CARL C. ICAHN

767 Fifth Avenue, 47th Floor

New York, New York 10153

August 9, 2016

Gina McCarthy	Janet McCabe
Administrator	Acting Assistant Administrator
U.S. Environmental Protection Agency	U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW	1200 Pennsylvania Ave., NW
Washington, D.C. 20460	Washington, D.C. 20460

Re: THE RFS PROGRAM IS BROKEN AND NEEDS TO BE FIXED IMMEDIATELY

Dear Administrator Gina McCarthy and Acting Assistant Administrator Janet McCabe:

I grew up on the streets of Queens. I managed to get into Princeton University from a tough high school probably because my scores on the college boards were quite high. After graduating in 1957 and a stint in the Army, I went to Wall Street in 1960. I did not come from a wealthy family. My mother was a school teacher and my father was a disappointed opera singer that barely earned a living. However by 1968, I saved enough to purchase a seat on the NYSE. Since that time, I am proud to say, my average annual return on capital has been 28% per year. I've gained a great deal of my profits by understanding markets and the many pitfalls that exist that most people do not understand. At the risk of being immodest, most respected experts involved in markets and the way they function would agree there are few in the country that understand investing in markets better than I do. I tell you this not because I wish to boast, but because I hope that you will take my following letter and warning very seriously.

Throughout economic history, there are markets that are “rigged” so that certain speculators and companies can profit at the expense of others that are innocently involved. Innocent people and companies are badly damaged and go bankrupt from “rigged” markets. Most crashes and panics have been the result of these types of “rigged” markets, such as the ’29 crash and the recent ’08 housing bubble. The RIN market is a “rigged” market and if not stopped immediately the consequences might well be disastrous. The RIN market will cause a number of refinery bankruptcies; the domino effect of this will be that “big” oil will sop up the bankrupt refineries, causing an oligopoly resulting in skyrocketing gasoline prices. Just as in ’29 and the ’08 housing bubble, these “rigged” markets are deceptive and at first look, relatively harmless. Often in “rigged” markets in their early stages, pundits opine there is no danger. **They are always wrong.** I warned a number of people in ’08 about the great dangers but to no avail because too many, including leading politicians, were told by respected bankers that there were no problems. Therefore, unfortunately, nothing was done until there was calamity and our whole system almost collapsed.

The RIN market is the quintessential example of a “rigged” market where large gas station chains, big oil companies and large speculators are assured to make windfall profits at the expense of small and midsized independent refineries which have been designated the “obligated parties" to deliver RINs. When gasoline is blended with ethanol and/or biofuel, the blender receives something called a "RIN" to prove they blended each gallon of gasoline they produced. The EPA has designated refineries as the "obligated party" to deliver a certain amount of RINs to the EPA each year or be severely penalized. But to make refineries obligated to prove their gasoline was blended is irrational. These refineries will almost certainly go bankrupt unless this obligation is changed almost immediately. Here's why:

Midsized independent refineries, such as HollyFrontier & CVR Energy, as well as smaller refineries, do not own gas stations and therefore do not control the blending and retail sale of their fuel, but are nevertheless "obligated" to deliver RINs at the end of each year to prove to the EPA that they blended or made sure that the gasoline they produced had been blended with ethanol and/or biofuel. However, while these refineries are capable of blending their gasoline with ethanol, at a cost of only $.01 per gallon, the large gas station chains they sell to have for the most part refused to purchase blended gasoline from them. RINs can only be produced when gasoline is actually blended. Since most gas stations will not purchase blended gasoline from refineries, these refineries cannot produce for themselves the amount of RINs demanded from them by the EPA. As a result, the RIN market has become "the mother of all short squeezes". Refineries must have RINs to deliver by a date certain but the only persons they can purchase these RINs from are blenders that own large gas stations or big oil companies that blend and also own gas station.

When refineries sell their unblended gasoline at the rack (because no one will buy blended gasoline from them) they try to purchase the RINs they need from the blenders they sell to. The blenders obviously understand the refineries' predicament and therefore

they have realized they can "squeeze" higher and higher prices from the "obligated refiners". RINs are now selling at over 20x what it would cost the refinery to produce them themselves. But even worse, speculators and large investment banks have now entered the picture and are competing with refineries to purchase RINs from the blenders at the rack. They are also making secret deals with the blenders to entice them not to sell to the refineries but rather to sell to them. These speculators are "hoarding" the RINs hoping to get much higher prices as the time nears when refineries are obligated to deliver RINs to the EPA. This is a classic short squeeze of a "rigged" market which is now entering its most dangerous phase – "HOARDING". As RINs are "hoarded" their price will move up exponentially and bankruptcies will take place which causes a debilitating domino effect.

On the other hand, reprehensibly "big oil" as well as gas station chains are benefiting from all this because they control the blending but more importantly they control the retail sale of their fuel since they own gas stations and franchisees that are contractually committed to buy their blended fuel. They therefore can avoid the over-priced RIN market. In fact, most of the "big oil" companies blend more than they produce and earn windfall profits selling their excess RINs just like exempt (non-refining) blenders. **EPA has done for "big oil" what the Federal Trade Commission would not allow "big oil" to do for itself – destroy its competition. Survival in the intensely competitive transportation fuels market means remaining competitive by constantly improving efficiency. It is impossible for independent and small refineries to remain competitive with "big oil" because they are paying 20x more than the true value of RINs that they must deliver to the EPA for compliance with the RFS**.

Interestingly, companies are actually boasting about the windfall profits they are receiving as a result of the EPA's irrational rulemaking. One of the biggest known beneficiaries of the over-priced RIN market is Murphy USA, a large gasoline chain owner and blender that collects RINs and sells them at a huge profit. In its 2015 10-K, it boasted that it made $117.5 million selling RINs to obligated parties in 2015. But this is only the tip of the iceberg. Amazingly, billions of dollars are being lost by refineries because they are being forced to pay so much for RINs simply as a result of the EPA ruling.

But perhaps most importantly, irrational regulations of the type we have been discussing, which cause "rigged" markets that bankrupt companies for no reason, have scared companies all over America. The perception in America is that government is "at war with business." As long as this perception exists and grows, a healthy economy cannot exist. The irrational regulation promulgated by the EPA is just one of a number of irrational rulings issued by regulated agencies. These regulations over the last eight years have caused a crisis of confidence on the part of companies. As a result, companies are increasingly frightened to invest their capital in machines, factories, etc. Spending is currently well below levels commonly seen even during recessions. Also surveys show this trend will continue and is on a strong downward trajectory. As Capital Spending declines, workers are forced to use old machinery that cannot compete and productivity growth is now the lowest level ever seen on record. As a result, good jobs, especially for skilled workers are in decline. Things must change so that government is no longer at war with business.

It is not too late to fix this problem if the EPA acts quickly.

The difference between the current RIN market and all other “rigged” markets in history is that this “rigged” market is the only one where the originators, namely the EPA, are not getting any of the windfall and the illegal profits that always result. Indeed the EPA has admitted that the desired effect, namely to see more renewable fuel blended, is not happening. In the 2014-2016 final rule, EPA acknowledged that high RIN prices did not incentivize wholesalers and retailers to increase distribution of E85, but incentivized them to maximize their profits. The only result of the current RIN market will likely be a disastrous crisis. Luckily and unlike other “rigged” markets such as the housing market in ‘08, the situation can still be saved by the EPA by simply changing the “obligated” party before it is too late.

I believe we all can agree that the mandate of the EPA is to improve our environment, not to benefit “big oil” and large gas station chains by bankrupting innocent refiners, especially when admittedly doing this in no way achieves the goal of benefiting our environment.

I wish to make clear, while I am not an expert on the environment, I share many of your concerns about its present state and believe many of the things you do are salutary. However, obviously the RIN program is certainly not one of them. If my predictions come to fruition you might well be “throwing the baby out with the bathwater”. In fact, I believe the RIN program will severely set back many of the “good” changes you are trying to accomplish. Throughout history, there are always scapegoats to be found and blamed for the pain, suffering and bankruptcies caused by “rigged” markets. I am not being overly dramatic. I have studied these markets for years and believe that in this case the EPA will be the perfect scapegoat in that there is absolutely no excuse for allowing this “rigged” market to continue transferring wealth from one group of companies to another, when admittedly your goals are not being achieved. However, ironically, if the obligated party is changed, there will actually be an increase in biofuel blended to meet the demands of an increased blend wall, thereby benefiting the environment. This will occur because blenders own gas stations and therefore have the ability, if they need to, to put E15 and E85 gas tanks at their stations, etc., etc.

There are certain defenses for the RIN program. I have studied them and they are nonsensical. For example, a defense made is that refiners are not hurt because they are passing on their cost of RINs by raising prices to the blenders. This is absurd and the obvious proof that it is not happening is the billions of dollars currently being lost by refiners. I have studied other defenses made that are even more absurd and would be happy to discuss them.

After reading this I respectfully request a discussion with you by phone or in person at your earliest possible convenience. I believe it is extremely important and time is of the essence.

I am not the only commentator that has pointed out the irrationality of EPA’s handling of the RFS program, where certain market participants are literally being driven out of business and others are being handed a windfall. For your reference, I recommend that you read the August 1, 2016 Seeking Alpha article entitled “A Tale Of Two Companies: CVR Refining and Casey's Country Store,” which states:

EPA requirements are making CVR Refining and Casey's Country Store go in opposite directions. Cost of RINs are piling on ever-increasing costs onto small refiners like CVR. Blenders like Casey's are enjoying a massive windfall from the enforced system. With this tale of two companies, Casey's General Stores (NASDAQ:CASY) and CVR Refining (NYSE:CVRR), it is definitely a case of the best of times and worst of times.

In addition, various refining companies, including Valero Energy, PBF Energy and Alon USA, among others, have also recently called out the epic failure of the RFS program and begged for EPA to intercede. On the July 27, 2016 earnings call for Valero Energy, CEO Joseph W. Gorder stated:

The current system, as you know, misaligns the RIN obligation with the ability to comply by blending. So, what's happened, it's enabled speculators to drive up RIN prices, which really distorts the markets. And it facilitates opportunities for RIN fraud, which we've seen a fair amount of. Moving to point of obligation really would address these issues, and then it would enable the penetration of biofuel products into the marketplace to increase their blending. So, that's really the emphasis for us on trying to push this just to try to fix a structure that we think really is misaligned and infeasible today.

On the July 29, 2016 earnings call for PBF Energy, CEO Thomas J. Nimbley stated:

RINs continue to be a headwind for the refining industry, and I would like to echo the sentiment of many of our refining peers. The RFS system is absolutely

broken. The EPA has the point of obligation in the wrong place and the goals of the program are not being met. While a complete overall of the statute is needed, we feel that at a minimum the EPA should move the point of obligation to where the RIN is generated, as it is done in California with AB32.

On the July 29, 2016 earnings call for Alon USA, CEO Paul Eisman stated:

> ***The total cost of meeting our RINs obligation in the second quarter was $9.1 million, including $2.1 million for the Big Spring refinery. Our current projection for RINs cost for the year is $10 million at Big Spring and $33 million at Krotz Springs based on RINs pricing as of June 30. While we do have the capability to offset much of our obligation at Big Spring, that is not the case at Krotz Springs. Except for feedstock purchase costs, this is our largest single cost item at the refinery. We agree with those that argue that this is a broken program and one that needs to be fixed.***

There are many other strong criticisms of this program I would be happy to discuss with you.

At the risk of being repetitive, I believe the summary below will help you to understand how dire the situation with the RFS program is:

1. Under the RFS refiners and importers are the obligated parties regardless of their ability to physically blend biofuels with hydrocarbon transportation fuels. Since biofuels cannot be blended at the refineries and shipped via pipeline blending occurs

at truck racks. Independent merchant refiners, who provide almost half of our nation's transportation fuels, do not control the vast majority biofuels blending of their hydrocarbon product. They have to buy credits from blenders who are exempt from compliance under the rule established by EPA.

2. The price of RINs has increased by over 5000% since its inception and exempt blenders are using the loophole in EPA's rule to siphon off billions of dollars in windfall profits selling blending credits to refiners. RFS was intended to promote renewable fuels and provide energy security but under EPA's leadership it has turned into a wealth transfer program that works against renewables and hurts national security.

3. Blenders are using their windfall profits to invest in their own companies – buying back stock and paying dividends – rather than investing in renewable fuel blending, which is the purpose of the rule. The RINs market is arguably one of the largest unregulated commodities markets in the world. It is a black pool, completely secretive and designed to allow speculation and fraud.

4. In the meantime, taxpayers are paying for government subsidies to encourage investments in renewable fuel blending that exempt blenders are not making because of the loophole in EPA's rule.

5. The Federal Trade Commission and EPA's Inspector General's office should investigate why EPA is allowing the market distortion caused by the blender loophole, which fails to serve its purported regulatory purpose.

6. Goldman Sachs reports that refiners stocks are plummeting because EPA set its renewable fuel volumes too high and is recommending that investors sell shares in any refiner that has a significant exposure to RINs.

Time is of the essence. I implore you to immediately change the "obligated" party in the RINs program before it is too late. I look forward to speaking with you.

Sincerely yours,

CARL C. ICAHN