exclusion of proposals similar to those requesting that companies adopt timeframes or targets to address climate change on micromanagement grounds “so long as the proposals afford discretion to management as to how to achieve such goals.”

The Staff has previously concurred that proposals prescribing specific methodologies with respect to the reduction of GHG emissions concern ordinary business operations and were therefore excludable under Rule 14a-8(i)(7). For example, in *Amazon, Inc.* (Apr. 7, 2023), the Staff permitted exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company measure and disclose scope 3 GHG emissions from its full value chain inclusive of its physical stores and e-commerce operations and all products that it sold directly as well those sold by third-party vendors, where the company argued that the proposal imposed a specific method for defining the activities excluded in the company’s scope 3 GHG emissions reporting. In *Chubb Ltd.* (Mar. 27, 2023), the proposal requested the adoption and disclosure of a policy for the timebound phase out of the company’s underwriting risks associated with new fossil fuel exploration and development projects, aligned with the IPCC’s recommendation to limit global temperature rise to 1.5°C. The company argued that the proposal “dictat[ed] a particular method – a categorical underwriting prohibition on all new fossil fuel projects – for the Company to align its activities to limit global temperature rise to 1.5 degrees Celsius” and the Staff concurred in the exclusion of the proposal under Rule 14a-8(i)(7).

Unlike in *ConocoPhillips Co.* (Mar. 19, 2021), the Proposal requests not only the setting of GHG emissions reduction targets, but also imposes a specific method for doing so – *i.e.*, by requiring the exclusion of carbon offsets and avoided emissions. In prescribing its own specific judgments with respect to GHG emissions reduction targets, the Proponent seeks to limit the discretion of Valero’s Board and management with respect to the most effective strategy to achieve certain GHG emissions reductions. Valero’s low-carbon fuels strategy and GHG emissions reduction targets in line with its business strategy have been carefully developed by Valero’s management, under the oversight of Valero’s Board, through informed and extensive analysis that balances highly complex, technical, and competing considerations, including (i) Valero’s regulatory obligations to serve its customers, (ii) the availability and cost of current or new energy resources and technologies, (iii) legal and permitting requirements, (iv) system operation and

energy integration, (v) efficiency, reliability, and resilience capabilities and factors, (vi) customer, supplier, and feedstock impacts on GHG emissions, (vii) the cost, feasibility, timelines, and risks of certain projects or strategies to reduce GHG emissions, (viii) global climate policies and legislation, (ix) global demand for reliable and affordable energy, (x) nuanced geopolitical factors affecting Valero's business and GHG emissions reduction efforts, (xi) the probability of certain climate scenarios occurring and the potential implications thereof for Valero's strategy, and (xii) the economy and global energy market dynamics. Valero's GHG emissions reduction targets in line with its business strategy reflect the day-to-day business experience and specialized knowledge of Valero's management, under the oversight of Valero's Board, relating to such complex considerations and are matters with respect to which ordinary shareholders are unlikely to possess adequate information and data to make an informed judgment. Accordingly, the Proposal seeks to micromanage Valero by asking shareholders to probe deeply into "matters 'too complex' for shareholders, as a group, to make an informed judgment." *See* SLB 14L. Valero's Board and management, rather than shareholders, are in the best position to make an informed judgment with respect to the nuances and complexities of liquid fuels production and how Valero's refineries and low-carbon fuels businesses can best be deployed to support the Proposal's ultimate objective of obtaining certain GHG emissions reductions.

In assessing whether a proposal micromanages by seeking to impose specific methods for implementing complex policies, the Staff evaluates not just the wording of the proposal but also the action called for by the proposal and the manner in which the action called for under a proposal would affect a company's activities and management discretion. *See Deere & Company* (Jan. 3, 2022) and *The Coca-Cola Co.* (Feb. 16, 2022), each of which involved a broadly phrased request but required detailed and intrusive actions to implement. Moreover, "granularity" is only one factor evaluated by the Staff. As stated in SLB 14L, the Staff focuses "on the level of granularity sought in the proposal **and whether and to what extent it inappropriately limits discretion of the board or management.**" (Emphasis added.)

If the Proposal is construed to not afford Valero discretion in whether to utilize avoided emissions from the production of low-carbon fuels, the blending of or credits from low-carbon fuels, or carbon capture and sequestration, then the Proposal consequently requires that Valero achieve the requested near-term GHG emissions reductions exclusively by specific means that are wholly inconsistent with the operations of a liquid fuels manufacturer and would substitute the Proponent's own judgments and conclusions with respect to Valero's day-to-day business for those of Valero's Board and management. Without the use of avoided emissions from the production of low-carbon fuels, the blending of or credits from low-carbon fuels, or carbon capture and sequestration, the only method left by which a liquid fuels manufacturer such as Valero could practically achieve a near-term GHG emissions reduction target that is found to be 1.5°C-aligned would be the reduction of emissions produced by Valero's refineries and plants beyond any reductions yielded by its planned efficiency improvements. While the Proponent has said in engagement calls that it does not intend to prescribe that Valero curtail its refining operations, or sell or close refineries, outside of efficiency improvements, the only other way to practically reduce the GHG emissions produced by Valero's refineries and plants would be to limit their output, such

as by curtailing its refineries' and plants' production levels, or closing or selling refineries and plants. Therefore, *the Proponent effectively prescribes the closure or sales of refineries and plants, or the curtailment of their production output levels, as the only means of achieving its emissions reduction target* and proposes to limit the discretion of Valero's Board and management in choosing the most effective or prudent way to achieve certain GHG emissions reductions. This asks shareholders to probe too deeply into and interfere with the manner in which Valero manages and operates its refineries and plants, the production from which constitutes Valero's core business. As its core business, Valero's operation of liquid fuels refineries and plants is a complex activity that involves the interplay of a wide range of factors implicating management's business judgment, including "decisions on production quality and quantity, and the retention of suppliers" as contemplated by the 1998 Release, as well as a vast number of other business considerations. It also asks shareholders to probe too deeply into and interfere with management's judgments with respect to complex questions regarding the best ways for Valero to align its business strategy and GHG emission reduction targets with the goal of achieving aggressive GHG emissions reductions. Whatever general understanding of climate issues shareholders may have, such general knowledge does not equip them to make an informed judgment on the complex, technical, and competing considerations noted above that are involved in determining the best steps for a liquid fuels manufacturer like Valero to achieve aggressive GHG emissions reductions. The Proposal thus indicates that if the essential objective of the Proposals is not construed to simply be Valero's adoption of a near-term GHG emissions reduction target that is found to be 1.5°C-aligned (which, as discussed above, Valero has already substantially implemented), then it primarily takes issue with the granular aspects of the specific actions, methodologies, approaches, and assumptions utilized in Valero's current targets and seeks to inappropriately limit Valero's discretion with respect to such granularities by imposing a proscriptive method for setting Valero's GHG emissions reduction targets. While Valero's management and Board value input from various stakeholders, the Proposal asks shareholders to probe too deeply into the complex assumptions, determinations, and methodologies that are used to set GHG emissions reduction targets and are fundamental to Valero's core day-to-day business operations. Additionally, the fact that it is not immediately apparent on the face of the text of the Proposal how, without the use of avoided emissions from the production of low-carbon fuels, the blending of or credits from low-carbon fuels, or carbon capture and sequestration, a liquid fuels manufacturer such as Valero could practically achieve further near-term GHG emissions reductions, except by curtailing the production levels of its refineries or plants, or closing or selling refineries or plants, confirms that the Proposal focuses on "matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." See the 1998 Amendments.

Moreover, the Proposal does not contain references to "well-established national or international frameworks" that may help shareholders make an informed judgment on the complex matter of calculating emissions reduction targets and determining the most prudent methodologies for achieving those emissions reduction targets. See SLB 14L. In fact, the Proposal's suggestion to "consider approaches used by advisory groups such as the Science Based Targets Initiative" illustrates the Proponent's own lack of understanding with respect to its request. As noted above, there are currently no SBTi standards or guidance for the oil and gas sector that are even available,

and the SBTi has explicitly stated that it “has stopped accepting commitments or targets from companies in the oil and gas sector” until it completes the development of an Oil and Gas Standard, which is currently not even expected until late 2024.<sup>31</sup> In addition, other influential advisory groups, government authorities, and third parties recognize that there is no single path to achieving alignment with a 1.5°C scenario, and recognize the importance of emissions reductions from low-carbon fuels and carbon capture and sequestration, which the Proposal’s request categorically disallows. As noted above, the COP28 agreement, published on December 13, 2023, specifically acknowledges that, in contributing to reductions in GHG emissions in line with the 1.5°C objective, parties should take into account “their different national circumstances, pathways and approaches” and further recognizes the use of low-carbon fuels, carbon capture and sequestration and transitional fuels as potential pathways to accelerating alignment with the 1.5°C goals of the Paris Agreement.<sup>32</sup> The pathways that Valero’s management, under the oversight of Valero’s Board, has determined will be most effective in reducing GHG emissions, and the related strategies, including the use of low-carbon fuels and carbon capture and sequestration, and the separate categorization of avoided emissions/displacements, are already consistent with the aforementioned strategies supported by the COP28 agreement. Such pathways are also already consistent with the methods supported by numerous other influential advisory groups, government authorities, and third-party sources, including the IPCC and IEA, multiple government authorities that have adopted low-carbon fuel regulations, policies, and standards, the GHG Protocol, and the GHG Protocol for Project Accounting, and the other third-parties discussed above and cited in Valero’s 2023 ESG Report. Importantly, the Proposal’s requirement to implement specific methods in setting the requested GHG emissions reduction target that categorically disallow the use of avoided emissions from the production of low-carbon fuels, the blending of or credits from low-carbon fuels, or carbon capture and sequestration, is actually contradictory to most well-established national or international frameworks (including the Paris Agreement and the COP28 agreement). While there is much public discussion and analysis concerning national and international frameworks and agreements concerning GHG emissions goals, there is almost no reasonable scenario by which a liquid fuels producer like Valero could reach the desired GHG emissions reduction goals without the use of reductions from low-carbon fuels or carbon capture and sequestration.

*Regardless of Whether the Proposal Addresses a Significant Policy Issue, the Proposal is Excludable Because it Does Not Focus on Any Significant Policy Issue that Transcends Valero’s Ordinary Business Operations and Seeks to Micromanage Valero.*

Valero acknowledges that the Staff has previously stated that a proposal may raise issues with a “broad societal impact, such that [it] transcend[s] the ordinary business of the company.” See SLB 14L. However, a proposal that involves a significant social policy issue may still be excluded under Rule 14a-8(i)(7) because of its micromanagement of the manner in which the

---

<sup>31</sup> See the SBTi’s Oil and Gas Standard Development Terms and Reference, available at:

<https://sciencebasedtargets.org/resources/files/Oil-and-Gas-TOR.pdf#page=9&zoom=100,72,168>

<sup>32</sup> See the COP28 agreement, available at: [https://unfccc.int/sites/default/files/resource/cma2023\\_L17\\_adv.pdf](https://unfccc.int/sites/default/files/resource/cma2023_L17_adv.pdf)



company should address that policy issue. *See* Staff Legal Bulletin No. 14E (Oct. 27, 2009), at note 8, citing the 1998 Release for the standard that “a proposal [that raises a significant policy issue] could be excluded under Rule 14a-8(i)(7), however, if it seeks to micromanage the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” *See also, e.g., Verizon Communications, Inc.* (Mar. 17, 2022) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting that the company publish annually the written and oral content of diversity, inclusion, equity or related employee-training materials, because the proposal probed too deeply into matters of a complex nature); *The Coca-Cola Co.* (Feb. 16, 2022) (permitting exclusion under Rule 14a-8(i)(7) of a proposal addressing the company’s political activities because the proposal attempted to micromanage the issue); *SeaWorld Entertainment, Inc.* (Apr. 20, 2021) (permitting exclusion under Rule 14a-8(i)(7) of a proposal requesting a report on specific changes to the company’s business to address animal welfare concerns because it attempted to micromanage the issue). In this case, the Proposal does not raise significant social policy issues that transcend the ordinary business of Valero. While the Proposal references “GHG emissions,” “climate change,” and “1.5°C-aligned targets,” the focus of the Proposal is not on a broad policy issue relating to these matters. Instead, the Proposal is an attempt to micromanage Valero by limiting its discretion in addressing the complex and granular issue of the best way to align Valero’s business strategy. Stated simply, the Proposal’s requirement for a near-term GHG emissions reduction target that has been found to be 1.5°C-aligned and does not include avoided emissions from low-carbon fuels or carbon capture and sequestration would require Valero’s management and Board to make specified decisions with respect to the ordinary business operations of its refineries and plants (namely, with respect to the production levels, closures, and/or sales of such refineries and plants) that not only contradict management’s and the Board’s assessments and conclusions with respect to the business strategy that they view is currently advisable and reasonable, but also do not transcend the ordinary business of Valero. The Proposal clearly micromanages Valero’s ordinary business operations and responses to the social policy issues of GHG emissions reductions and the other matters referenced above by requiring Valero to adopt a proscriptive method of achieving certain GHG emissions reductions, a judgment that requires specialized expertise in the energy industry, among many other complex, technical, and competing considerations noted above, as well as day-to-day familiarity with liquid fuels production. As discussed above, the core of the Proposal therefore deals with matters that fundamentally concern Valero’s ordinary business.

### **Conclusion**

On the basis of the foregoing, Valero respectfully requests that the Staff concur that it will take no action if Valero excludes the Proposal from the 2024 proxy materials. If the Staff disagrees with the conclusions set forth in this letter, or should any additional information be desired in support of Valero’s position, we would appreciate the opportunity to confer with the Staff concerning these matters prior to the issuance of the Staff’s response.

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
January 4, 2024  
Page 17 of 17

If you have any questions with respect to this matter, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Richard Walsh". The signature is written in a cursive style with a large, stylized initial "R".

Richard J. Walsh

cc: Danielle Fugere  
President and Chief Counsel  
As You Sow

Anthony Rust  
Chair of Investment Committee  
Warren Wilson College

**Exhibit A**: Shareholder proposal received from As You Sow on behalf of Warren Wilson College

**Exhibit B**: Deficiency Notice

**Exhibit C**: Response to Deficiency Notice

**Exhibit D**: Other Correspondence with As You Sow


**Exhibit A**

Shareholder Proposal



**VIA FEDEX & EMAIL**

November 21, 2023

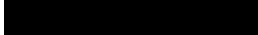
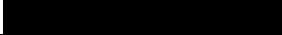
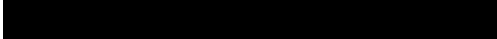
Richard J. Walsh  
Senior Vice President, General Counsel, and Secretary  
Valero Energy Corporation  
One Valero Way,  
San Antonio, Texas 78249  


Dear Mr. Walsh,

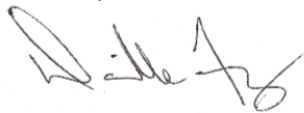
*As You Sow*® is filing a shareholder proposal on behalf of Warren Wilson College (“Proponent”), a shareholder of Valero Energy Corporation for inclusion in Valero’s 2024 proxy statement and for consideration by shareholders in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934.

A letter from the Proponent authorizing *As You Sow* to act on its behalf is enclosed. A representative of the Proponent will attend the stockholder meeting to move the resolution as required.

We are available to discuss this issue and are optimistic that such a discussion could result in resolution of the Proponent’s concerns.

To schedule a dialogue, please contact David Shugar, Climate & Energy Program Manager at  and Diana Myers, Climate & Energy Sr. Associate at . Please send all correspondence **with a copy to** .

Sincerely,



Danielle Fugere  
President and Chief Counsel  
Enclosures

- Shareholder Proposal
- Shareholder Authorization

cc: 

**WHEREAS:** As the window narrows to limit global warming to 1.5°C and avoid the most catastrophic impacts of climate change, experts and investors, including the Science Based Targets Initiative and CA100+, are clear that companies must achieve actual near-term emissions reductions, rather than relying on carbon offsets.<sup>1</sup> Many carbon offsetting projects do not produce additional and permanent real-world emissions reductions.<sup>2</sup> Public skepticism and increasing legal scrutiny make it imperative that companies ensure corporate reduction strategies result in actual emission reductions that align with 1.5°C.

Companies are facing public backlash from investigations into corporate offsetting projects,<sup>3</sup> resulting in multiple lawsuits alleging that offset use is misleading.<sup>4</sup> Emerging UK and US reporting requirements require companies to separately account emissions and offsetting, and more broadly, EU regulations prohibit companies from counting carbon credits toward meeting emissions reduction goals.<sup>5</sup> In addition to these legal and reputational risks, reliance on offsetting can result in misallocated decarbonization expenditures and missed opportunities to align with a decarbonizing economy.

To mitigate reputational, regulatory, and legal risk, it is in Valero's best interest to adopt an emission reduction plan that does not rely on carbon offsets. Valero has a goal to "reduce and offset" its global refining emissions 100% by 2035, including plans to "displace," or offset, emissions through "blending of and credits from low-carbon fuels."<sup>6</sup> Only 7% of this goal is achieved with absolute emissions reductions, while the rest of the near-term goal relies on displaced emissions, carbon credits, and carbon capture. Moreover, a large part of Valero's strategy appears to involve using avoided emissions from its value chain to "displace" operational emissions. It is unclear to investors how Valero is avoiding "double counting" in doing so, posing potential regulatory and legal issues. Such disclosure gaps hinder investors from accurately assessing Valero's exposure to climate-related financial risk. Additionally, by failing to achieve substantial emissions reductions, this goal does not align with limiting global warming to 1.5°C.

By adopting near-term reduction goals that do not rely on offsets and avoided emissions, Valero can ensure its decarbonization strategy aligns with the global 1.5°C goal, prepare for emerging regulation, and position itself to maximize long-term value in a transitioning economy.

**BE IT RESOLVED:** Shareholders request that Valero adopt a 1.5°C-aligned, near-term emissions reduction target that does not include the use of carbon offsets and avoided emissions.

**SUPPORTING STATEMENT:** Proponents suggest, at Board discretion, that the Company:

- Disclose a timeline for setting near-term 1.5°C-aligned emission reduction goals;

---

<sup>1</sup> <https://sciencebasedtargets.org/resources/files/SBTi-criteria.pdf> , p. 10

<sup>2</sup> <https://www.bloomberg.com/news/articles/2022-11-21/junk-carbon-offsets-allow-companies-to-claim-they-re-carbon-neutral>

<sup>3</sup> <https://www.bbc.com/news/science-environment-60248830>

<sup>4</sup> <https://www.clientearth.org/media/nq4jnyww/ce-offsets-legal-briefing.pdf> , p.5

<sup>5</sup> <https://www.ft.com/content/53f84f03-1f1c-4240-977f-9de0e4893377>; <https://www.gov.uk/government/news/uk-to-enshrine-mandatory-climate-disclosures-for-largest-companies-in-law>; <https://corpgov.law.harvard.edu/2023/10/22/california-enacts-major-climate-related-disclosure-laws/>; <https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf>, p.62

<sup>6</sup> <https://investorvalero.com/esg/default.aspx>

- Consider approaches used by advisory groups such as the Science Based Targets initiative; and
- Include an enterprise-wide climate transition plan to achieve 1.5°C-aligned emission reductions.

November 21, 2023

Andrew Behar  
CEO  
As You Sow

[REDACTED]  
[REDACTED]

**Re: Authorization to File Shareholder Resolution**

Dear Mr. Behar,

In accordance with Rule 14a-8 of the General Rules and Regulations of the Securities and Exchange Act of 1934, Warren Wilson College, (“Stockholder”), authorizes *As You Sow* to file or co-file a shareholder resolution with the named Company on our behalf for inclusion in the Company’s 2024 proxy statement. The resolution at issue relates to the below described subject.

Stockholder: Warren Wilson College

Company: Valero Energy Corp

Subject: Carbon offset disclosures and policies.

The Stockholder has continuously owned Company stock, with voting rights, for a duration of time that enables the Stockholder to file a shareholder resolution for inclusion in the Company’s proxy statement. The Stockholder intends to hold the required amount of such stock through the date of the Company’s annual meeting in 2024.

The Stockholder gives *As You Sow* authority to address, on the Stockholder’s behalf, any and all aspects of the shareholder resolution, including drafting and editing the proposal, representing Stockholder in engagements with the Company, entering into any agreement with the Company, designating another entity as lead filer and representative of the shareholder, presenting the proposal at the Company’s annual general meeting, and all other forms of representation necessary in moving the proposal. The Stockholder understands that the Stockholder’s name may appear on the company’s proxy statement as the filer of the aforementioned resolution, and that the media may mention the Stockholder’s name in relation to the resolution. The Stockholder supports this proposal.



Anthony Rust is the Chair of the Investment Committee at Warren Wilson College.

He is available for a meeting with Valero Energy Corp regarding this shareholder proposal, at the following days/times: [Stockholder to provide 2 dates and 30-minute meeting options within the following time frame: 12/4/2023 - 12/18/2023

Monday - Friday and between the hours of 9:00am and 5:30pm Central Time]

DATE: 12/14/2023      TIME: 2:00 p.m. CT                      DATE: 12/15/2023      TIME: 2:00 p.m. CT

If the Company would like to meet at one of these dates and times, let the Stockholder and *As You Sow* at, [REDACTED], know within 2 days of the dates offered in this letter

If this Authorization is used for a Co-filing role instead of for a Proponent role, then the Stockholder agrees to designate the Proponent to engage on the Stockholder's behalf on the dates and times that the Proponent has provided.


Anthony Rust can be contacted at [REDACTED] to schedule a dialogue during one of the above dates. Any correspondence regarding meeting dates must **also be sent to my representative:**

**David Shugar, Climate and Energy Program Manager at [REDACTED]**

**Diana Myers, Say on Climate Sr. Associate at [REDACTED]**

**and to [REDACTED].**

Sincerely,

DocuSigned by:  
  
B62D83ADB659482...  
Dr. Damián J. Fernández  
President

**Exhibit B**

Deficiency Notice

**From: "Rueda, Giovanna" </O=UDSC/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=217A60CA779C4F3B95F76E7DB463E942-RUEDA**  
**Date: December 1, 2023 at 9:11:00 AM CST**  
**Subject: RE: Valero Energy - Shareholder Proposal Filing Documents**

As You Sow team,  
Attached please find a deficiency letter for your review. Could you please either send me the email addresses of Anthony Rust and Dr. Damián J. Fernández at Warren Wilson College or include me in your correspondence with them when you forward this email to them?  
Thank you and best regards, Giovanna

Giovanna Rueda  
Valero  
VP, ESG

One Valero Way | San Antonio, TX 78249 | Phone: [REDACTED]

---

**From:** Shareholder Engagement <[REDACTED]>  
**Sent:** Wednesday, November 22, 2023 10:46 AM  
**To:** Walsh, Richard <[REDACTED]>; Investor Relations <[REDACTED]>  
**Cc:** David Shugar <[REDACTED]>; Diana Myers <[REDACTED]>; Abigail Paris <[REDACTED]>; Gail Follansbee <[REDACTED]>; Sophia Wilson <[REDACTED]>; Rachel Lowy <[REDACTED]>  
**Subject:** Valero Energy - Shareholder Proposal Filing Documents

Dear Mr. Walsh,

Attached please find the lead filing document packet submitting a shareholder proposal for

inclusion in the company's 2024 proxy statement. A printed copy of these documents has been sent to your offices via FedEx and our records show it was delivered today, November 22, 2023 at 10:20am.

It would be much appreciated if you could please confirm receipt of this email.

Thank you and wishing you a great holiday weekend,  
Rachel Lowy

**Rachel Lowy (she/her/hers)**

**Shareholder Relations Sr. Coordinator**

*As You Sow*®

[REDACTED]

[REDACTED]

[REDACTED] | [www.asyousow.org](http://www.asyousow.org)

**~Empowering Shareholders to Change Corporations for Good~**



**Richard J. Walsh**  
Senior Vice President,  
General Counsel and  
Secretary

November 30, 2023

VIA EMAIL

Danielle Fugere  
President and Chief Counsel  
As You Sow

Anthony Rust  
Chair, Investment Committee  
Warren Wilson College

Dr. Damián J. Fernández  
President  
Warren Wilson College

Re: Stockholder Proposal

Dear Sir or Madam:

This will acknowledge receipt of the letter, dated November 21, 2023, in which As You Sow has submitted a stockholder proposal (the “Proposal”) on behalf of Warren Wilson College (the “Proponent”) in connection with Valero’s 2024 annual meeting of stockholders (the “Annual Meeting”). By way of rules adopted pursuant to the Securities Exchange Act of 1934 (as amended, the “Exchange Act”), the U.S. Securities and Exchange Commission (the “SEC”) has prescribed certain procedural and eligibility requirements for the submission of proposals to be included in a company’s proxy materials. I write to provide notice of certain defects in your submission, as described below.

Pursuant to Exchange Act Rule 14a-8(b)(ii), to be eligible to submit a proposal, a proponent must be a Valero stockholder and must provide Valero with a written statement that it intends to continue to hold the requisite amount of securities, determined in accordance with paragraphs (b)(1)(i)(A) through (C) of Rule 14a-8, through the date of the Annual Meeting.

The cover letter we received from the Proponent includes the statement that the Proponent will “hold the required amount of such stock through the date of the Company’s annual meeting in 2024” That statement, without reference to Rule 14a-8, does not make clear that the Proponent intends to continue to hold the requisite amount of Valero securities, determined in accordance with paragraphs (b)(1)(i)(A) through (C) of Rule 14a-8, through the date of the Annual Meeting.

In order for us to properly consider the Proponent’s request, please provide to us a statement that it intends to continue to hold the requisite amount of securities, determined in accordance with paragraphs (b)(1)(i)(A) through (C) of Rule 14a-8, through the date of the Annual Meeting.

In addition, pursuant to Exchange Act Rule 14a-8(b), to be eligible to submit a proposal, the Proponent must be a Valero stockholder, either as a registered holder or as a beneficial holder (*i.e.*, a street name holder), and must have continuously held at least:

(a) \$2,000 in market value of Valero securities entitled to vote on the Proposal for at least three years preceding and including the date the Proposal was submitted to Valero;

(b) \$15,000 in market value of Valero securities entitled to vote on the Proposal for at least two years preceding and including the date the Proposal was submitted to Valero; or

(c) \$25,000 in market value of Valero securities entitled to vote on the Proposal for at least one year preceding and including the date the Proposal was submitted to Valero (collectively, the “Ownership Requirements”).

Our records do not indicate that the Proponent is a registered holder of Valero’s common stock. Exchange Act Rules 14a-8(b)(2) and (3) and SEC staff guidance provide that if the Proponent is not a registered holder the Proponent must prove its eligibility by submitting to Valero either:

1. a written statement from the “record” holder of the Proponent’s securities (usually a broker or bank) verifying that, at the time the Proponent submitted the Proposal, the Proponent continuously held the requisite amount of Valero securities to satisfy at least one of the Ownership Requirements; or
2. a copy of a filed Schedule 13D, Schedule 13G, Form 3, Form 4, Form 5, or amendments to those documents or updated forms, demonstrating that the Proponent continuously held the requisite amount of Valero securities to satisfy at least one of the Ownership Requirements, and any subsequent amendments reporting a change in ownership level, along with a written statement that the Proponent continuously held the requisite amount of Valero securities to satisfy at least one of the Ownership Requirements.

To date, we have not received sufficient proof of the Proponent’s ownership of Valero securities. In order for us to properly consider the Proponent’s request, please provide to us acceptable documentation that the Proponent is a Valero stockholder and has continuously held the requisite amount of Valero securities to satisfy at least one of the Ownership Requirements. You should be able to confirm the identity of the DTC (as defined below) participant by asking the Proponent’s broker or bank. If the broker is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through the Proponent’s account statements, because the clearing broker identified on the account statements will generally be a DTC participant.

Danielle Fugere  
Anthony Rust  
Dr. Damián J. Fernández  
Page 3

In this regard, I direct your attention to the SEC's Division of Corporation Finance Staff Legal Bulletin No. 14 (at C(1)(c)(1)-(2)), which indicates that, for purposes of Exchange Act Rule 14a-8(b)(2), written statements verifying ownership of securities "must be from the record holder of the shareholder's securities, which is usually a broker or bank."

Please note that most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the Depository Trust Company ("DTC"), and the Division of Corporation Finance advises that, for purposes of Exchange Act Rule 14a-8(b)(2)(i), only DTC participants or affiliates of DTC participants "should be viewed as 'record' holders of securities that are deposited at DTC" (Staff Legal Bulletin No. 14F at B(3) and No. 14G at B(1)-(2)) (copies of these and other Staff Legal Bulletins containing useful information for proponents when submitting proof of ownership to companies can be found on the SEC's website at: <http://www.sec.gov/interps/legal.shtml>). You can confirm whether the Proponent's broker or bank is a DTC participant by asking the broker or bank or by checking DTC's participant list, which is available at <https://www.dtcc.com/-/media/Files/Downloads/client-center/DTC/DTC-Participant-in-Alphabetical-Listing-1.pdf>.

Consistent with the foregoing, if the Proponent intends to demonstrate ownership by submitting a written statement from the "record" holder of the Proponent's securities, please provide to us a written statement from the DTC participant record holder of the Proponent's securities verifying (a) that the DTC participant is the record holder, (b) the number of securities held in the Proponent's name, and (c) that the Proponent has continuously held the requisite amount of Valero securities to satisfy at least one of the Ownership Requirements.

If the DTC participant that holds the Proponent's securities is not able to confirm individual holdings but is able to confirm the holdings of such Proponent's broker or bank, then the Proponent may satisfy the proof of ownership requirements by obtaining and submitting two proof of ownership statements verifying that, for at least the applicable period preceding and including the date the Proposal was submitted, the requisite number of Valero securities were continuously held. The first statement should be from the Proponent's broker or bank confirming the Proponent's ownership. The second statement should be from the DTC participant confirming the broker or bank's ownership.

Your response may be sent to my attention at the address below or by email ([REDACTED]). Pursuant to Exchange Act Rule 14a-8(f), your response must be postmarked or transmitted electronically no later than 14 days from the date you receive this letter.

Please note that because your submission has not satisfied the procedural requirements described above, we have not yet determined whether the submission could be omitted from the Valero proxy statement on other grounds. If you adequately correct the procedural deficiencies within the 14-day time frame, we reserve the right to omit your Proposal pursuant to Rule 14a-8 on other valid grounds for such action.

Danielle Fugere  
Anthony Rust  
Dr. Damián J. Fernández  
Page 4

Copies of Exchange Act Rule 14a-8 and Staff Legal Bulletin Nos.14, 14F and 14G are enclosed for your convenience.

If you have any questions or would like to speak with a representative from Valero about your Proposal, please contact me at [REDACTED] or Giovanna Rueda at [REDACTED].

Sincerely,

A handwritten signature in black ink that reads "Richard J. Walsh". The signature is written in a cursive, flowing style.

Richard J. Walsh



**Exhibit C**

Response to Deficiency Notice

---

**From:** Shareholder Engagement <[REDACTED]>  
**Sent:** Friday, December 15, 2023 3:00 PM  
**To:** Rueda, Giovanna <[REDACTED]>; David Shugar <[REDACTED]>; Diana Myers <[REDACTED]>; Abigail Paris <[REDACTED]>; Gail Follansbee <[REDACTED]>; Sophia Wilson <[REDACTED]>; Rachel Lowy <[REDACTED]>  
**Cc:** Adams, Pearl <[REDACTED]>  
**Subject:** Re: Valero Energy - Shareholder Proposal Filing Documents

Hello Giovanna,

Confirming receipt of this deficiency letter.

Please see attached the following proof of ownership:  
Lead Filer      Warren Wilson College      78

It would be greatly appreciated if you could confirm receipt and that all deficiencies have been satisfied.

Thank you and have a nice weekend,  
Rachel

**Rachel Lowy (she/her/hers)**

**Shareholder Relations Sr. Coordinator**

*As You Sow*®

[REDACTED]

---

**From:** Rueda, Giovanna <[REDACTED]>  
**Sent:** Friday, December 1, 2023 7:11 AM  
**To:** David Shugar <[REDACTED]>; Diana Myers <[REDACTED]>; Abigail Paris <[REDACTED]>; Gail Follansbee <[REDACTED]>; Sophia Wilson <[REDACTED]>; Rachel Lowy <[REDACTED]>  
**Cc:** Shareholder Engagement <[REDACTED]>; Adams, Pearl

<[REDACTED]>

**Subject:** RE: Valero Energy - Shareholder Proposal Filing Documents

Some people who received this message don't often get email from [REDACTED]. [Learn why this is important](#)

**As You Sow team,**

**Attached please find a deficiency letter for your review. Could you please either send me the email addresses of Anthony Rust and Dr. Damián J. Fernández at Warren Wilson College or include me in your correspondence with them when you forward this email to them?**

**Thank you and best regards, Giovanna**

Giovanna Rueda

Valero

VP, ESG

One Valero Way | San Antonio, TX 78249 | Phone: [REDACTED]

---

**From:** Shareholder Engagement <[REDACTED]>

**Sent:** Wednesday, November 22, 2023 10:46 AM

**To:** Walsh, Richard <[REDACTED]>; Investor Relations

<[REDACTED]>  
**Cc:** David Shugar <[REDACTED]>; Diana Myers <[REDACTED]>;  
Abigail Paris <[REDACTED]>; Gail Follansbee <[REDACTED]>; Sophia  
Wilson <[REDACTED]>; Rachel Lowy <[REDACTED]>

**Subject:** Valero Energy - Shareholder Proposal Filing Documents

**Dear Mr. Walsh,**

**Attached please find the lead filing document packet submitting a shareholder proposal for inclusion in the company's 2024 proxy statement. A printed copy of these documents has been sent to your offices via FedEx and our records show it was delivered today, November 22, 2023 at 10:20am.**

**It would be much appreciated if you could please confirm receipt of this email.**

**Thank you and wishing you a great holiday weekend,**

**Rachel Lowy**

**Rachel Lowy (she/her/hers)**

**Shareholder Relations Sr. Coordinator**

*As You Sow*®

[REDACTED]

[REDACTED]

[REDACTED] | [www.asyousow.org](http://www.asyousow.org)

**~Empowering Shareholders to Change Corporations for Good~**



Robert E. Kuhlman, Jr.  
Principal Custody Solutions

[REDACTED]  
[REDACTED]  
e-mail: [REDACTED]

December 11, 2023

Re: Warren Wilson College Managed Portfolio Asset Inquiry

To whom it may concern:

Principal Bank, a DTC participant, acts as the custodian for Warren Wilson College (“the client”). Please be advised that over the period of 3 years ending as of November 21, 2023, Warren Wilson College has held and continues to hold a minimum of **78** shares in:

Valero Energy Corp (VLO), CUSIP [REDACTED]

Furthermore, this investment has been worth at least \$2,000 at some point within the 60 calendar days before the date the shareholder submitted the proposal: November 21, 2023. For your records the client currently holds **97** shares of the above security as of the date of this letter.

Sincerely,

Robert E. Kuhlman, Jr.  
Senior Relationship Manager

cc: Dr. Damián J. Fernández – Warren Wilson College  
Brian Dana – Meketa Investment Group

**Exhibit D**

Other Correspondence

**From: "Rueda, Giovanna" </O=UDSC/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=217A60CA779C4F3B95F76E7DB463E942-RUEDA>**  
**Date: November 27, 2023 at 8:12:00 AM CST**  
**Subject: RE: Valero Energy - Shareholder Proposal Filing Documents**

Hi Rachel,

We received your email and submission. We will be reviewing soon.

Should we keep the engagement time we have already in the calendar with David on December 4 at 11 am CT?

Regards, Giovanna

---

**From:** Shareholder Engagement <[REDACTED]>  
**Sent:** Wednesday, November 22, 2023 10:46 AM  
**To:** Walsh, Richard <[REDACTED]>; Investor Relations <[REDACTED]>  
**Cc:** David Shugar <[REDACTED]>; Diana Myers <[REDACTED]>; Abigail Paris <[REDACTED]>; Gail Follansbee <[REDACTED]>; Sophia Wilson <[REDACTED]>; Rachel Lowy <[REDACTED]>  
**Subject:** Valero Energy - Shareholder Proposal Filing Documents

Dear Mr. Walsh,

Attached please find the lead filing document packet submitting a shareholder proposal for inclusion in the company's 2024 proxy statement. A printed copy of these documents has been sent to your offices via FedEx and our records show it was delivered today, November 22, 2023 at 10:20am.

It would be much appreciated if you could please confirm receipt of this email.

Thank you and wishing you a great holiday weekend,  
Rachel Lowy

**Rachel Lowy (she/her/hers)**

**Shareholder Relations Sr. Coordinator**

*As You Sow*®

[Redacted]

[Redacted]

[Redacted] | [www.asyousow.org](http://www.asyousow.org)



~Empowering Shareholders to Change Corporations for Good~



**From:** "Rueda, Giovanna" </O=UDSC/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=217A60CA779C4F3B95F76E7DB463E942-RUEDA>  
**Date:** December 12, 2023 at 2:14:00 PM CST  
**Subject:** RE: Scope 4

That works for me! please send an invitation.

---

**From:** Alexandra Ferry <[REDACTED]>  
**Sent:** Monday, December 11, 2023 4:22 PM  
**To:** Rueda, Giovanna <[REDACTED]>  
**Subject:** Re: Scope 4

Thanks, Giovanna.

How's 1:30-2pm PST on January 4<sup>th</sup>? If not, I am happy to provide wider availability for the 4<sup>th</sup>. I am happy to send over the invitation once confirmed.

Thank you,

Alex

**Alex Ferry**  
**Program & Special Projects Associate**  
***As You Sow***

[REDACTED]  
[REDACTED]  
[REDACTED] | [www.asyousow.org](http://www.asyousow.org)



~Empowering Shareholders to Change Corporations for Good~

---

**From:** Rueda, Giovanna <[REDACTED]>  
**Date:** Monday, December 11, 2023 at 11:52 AM  
**To:** Alexandra Ferry <[REDACTED]>  
**Subject:** FW: Scope 4

You don't often get email from [REDACTED]. [Learn why this is important](#)

Hi Alex,

Availability for the next days include:

12/13: 2pm – 3pm Central

12/14: 9am- 12pm Central

12/29: 9am to 1 pm Central

January 4 and January 5 are wide open right now.

Thanks, Giovanna

---

**From:** Danielle Fugere <[REDACTED]>  
**Sent:** Monday, December 11, 2023 10:25 AM  
**To:** Rueda, Giovanna <[REDACTED]>  
**Cc:** Abigail Rome <[REDACTED]>; Parker Caswell <[REDACTED]>; Diana Myers <[REDACTED]>; David Shugar <[REDACTED]>; Alexandra Ferry <[REDACTED]>  
**Subject:** Scope 4

Giovanna,

Thank you for a great discussion last week about Valero's Scope 4/removal work and how best to account for it. As a follow up, as we noted, it would make sense to touch base with more time to work through these issues, particularly with regard to the Proposal. If that makes sense to you, our colleague Alex can help set up a time.

Best,

Danielle

---

Danielle Fugere  
President & Chief Counsel

**As You Sow**

[REDACTED]  
[REDACTED] | [www.asyousow.org](http://www.asyousow.org)



February 16, 2024

**VIA ONLINE SUBMISSION**

Office of Chief Counsel  
Division of Corporation Finance  
U.S. Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

Email: [shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)

**Re: Shareholder Proposal to Valero Energy Corporation Regarding Offset-Free Emissions Reduction Targets on Behalf of Warren Wilson College**

Ladies and Gentlemen:

Warren Wilson College (the “Proponent”), a beneficial owner of common stock of Valero Energy Corporation (the “Company” or “Valero”), has submitted a shareholder proposal (the “Proposal”) asking that Valero adopt a 1.5°C-aligned near-term emissions reduction target *that does not include the use of carbon offsets and avoided emissions*. The Proponent has designated *As You Sow* to act as its representative with respect to the Proposal, including responding to the Company’s January 4, 2024 “No Action” letter (the “Company Letter”).

The Company Letter contends that the Proposal may be excluded from the Company’s 2024 proxy statement because, the Company argues, Valero has substantially implemented the Proposal and because the Proposal seeks to micromanage the Company. Proponent’s response demonstrates that the Company has no basis under Rule 14a-8 for exclusion of the Proposal. As such, the Proponent respectfully requests that the Staff inform the Company that it cannot concur with the Company’s request.

A copy of this letter is being emailed concurrently to the Company.

**SUMMARY**

The Proposal requests that Valero adopt a 1.5°C-aligned near-term emissions reduction target *that does not include use of carbon offsets and avoided emissions*. The Proposal requests that the Company exclude the use of these accounting mechanisms in its near-term targets because, as discussed below, they risk confusing investors, exaggerating the Company’s actual climate progress, and thwarting investors in comparing the Company’s climate risk to its peers.

Valero has set a near-term emissions target for its Scope 1 and 2 emissions, which are defined as covering a Company’s operational and electricity-related emissions. The Company has not set Scope 3 targets to cover reductions in emissions associated with customer use of its products. However, the Company anticipates that 80% of its progress toward its Scope 1 and 2 target will come from “avoided emissions,” with only 7% coming from actual reductions in its operational and electricity-related emissions. “Avoided emissions” are an accounting mechanism intended to measure the GHG emissions “avoided” when a customer uses a company’s lower-emitting product instead of a higher-emitting alternative. By definition, they reflect *hypothetical*

emissions reductions (*i.e.*, reductions when compared to an alternative scenario) made by entities *outside* a company's operations and electricity use.

Even if “avoided emissions” were a valid measurement of emissions reductions — and, according to every major emissions accounting and targeting framework, they are not — they should not be conflated with Scope 1 or 2 emissions reductions. To do so confuses GHG reduction reporting, to take credit for non-existent reductions outside of the reported scope, and in doing so to make it difficult for investors to compare climate action and climate risk across peer companies. Further, as discussed in more detail below, “avoided emissions” is a hypothetical assumption about consumer actions that does not belong in a target that accounts for actual reductions.

The Company's argument that it has substantially implemented the Proposal because it has adopted a 1.5°C-aligned target requires the Staff to ignore the critical piece of the resolved clause — that such target *not include use of avoided emissions or offsets*. The concern of not counting avoided emissions and offsets in the Company's GHG emission reduction target is *the* underlying concern and essential objective of the Proposal. If the Proponent's central purpose was simply a 1.5°C goal, it would have ended the Proposal there. Instead, it clearly asks that the Company adopt a 1.5°C near term target that does not count use of offsets or “avoided” emissions toward its own emissions reduction targets. The Company cannot have substantially implemented the Proposal while ignoring this central purpose.

Further, the Proposal does not micromanage the Company. The Staff has previously held that proposals may ask companies to set greenhouse gas reduction targets that include specific criteria, without being subject to exclusion for micromanagement. The Proponent's request that the Company's greenhouse gas emission target exclude hypothetically avoided emissions from outside its enterprise falls within this acceptable range. Excluding use of fictional “avoided emissions” or paper-based carbon credits provides fundamental guidance on the type of target that investors seek without dictating how the Company goes about meeting such emission reduction target.

## THE PROPOSAL

**WHEREAS:** As the window narrows to limit global warming to 1.5°C and avoid the most catastrophic impacts of climate change, experts and investors, including the Science Based Targets Initiative and CA100+, are clear that companies must achieve actual near-term emissions reductions, rather than relying on carbon offsets.<sup>1</sup> Many carbon offsetting projects do not produce additional and permanent real-world emissions reductions.<sup>2</sup> Public skepticism and increasing legal scrutiny make it imperative that companies ensure corporate reduction strategies result in actual emission reductions that align with 1.5°C.

---

<sup>1</sup> <https://sciencebasedtargets.org/resources/files/SBTi-criteria.pdf>, p. 10

<sup>2</sup> <https://www.bloomberg.com/news/articles/2022-11-21/junk-carbon-offsets-allow-companies-to-claim-they-re-carbon-neutral>

Companies are facing public backlash from investigations into corporate offsetting projects,<sup>3</sup> resulting in multiple lawsuits alleging that offset use is misleading.<sup>4</sup> Emerging UK and US reporting requirements require companies to separately account emissions and offsetting, and more broadly, EU regulations prohibit companies from counting carbon credits toward meeting emissions reduction goals.<sup>5</sup> In addition to these legal and reputational risks, reliance on offsetting can result in misallocated decarbonization expenditures and missed opportunities to align with a decarbonizing economy.

To mitigate reputational, regulatory, and legal risk, it is in Valero's best interest to adopt an emission reduction plan that does not rely on carbon offsets. Valero has a goal to "reduce and offset" its global refining emissions 100% by 2035, including plans to "displace," or offset, emissions through "blending of and credits from low-carbon fuels."<sup>6</sup> Only 7% of this goal is achieved with absolute emissions reductions, while the rest of the near-term goal relies on displaced emissions, carbon credits, and carbon capture. Moreover, a large part of Valero's strategy appears to involve using avoided emissions from its value chain to "displace" operational emissions. It is unclear to investors how Valero is avoiding "double counting" in doing so, posing potential regulatory and legal issues. Such disclosure gaps hinder investors from accurately assessing Valero's exposure to climate-related financial risk. Additionally, by failing to achieve substantial emissions reductions, this goal does not align with limiting global warming to 1.5°C.

By adopting near-term reduction goals that do not rely on offsets and avoided emissions, Valero can ensure its decarbonization strategy aligns with the global 1.5°C goal, prepare for emerging regulation, and position itself to maximize long-term value in a transitioning economy.

**BE IT RESOLVED:** Shareholders request that Valero adopt a 1.5°C-aligned, near-term emissions reduction target that does not include the use of carbon offsets and avoided emissions.

**SUPPORTING STATEMENT:** Proponents suggest, at Board discretion, that the Company:

- Disclose a timeline for setting near-term 1.5°C-aligned emission reduction goals;
- Consider approaches used by advisory groups such as the Science Based Targets initiative; and
- Include an enterprise-wide climate transition plan to achieve 1.5°C-aligned emission reductions.

---

<sup>3</sup> <https://www.bbc.com/news/science-environment-60248830>

<sup>4</sup> <https://www.clientearth.org/media/nq4jnyww/ce-offsets-legal-briefing.pdf> , p.5

<sup>5</sup> <https://www.ft.com/content/53f84f03-1f1c-4240-977f-9de0e4893377>; <https://www.gov.uk/government/news/uk-to-enshrine-mandatory-climate-disclosures-for-largest-companies-in-law>; <https://corpgov.law.harvard.edu/2023/10/22/california-enacts-major-climate-related-disclosure-laws/>; <https://ghgprotocol.org/sites/default/files/standards/ghg-protocol-revised.pdf>, p.62

<sup>6</sup> <https://investorvalero.com/esg/default.aspx>

## BACKGROUND

### A. Avoided or Displaced Emissions and Carbon Credits

“Avoided emissions,” sometimes referred to as Scope 4 emissions, are increasingly used by companies for purposes of showing “that their products can help avoid greenhouse gas emissions compared to other products in the marketplace.”<sup>1</sup> Avoided emissions measure hypothetical emissions reductions that may occur if the Company’s product replaces another, higher-emissions product(s) on the market. While this can be a useful metric to report, avoided emissions do not measure a company’s own emissions reductions, *i.e.*, the actions it has taken to transition and decarbonize its operations. Thus, avoided emissions do not belong in a company’s emission reduction target, which is commonly understood by investors to be a measure of a company’s actual, enterprise-wide greenhouse gas emission reductions.

There is no doubt that low-emissions products are an important part of a net zero-aligned economy. But potential “comparative impacts *are not the same as changes in absolute emissions*.”<sup>2</sup> In other words: avoided emissions do not constitute *actual* emissions reductions — they are an accounting metric that measures a hypothetical situation and are therefore confusing at best when incorporated into company emissions reduction targets. Using them in this way can also expose a company to charges of greenwashing.<sup>3</sup> Moreover, a focus on avoided emissions may in fact delay or even work against a net zero-aligned transition insofar as the company prioritizes development of low-intensity-but-still-emitting products over zero emissions fuels, for instance, or actions that reduce actual enterprise emissions. Similarly, customers of biodiesel may have purchased even lower emissions fuels in the absence of bio-based fuels, creating a missed opportunity for reductions.

As a consequence, emissions accounting frameworks are in agreement that claims by companies about “avoided” emissions should not be factored into their emissions inventories:

- **CDP:** “Avoided emissions should be reported separately and should not be used to adjust Scopes 1, 2 or 3 emissions, says Tatiana Boldyreva, associate director for climate change at CDP . . . . Reporting of avoided emissions is best used to inform product or policy design rather than as an indication of climate mitigation efforts, says Boldyreva.”<sup>4</sup>
- **SBTi:** “Avoided emissions should not count towards near-term or long-term emission reduction targets, according to Science-Based Targets Initiative, an organisation that promotes best practice. They do not count as a reduction of a company’s Scopes 1, 2 and 3 inventories and should be excluded from net-zero reporting, according to the SBTi’s corporate net-zero standard.”<sup>5</sup>

---

<sup>1</sup> *Estimating and Reporting Avoided Emissions*, Greenhouse Gas Protocol, <https://ghgprotocol.org/estimating-and-reporting-avoided-emissions>

<sup>2</sup> Stephen Russell, *Estimating and Reporting the Comparative Emissions Impacts of Products*, World Resources Inst. (Jan. 2019), [https://ghgprotocol.org/sites/default/files/2023-03/18\\_WP\\_Comparative-Emissions\\_final.pdf](https://ghgprotocol.org/sites/default/files/2023-03/18_WP_Comparative-Emissions_final.pdf) (emphasis added).

<sup>3</sup> *Id.*

<sup>4</sup> Jessica Tasman-Jones, *Measuring Scope 4 emissions: what boards need to know*, Financial Times (2022), <https://professional.ft.com/en-gb/blog/measuring-scope-4-emissions-what-boards-need-to-know/>.

<sup>5</sup> *Id.*

- “[A]voided emissions must be reported separately from scope 1, 2 and 3 emissions, and must not be counted toward near-term [science-based targets], including any scope 3 target.”<sup>6</sup>
- **GHG Protocol:** “The WRI says companies should first calculate and report Scopes 1, 2 and 3 emissions before calculating and disclosing an avoided emissions figure.”<sup>7</sup>
  - “If a company reports positive impacts [from avoided emissions], it should also report a complete inventory of scope 1, 2 and 3 emissions. Companies should not make claims about positive impacts without being transparent about whether their scope 1, 2, and 3 emissions are increasing or decreasing. . . . [C]omparative impacts should not be used to adjust scope 1, 2, and 3 emissions [and] . . . should not be compared with corporate GHG inventories.”<sup>8</sup>

Although the Company states that it does not use carbon offsets at this time, a short discussion is useful. Carbon offsets are tradable “rights” or certificates linked to activities made by an entity outside the company that may lower the amount of carbon dioxide (CO) in the atmosphere. By buying offsets, companies leverage other entities’ actions and claim reductions instead of taking actions to lower their own carbon emissions.<sup>9</sup>

### **B. Valero’s GHG Targets**

Valero has set near-term 2025 and 2035 targets focused on “reducing *and displacing* [its] global refinery Scope 1 and 2 GHG emissions” by 63% by 2025 and 100% by 2035.<sup>10</sup> These targets include credit for “avoided emissions from the production and blending obligations of low-carbon fuels.”<sup>11</sup> Once the Company achieves its purported “100% Reduction” target, Valero will have reduced and/or captured only 6.1 metric tons – **less than 19%** of the 32.3 million metric tons CO<sub>2</sub>e it emitted in 2011, its baseline year, **while claiming a 100% reduction**.<sup>12</sup> The “avoided emissions” Valero is currently claiming in its GHG emissions reduction targets do not actually reduce the Company’s emissions. Its target is therefore misleading to investors. By asking for a target that does not include avoided emissions and offsets, shareholders seek to address this confusion.

---

<sup>6</sup> *SBTi Corporate Manual*, Science Based Targets Initiative (Apr. 2023), <https://sciencebasedtargets.org/resources/files/SBTi-Corporate-Manual.pdf>.

<sup>7</sup> Tasman-Jones, *Measuring Scope 4 emissions*, *supra*.

<sup>8</sup> Russell, *Estimating and Reporting*, *supra*.

<sup>9</sup> Carbon Offsets, MIT Climate Portal, [climate.mit.edu/explainers/carbon-offsets](https://climate.mit.edu/explainers/carbon-offsets)

<sup>10</sup> *2022 TCFD Report*, Valero (Sept. 2022), <https://www.valero.com/sites/default/files/valero-documents/2022-TCFD-Report-FINAL-digital-spreads.pdf> (emphasis added).

<sup>11</sup> *2023 ESG Report*, Valero (Aug. 2023), [https://www.valero.com/sites/default/files/valero-documents/2023\\_ESG\\_Report.pdf](https://www.valero.com/sites/default/files/valero-documents/2023_ESG_Report.pdf). The Company appears to use the terms “avoided” and “displaced” emissions interchangeably.

<sup>12</sup> *2023 ESG Report*, Valero (Aug. 2023), [https://www.valero.com/sites/default/files/valero-documents/2023\\_ESG\\_Report.pdf](https://www.valero.com/sites/default/files/valero-documents/2023_ESG_Report.pdf).

## ANALYSIS

### I. THE PROPOSAL HAS NOT BEEN SUBSTANTIALLY IMPLEMENTED

The Company Letter argues that “the essential objective of [the Proposal] is the adoption of a near-term GHG emissions reduction target that has been found to be 1.5°C-aligned.” Company Letter at 3. It states that Valero has adopted such a target, and therefore the Proposal has been substantially implemented. The Company only reaches this conclusion by reading half of the Resolved Clause out of the Proposal. Despite the Company’s argument that it can cut out the heart of the Resolved Clause, the Proposal’s resolved clause is clear and gives it no authority to do so. Reading the plain terms of the Resolved Clause, which is a 1.5°C target that measures *the Company’s actual reductions* made within the target’s stated Scopes, the Proposal has not been substantially implemented.

#### A. The Substantial Implementation Standard

To meet its burden to show that the Proposal can be excluded under Rule 14a-8(i)(10), the Company must show that it has addressed the Proposal’s underlying concerns and essential objectives, *see Exelon Corp.* (Feb. 26, 2010); *accord. Best Buy Co., Inc.* (Apr. 22, 2022). It must also demonstrate that its “particular policies, practices and procedures compare favorably with the guidelines of the proposal.” *Texaco, Inc.* (Mar. 28, 1991) (emphasis added).

#### B. The Company Letter Misidentifies the Proposal’s Underlying Concern and Essential Objective

The underlying concern of this Proposal is that Valero’s emissions reduction target should measure the Company’s actual 1.5°C progress. It should not obfuscate its actual reductions by using “avoided emissions” or carbon offsets, two mechanisms that would credit Valero with GHG reductions it has not achieved. Such a practice presents a confusing or misleading picture to shareholders of the Company’s actual climate impact and climate risk. In addition, claims of reducing emissions without actually doing so exposes the Company to “reputational, regulatory, and legal risk.”

The Proposal makes manifestly clear that its primary concern is avoiding use of carbon offsets and avoided emissions in its targets, precisely because, as the Proposal notes, these practices can “fail[] to achieve substantial emissions reductions.” Moreover, they are not reflective of whether or not Valero’s own emissions reductions are aligned with 1.5°C. Valero is free to describe its avoided emissions and their potential benefits elsewhere, or to otherwise tout its purchase of offsets, but this can be done where shareholders are not likely to confuse such paper or potential reductions with actual emissions reductions the Company has achieved.

In short: the Proposal requests that the Company adopt a 1.5°C-aligned near-term target that does not use avoided emissions. The Company has not substantially implemented the Proposal.

In arguing otherwise, the Company Letter explicitly reads out of the Proposal its key clause with conclusory arguments. It states that, because the Proposal underscores the importance of 1.5°C alignment and asks for additional discretionary reporting about 1.5°C alignment in the Supporting statement, “then the essential objective of the Proposal *must be* for Valero to adopt a near-term GHG emissions reduction target that has been found to be 1.5°C-aligned.” Company



Letter at 4 (emphasis added). The Company provides no basis for the proposition that the Staff has obviated the need for accurate and transparent reporting – the very purpose of the Proposal – just because a company strenuously argues that its actions are in fact 1.5°C aligned and uses pages of arguments to describes its actions.

The word *essential* in “essential objective” “implies belonging to the very nature of a thing and therefore being incapable of removal without destroying the thing itself or its character.”<sup>13</sup> *Objective*, of course, means “an aim, goal, or end of action.”<sup>14</sup> A proposal’s “essential objective” is therefore the goal of the proposal that cannot be altered without fundamentally changing the meaning of the proposal. Here, removing the fundamental condition that the requested target not include the use of avoided emissions or offsets (i.e., emissions reductions the Company did not make) would change the very purpose of this reporting Proposal.

As discussed above, the Proposal specifically addresses use of “avoided emissions” and offsets because reliance on these mechanisms as a means of claiming 1.5°C-aligned GHG emissions reductions is likely to mislead a significant number of shareholders. It also exposes the Company to serious concerns about greenwashing, posing both reputational and legal risks. The use of avoided emissions can lead, inadvertently or not, to misleading claims — like Valero’s claim in its TCFD and ESG reports that its target will lead to a “100% Reduction” in its emissions, when 80% of that figure comes from avoided emissions, not reductions of the Company’s emissions. As scholars note, “avoided emissions claims are often unverifiable or inaccurate.”<sup>15</sup> Moreover, “many companies inaccurately estimate the climate benefits of their products,” while almost never accounting for the other side of the coin: emissions that their products *add* compared to alternatives.<sup>16</sup> In short, the Company has not addressed the Proposal’s underlying concerns or essential objective, and its current target does not compare favorably to the Proposal.

The Staff precedents relied on by the Company are easily distinguishable. For example, in *IDACORP, Inc.* (Apr. 1, 2022), the proposal requested that the company disclose short-, medium-, and long-term emissions reduction targets. The company had done so. The proponent argued that the company’s targets were inadequate because they were inconsistent with SBTi and because the company did not include certain business activities in its targets. The proposal, however, did not request specific consistency with SBTi. Further, in response to the proposal, the company added the requested business activities to its targets. None of that is true here. The Proposal explicitly places a fundamental condition on the target it requests the Company adopt, and the Company’s existing target does not meet that condition.

Similarly, in *Hess Corp.* (Apr. 11, 2019), the proposal requested that the company issue a report on “how it can reduce its carbon footprint” in alignment with the Paris Agreement. The Company had disclosed a climate change strategy, and the proponent’s attempts to emphasize different aspects of the “whereas” clause as central to the proposal were unsuccessful. Here, the Proposal’s request that the Company’s target not include avoided emissions or offsets is

---

<sup>13</sup> *Essential*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/essential>.

<sup>14</sup> *Objective*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/objective>.

<sup>15</sup> *Id.*

<sup>16</sup> Stephen Russell & Yelena Akopian, *Many Companies Inaccurately Estimate the Climate Benefits of Their Products*, World Resources Institute (Mar. 12, 2019), <https://www.wri.org/insights/many-companies-inaccurately-estimate-climate-benefits-their-products>.

specifically part of the Proposal's Resolved clause; the Proposal cannot be deemed to have been substantially implemented without it. Finally, in *Exxon Mobil Corp.* (Mar. 20, 2020), the proposal requested the company disclose "if and how it plans to reduce its total contribution to climate change and align its operations and investments" with the Paris Agreement. As in *Hess*, this proposal was found to be satisfied by the Company's existing reports that disclosed its climate strategy. Here, by contrast, the Proposal contains a specific request that the Company has undeniably failed to meet.

More relevant precedent supports inclusion of the Proposal. In *Johnson & Johnson* (Feb. 7, 2022), the proposal requested a report on how the company's receipt of government funding for development of COVID-19 vaccines and therapeutics would be accounted for in accessibility of such products, including pricing. J&J pointed to numerous publications on its website "on its approach to COVID-19 vaccine and therapeutic access and pricing." But the proponent successfully argued that the company's disclosures did not specifically address the role that J&J's receipt of government funding played in its decisionmaking, the core component of the requested report. Similarly, in *PNM Resources, Inc.* (Mar. 23, 2018), the proposal requested the adoption of a policy requiring the chairperson of the board to be independent. The Company argued that its existing board structures ensured independent oversight of the board, but the structures did not explicitly require an independent chairperson, the proposal's requested action. The no-action request was denied.

Similarly, the disclosure proposals in *Eli Lilly & Co.* (Mar. 10, 2023) and *Pfizer Inc.* (Feb. 10, 2022) demonstrate that existing policies do not substantially implement a proposal if they fail to fulfill the core purpose of the proposal's request. Both proposals (substantially the same in each case) requested that the company report to shareholders on *the effectiveness of the companies' diversity, equity, and inclusion efforts*. In each instance, the Company argued that it had provided quantitative data regarding the racial, ethnic, and gender breakdown of its employees in certain positions. The proponent successfully argued in each case that the data provided constituted only a "snapshot" of diversity of personnel at a single point of time; this was not sufficient to meet the purpose of the proposals which was to report on *the effectiveness of the company's DEI programs*. Issuers were not allowed to rewrite the Proposals' request by arguing that what it had already provided was sufficient. Similarly, here, the Company cannot ignore the actual request of the Proposal which is that the Company's 1.5°C target exclude "avoided emissions" and offsets. Valero's target does not satisfy this core purpose of the Proposal.

## **II. THE PROPOSAL DOES NOT MICROMANAGE THE COMPANY**

The Company Letter also argues that "to the extent an essential element of the Proposal is construed to impose specific methodologies for determining GHG emissions reduction targets by requiring Valero to exclude" avoided emissions, then the Proposal micromanages it. Company Letter at 11. However, the Staff has made clear that proponents are allowed to request that companies set emissions reduction targets. The Company has not done so — even within the relatively miniscule bucket of its Scope 1 and 2 emissions, it has set an emissions *displacement* target that features only a tiny amount of emissions reductions. The Proposal requests that the Company adopt an emissions reduction target. It is therefore permissible. Investors' ability to request consequential company action on matters of significant social policy, as recognized in Staff Legal Bulletin No. 14L, will become meaningless if companies can adopt watered-down

policies, call them targets, and get any attempt to make them meaningful excluded as micromanagement.

### **A. The Micromanagement Standard**

Rule 14a-8(i)(7) permits the exclusion of proposals that “deal[] with a matter relating to the company’s ordinary business operations.” As the Commission has recognized, however, proposals focused on a *significant social policy issue* generally are not excludable even if they relate to the company’s day-to-day business. *See* SEC, Exchange Act Release No. 34-40018 (May 21, 1998) (“1998 Release”). This is true even when the proposal “relates to the ‘nitty-gritty of [a company’s] core business.” Staff Legal Bulletin No. 14H (Oct. 22, 2015).

At the same time, the Commission has also recognized the exclusion under Rule 14a-8(i)(7) of proposals seeking to “micromanage” companies by “probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” 1998 Release. The Staff provided additional guidance about the scope of micromanagement exclusion in Staff Legal Bulletin No. 14L (Nov. 3, 2021). There, the Staff noted that “proposals *seeking detail* or *seeking to promote* timeframes or *methods* do not per se constitute micromanagement.” (emphasis added). Rather, the Staff looks at:

[T]he level of granularity sought in the proposal and whether and to what extent it inappropriately limits discretion of the board or management. We would expect the level of detail included in a shareholder proposal to be consistent with that needed to enable investors to assess an issuer’s impacts, progress towards goals, risks or other strategic matters appropriate for shareholder input.

Staff Legal Bulletin No. 14L. SLB 14L made clear that the Staff will not concur in the exclusion of proposals “that suggest targets or timelines so long as the proposals afford discretion to management as to how to achieve such goals.” But affording discretion to management as to how to achieve targets does not mean that proposals can make *no* requests as to timeframes or methods. As the Commission recognized in 1998, proposals seeking to promote timeframes or methods do not “necessarily amount to ‘ordinary business’” because differences in timeframe or methods “could involve significant policy where large differences are at stake.” 1998 Release.

Finally, the Staff has provided guidance on the standards it uses to judge the appropriate level of granularity in a proposal, noting that the Staff “may consider the sophistication of investors generally on the matter, the availability of data, and the robustness of public discussion and analysis on the topic” as well as “references to well-established national or international frameworks when assessing proposals related to disclosure, target setting, and timeframes as indicative of topics that shareholders are well-equipped to evaluate.” *Id.*

### **B. The Proposal Is at an Appropriate Level of Granularity and Does Not Unduly Intrude on Management or Board Discretion**

The Proposal falls well within the boundaries established by Commission rulemaking, Staff guidance, and precedent.

First, consistent with Staff Legal Bulletin No. 14L, the Proposal requests that the Company adopt a greenhouse gas *reduction* target. As described above, the Company has not meaningfully done so. Rather, it has adopted a greenhouse gas emissions displacement target. It anticipates that only 7% of its “100% Reduction” in Scope 1 and 2 emissions will involve actual reduction of emissions. Thus, shareholders are well within their rights to request that the Company adopt a target that reports on its own, actual emissions reductions, and that it reports only Scope 1 and 2 emissions reductions in its Scope 1 and 2 emissions reduction target. Concluding that this Proposal micromanages the Company would introduce perverse incentives into the shareholder proposal process. Companies would be able to adopt toothless or misleading targets and exclude any effort by shareholders to ask the company to improve upon those targets, including for consistency with well-understood global frameworks allowing for consistency and comparison. This is plainly not the intent of the micromanagement rule.

Comparison to the Staff precedents cited by the Company are instructive. In *Amazon.com, Inc.* (Apr. 7, 2023), the proposal was excluded because the Staff concluded that it delved too deeply into the specific elements the Company must include in its greenhouse gas emissions reporting, including what stores, sales, and products it should measure. Nothing in the Amazon proposal addressed the fundamental components of the company’s target. By contrast, in *ConocoPhillips Co.* (Mar. 19, 2021), the staff declined to concur in excluding the proposal under the micromanagement rule where the proposal requested that the company set “emission reduction targets covering the greenhouse gas (GHG) emissions of the Company’s operations as well as their energy products (Scope 1, 2, and 3).” Valero argues that *ConocoPhillips* requested “only the setting of GHG emissions reduction targets,” Company Letter at 12 — but this is incorrect. The proposal defined the boundaries of the requested targets, including requesting the inclusion of Scope 3 emissions related to the company’s energy products. It further requested that the targets address absolute emissions reductions and be Paris-aligned (i.e. 1.5°C aligned). The Staff found that including these important guidelines for target setting was not micromanagement.

In this respect, *ConocoPhillips* is consistent with the Commission’s 1998 Release, which clarified that proposals seeking to promote specific methods do not necessarily constitute micromanagement because such methodological choices “could involve significant policy where large differences are at stake.” 1998 Release. For the reasons described *supra*, that is precisely the case here. A 2035 target to reduce actual operational emissions by 7%, while being able to claim 100% compliance, is not what investors have in mind when they hear that a company has a 1.5°C-aligned near-term emissions reduction target, particularly one where the company claims results in “100% Reduction” in its Scope 1 and 2 emissions. “Large differences are at stake” when it comes to including hypothetical avoided emissions in a company’s Scope 1 and 2 emissions reduction target which Scopes specifically address emissions from *the Company’s* operations and electricity use. Those differences boil down not only to the adequacy of company action to address its own contribution to a net-zero world, but also significant regulatory, reputational, and legal risks.

Second, the Proposal’s prohibition on the inclusion of avoided emissions does not unduly restrict management or Board discretion to an impermissible degree because the Company remains free

to determine what actions it will take to meet a 1.5°C-aligned, near-term emissions reduction target. Consistent with the guidance of Staff Legal Bulletin No. 14L, the Proposal does not prescribe “how to achieve” the target it requests the Company set. The condition that the Company not include avoided emissions in its target is part of the target requested by the Proposal, not a mandate on Company action in how to achieve it. The Proposal does not require that the Company stop accounting for or disclosing its avoided emissions. It simply requests that the Company adopt a target that does not include avoided emissions.

The contrast with Staff precedent cited by the Company is instructive. The Company Letter cites *Chubb Ltd.* (Mar. 27, 2023), in which the proposal demanded the adoption of specific actions to reduce climate emissions: a time-bound phaseout of underwriting risks associated with new fossil fuel exploration and development projects. Contrast this outcome with *Morgan Stanley* (Mar. 25, 2022), *JPMorgan Chase & Co.* (Mar. 25, 2022), and *Citigroup Inc.* (Mar. 7, 2022). In those instances, the proposals requested that the companies “adopt a policy . . . committing to proactive measures to ensure that the Company’s lending and underwriting do not contribute to new fossil fuel development.” The Staff declined to concur in the companies’ requests to exclude the proposals for micromanagement because proponents were seeking an outcome, not dictating specific actions. The difference between those cases and *Chubb* is directly relevant to this Proposal: the non-excluded proposals did not request the adoption of specific actions, but instead requested the company adopt “a policy” to implement a specific methodology to achieve climate goals, leaving the “how” up to the company. Here, the Proposal defines the nature of the target it requests the Company set, leaving the Company full discretion as to how to meet that target. Further, the Proposal does not seek to prohibit the Company from elsewhere accounting for and disclosing its avoided emissions. For this reason, the Company is wrong in asserting that the Proposal “requires” any specific company actions to meet climate goals or any change to the company’s operations. *See* Company Letter at 13-14.

Thus, the Proposal does not micromanage the Company. It asks that the Company set a target. The target should not rely upon avoided or offset emissions. The Company is free to determine how it meets that target. The use of avoided emissions is a significant methodological concern that transforms the nature of the Company’s climate disclosures, is a topic of significant public discussion, can be confusing and misleading to investors, can give the appearance of 1.5 degree alignment that is not actually being achieved by the Company, and is therefore appropriate for shareholder input.

## CONCLUSION

In its climate disclosures, the Company claims that it expects to achieve a “100% Reduction” in its Scope 1 and 2 emissions by 2035. The reality is that the Company expects to achieve a 7% reduction in its Scope 1 and 2 emissions by 2035; fully 80% of its claimed reductions are planned to come from use of “avoided emissions,” a hypothetical reduction based on a calculation that some set of people will use renewable fuels versus fossil fuels. Outside of their accuracy, avoided emissions are not reductions in the Company’s Scope 1 and 2 emissions. A proposal asking for a clear and transparent GHG target, that measures only the Scopes it is purportedly reporting on, is neither substantially implemented nor micromanaging the Company. This Proposal is appropriately a subject of shareholder consideration.

Office of Chief Counsel  
February 16, 2024  
Page 12 of 12

Based on the foregoing, we believe that the Company has provided no basis for the conclusion that the Proposal is excludable from the 2023 proxy statement pursuant to Rule 14a-8. We urge the Staff to deny the no action request.

Sincerely,

A handwritten signature in black ink, appearing to read "LM", with a long, sweeping flourish extending to the right.

Luke Morgan  
Staff Attorney, *As You Sow*

cc:

Richard J. Walsh, Valero Energy Corporation



**Richard J. Walsh**  
*Senior Vice President, General Counsel and Secretary*  
Valero Energy Corporation

February 23, 2024

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
100 F Street, N.E.  
Washington, D.C. 20549

RE: Valero Energy Corporation 2024 Annual Meeting of Shareholders  
Proposal of As You Sow, on behalf of Warren Wilson College

Ladies and Gentlemen:

I am submitting this letter on behalf of Valero Energy Corporation (“Valero”) in response to a letter (the “As You Sow Comment Letter”) addressed to the Staff of the Division of Corporation Finance (the “Staff”) of the U.S. Securities and Exchange Commission by As You Sow on behalf of Warren Wilson College (collectively referred to as the “Proponent”) commenting on Valero’s prior letter to the Staff, dated January 4, 2024 (the “No-Action Letter”) requesting that the Staff concur in Valero’s view that it may exclude the Proponent’s shareholder proposal (the “Proposal”) from inclusion in Valero’s 2024 proxy materials. The As You Sow Comment Letter proves the very point of the No-Action Letter, that As You Sow seeks to micromanage Valero’s emissions reductions strategy, which already substantially implements the Proposal.

As stated in the No-Action Letter, Valero seeks to exclude the Proposal because it has been substantially implemented and because it seeks to micromanage Valero in relation to matters squarely within the realm of ordinary business operations that is the responsibility of management. The As You Sow Comment Letter admits to both bases for exclusion.

With respect to substantial implementation, the As You Sow Comment Letter explains: “The underlying concern of this Proposal is that Valero’s emissions reduction target should measure the Company’s actual 1.5°C progress.”<sup>1</sup> Valero has done exactly that, by setting emissions reductions targets that use methodologies well-recognized in the scientific community and that measure actual emissions reductions made possible by Valero’s products. Valero’s approach to emissions reductions is also clearly and publicly disclosed and shareholders can already make their own assessment of the progress Valero has made. Notably, in that one sentence

---

<sup>1</sup> As You Sow Comment Letter at 6.

where the Proponent distills the Proposal’s “underlying concern,” that sentence never mentions the words “avoided emissions” or “displacements.”<sup>2</sup>

Even if the Proposal were interpreted as though its essential element was the specific exclusion of avoided emissions as a means of achieving reductions, the Proposal would clearly seek to micromanage Valero’s strategy for achieving emissions reductions in the context of its business. The Proponent admits that there are many ways of setting emissions reductions targets, but proposes to limit the discretion of the Valero board of directors and management by mandating one specific methodology that would require Valero to exclude avoided emissions from its calculations. If that is not micromanagement, then what is?

The Proponent then attempts a sleight of hand, explaining that because the Proposal addresses only the methodologies that may be considered when constructing a target, it does not prescribe methods for actually achieving that target: “the Proposal defines the nature of the target it requests the Company set, leaving the Company full discretion as to how to meet that target.”<sup>3</sup> Yet the Proponent loses sight of the fact that in some cases methodologies may be so inherent to a target that results cannot be interpreted without reference to those methods. For example, if a shoe salesman sets a goal of selling 30 pairs of shoes without offering a discount, has he met his target if he sells 25 pairs at full price and five pairs at a 10% discount? The Proposal’s requirement not to use avoided emissions in constructing an emissions reduction target leaves available only limited other means of achieving emissions reductions: the closure or sales of refineries and plants or the curtailment of their production output levels, and thus necessarily amounts to dictating and micromanaging ordinary business operational decisions of Valero. That the Proponent does not understand this basic characteristic of Valero’s business is further support that this is a matter that must be left to the expert judgment of Valero’s management as required by Rule 14a-8(i)(7).

If you have any questions with respect to this matter, please do not hesitate to contact me.

Very truly yours,



Richard J. Walsh

cc: Danielle Fugere  
President and Chief Counsel  
As You Sow

Anthony Rust  
Chair of Investment Committee  
Warren Wilson College

---

<sup>2</sup> As You Sow Comment Letter at 6.

<sup>3</sup> As You Sow Comment Letter at 11.