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November 3, 2016

Shaun Donovan, Director
The Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Re: **THE LOOMING EMERGENCY ON NOVEMBER 30, 2016**
If the OMB does not require the EPA to lower its proposed 2017 ethanol and biofuels blending requirements, which are mathematically impossible to achieve, it will be the final nail in the coffin for a number of United States refineries. This is almost like something out of Alice in Wonderland, with the EPA seemingly bent on ignoring reality in order to capriciously destroy an entire industry.

Dear Director Donovan:

As you know, the EPA's proposed rule containing the 2017 ethanol and biofuels blending requirements is currently under review at the Office of Management and Budget (OMB). Each year, the EPA requires that a certain volume of ethanol or biofuels be blended into our nation's gasoline output. The Renewable Identification Numbers (RINs) program mandates that if refiners are unable to comply with these blending requirements (which are set arbitrarily by the EPA and mathematically impossible for refiners to meet), they must buy their compliance through the purchase of overpriced RINs (electronic credits that demonstrate compliance with the EPA's blending requirements) on a shadowy, unregulated trading market. As the EPA has thus far refused to take any action to relieve the devastating financial pressure that its RINs rules have placed on small and medium sized merchant refineries, the OMB may be the last chance that many of these refineries have to avoid bankruptcy. I therefore implore you to take this letter with the utmost seriousness.

While I am an expert in very few things, few will deny that I know more than most about markets and investing. My performance of 28% annualized returns since 1968 speaks for itself. I say this not to boast but because I hope my record and reputation might influence policymakers to take my dire warning seriously. Back in 2008, I warned a number of people about what certain Wall Street firms were doing and the great danger it posed to the economy. Nothing was done and the whole economic system almost collapsed. The OMB now has the opportunity to prevent a similar crisis from occurring. It would be a terrible shame if the EPA's rules are allowed to bankrupt several refineries when a few small changes are all that is necessary to fix this broken system. I truly hope that we are not forced in the future to look back on this moment as another missed opportunity for the government to avert a national economic disaster.

The RINs program is broken and, if not fixed immediately, will cause devastating consequences for the refining industry – and for the national economy. When even one refiner has problems, gasoline prices can be drastically affected. As we all know, when gasoline prices spike, the rippling effects on our economy can be crippling and include lower consumer spending, decreased travel, higher shipping and transportation costs, increased unemployment, decreased consumer confidence, higher food prices, and budget cuts in vital areas such as education and public transportation, among many other negative consequences.

Today, a large number of small and medium sized merchant refineries are suffering, with some even on the verge of collapse, due to the escalating costs of RINs. On November 30th, the final nail in the coffin for a number of these refineries will be hammered in if the EPA fails to lower the volumes of ethanol and biofuels that it has proposed to require refineries to blend with gasoline and diesel fuel in 2017. The elimination of these refineries will lead to the strengthening of "Big Oil" oligopolies by allowing them to take advantage of the fact that they will control the supply of gasoline, causing spikes in prices for consumers, which will have a domino effect that will badly damage the economy.

There is much wrong with the RINs program that will ultimately need to be fixed. Most importantly, the point of obligation must be changed such that the blenders (including large retail chains, some of which are owned or controlled by large integrated oil companies) who are actually in control of how much renewable fuel gets blended are the parties who must be obligated to comply with the RINs program, rather than the small and medium-sized refineries who are at their mercy. But at this moment there is an emergency looming that is even more ominous: on November 30th, the EPA will finalize the volumes of ethanol and biofuels that refineries will be required to blend with gasoline and diesel fuel in 2017. If the volumes contained in the EPA's proposed rule remain unchanged, it will be the final nail in the coffin for a number of U.S. refineries. The EPA indicated in the proposed rule that in 2017 refiners will need to guarantee the blending of nearly 700 million more gallons of biofuel than was required under the already demonstrably unachievable 2016 volume obligations! The proposed increased volumes are **mathematically impossible to achieve**, and the associated costs of compliance through the forced purchase of RINs from those seeking extortionate rent will surely precipitate the failure of many small and medium-sized refineries. As the OMB must surely understand, when a refinery closes it doesn't only impact the company and its employees it impacts an entire region of the country who now must replace the lost gasoline production. As we have seen in previous moments of crisis in the sector (e.g. Hurricane Katrina, Hurricane Sandy, etc.), even a brief shutdown leads to spikes in the gasoline market and immediate pain and suffering for consumers and the entire U.S. economy. It is simply unbelievable that EPA would risk this scenario rather than seeking immediate comment on a structural design flaw—the point of obligation—that could actually help this program.

It is even more absurd that the EPA continues to punish and ruin merchant refineries that have done nothing wrong when the EPA themselves admit that the RFS program is not working. The only beneficiaries of the broken RFS program are "Big Oil," exempt blenders and the Wall

Street speculators that are manipulating the RINs market for illicit gain, causing the compliance costs of merchant refineries to skyrocket – all with the EPA's imprimatur. Even the EPA's own former Chief of Criminal Investigations, Doug Parker, recently stated publicly that "structural vulnerabilities in the regulations, limited agency oversight, and a lack of market transparency within the RFS made this program a ripe target for massive fraud and illicit gain."

The EPA heretofore has absolutely closed its eyes to the crisis in the refinery business, indeed going so far as to even deny that any problems exist! Based on the views of an internal EPA "economist" (who is in fact not an economist at all, but rather a chemical engineer!), the EPA has bizarrely concluded that refineries are passing through the higher RINs compliance costs: "EPA notes that after further review...it has been found that a refinery does not experience disproportionate economic hardship simply because it may need to purchase a significant percentage of its RINs for compliance from other parties, even though RIN prices have increased...because the RIN prices lead to higher sales prices obtained for the refineries' blendstock, resulting in little or no net cost of compliance for the refinery." But the facts are the facts, and they belie the EPA's ridiculous position.

When merchant refiners, exempt blenders and "Big Oil" players compete at a rack, they all get the same price for their fuel – the merchant refiner doesn't get more simply because it has a cost that the others do not. What happens at the rack is that exempt blenders and "Big Oil" players reap a windfall because they can blend without a compliance obligation – i.e., they capture the RIN they need for compliance without incurring a cost. The merchant refiner, however, incurs a cost that the others do not have – the price of purchasing a RIN. The EPA's theory of "RINs cost pass through" is therefore a red herring because two of the three parties at the rack have no such cost to recover.

The result of this disparity in treatment of competitors by the EPA will be extremely deleterious to the merchant refiner, and many will ultimately be driven into bankruptcy. In addition to being penalized vis-à-vis their competitors in this manner, the merchant refiner is then forced by the EPA to take on even more risk by having to purchase RINs on an unregulated, rigged market where fraudulent activity is rampant and there is no way to verify whether purchased RINs are counterfeit. The active and ongoing manipulations and illegal collusion in the RINs market are unconscionable, known to the EPA, and, as Thomas D. O'Malley, the former Executive Chairman of PBF Energy Company, LLC advised the EPA in August, will "ultimately lead to a serious government scandal" and will badly damage merchant refiners as well as other unwary purchasers of fraudulent RINs, just as the purchasers of mortgage backed securities and derivatives were damaged during the crisis in 2008.

Every investment bank has spotted this issue as plain as day and has advised its investors to sell their shares in refiners that have RINs exposure but EPA's chemical engineer continues to tilt at windmills and ignores facts.

Facts are facts. The financial results at many of the refineries most affected by skyrocketing RINs costs have gotten pummeled in recent years. And this dismal trajectory has for the most part continued in 2016. Below are estimated RINs-related expenses for 2016 at various refineries:

Delek US Holdings	$38,000,000
Western Refining	$40,000,000
Alon USA Energy	$43,000,000
CVR Refining	$224,000,000
Philadelphia Energy Solutions	$250,000,000
HollyFrontier	$260,000,000
PBF Energy	$412,000,000
Valero Energy	$800,000,000

If the proposed 2017 blending volumes are finalized on November 30th, these losses will only multiply, further devastating the already beleaguered domestic refining industry.

The math speaks for itself. The EPA's proposed blend volumes for 2017 clearly exceed the generally acknowledged 10% "blend wall" for gasoline and the 5% blend wall for diesel – i.e., the outer limits of ethanol and biofuels that experts agree can be blended into the nation's motor fuels. The excess fuel that the EPA requires refiners to blend with ethanol cannot be sold because there is no market for it, consumers don't want it, and half the cars on the road can't run on it. The EPA bases its blending requirements upon projections of national fuel consumption published by the U.S. Energy Information Administration (EIA). The EIA has projected that in 2017, consumers will use 196.63 billion gallons of gasoline and diesel fuel, which includes 16.56 billion gallons of ethanol and biofuels. This equates to 10.004% blending for gasoline (already slightly in excess of the 10% blend wall) and 4.306% for diesel. In its infinite wisdom, however, the EPA has proposed to require that in 2017 a total of 18.8 billion gallons of ethanol and biofuels be blended with gasoline and diesel fuel (or approximately 10.64% for gasoline and 6.8% for diesel – far in excess of the 10% blend wall for gasoline and the 5% blend wall for diesel). These requirements are therefore **mathematically impossible to achieve** based on the government's own projections! This is almost like something out of Alice in Wonderland, with the EPA seemingly bent on ignoring reality in order to capriciously destroy an entire industry.

The EPA's argument that the carryover "RIN bank" will be available to satisfy the RINs needed for 2017 is as ludicrous as it is fallacious. In the proposed 2017 rule, the EPA stated: "We believe that carryover RINs are extremely important in providing obligated parties compliance flexibility in the face of substantial uncertainties in the transportation fuel marketplace, and in providing a liquid and well-functioning RIN market upon which success of the entire program depends." The EPA failed to mention, however, that there are two major flaws in its logic. First, a large portion of this so-called "bank" may be comprised of counterfeit RINs due to the fraudulent activities described by Doug Parker – and thus the "bank" may be much smaller than anticipated, or may not even exist at all. Second, even if there is a supply of legitimate carryover RINs, they may never find their way into the hands of the small and medium-sized merchant refineries that are suffering under the EPA's oppressive regime (absent the payment of extortionate rent) – because they are held by "Big Oil" and exempt big fuel retailers who do not need them for compliance and are more than able to absorb a small loss over the short term by letting excess RINs expire worthless in order to put their smaller competitors out of business and thus strengthen their oligopoly power over the longer term. Furthermore, exempt blenders are not required to meet the EPA's RVO targets and have no incentive to "break through" the blend wall. Thus they will blend at lower levels forcing a net shortage of RINs.

The OMB now has the opportunity to avert another 2008-style financial crisis but only if it takes resolute and immediate action. We therefore implore the OMB, before it is too late and the EPA's rule becomes final on November 30th, to take decisive action – by requiring the EPA to drastically lower on November 30th the volumes of ethanol and biofuels that must be blended in 2017. It is important to note that the volumes of ethanol and biofuels that the EPA has indicated it will require refineries to blend in 2017 are mathematically impossible to achieve. Therefore, the demands being made on merchant refineries will be impossible for them to achieve. This has become an Alice in Wonderland situation – but it is not funny because of the dire consequences that it will soon manifest.

The precipice we are now facing is alarmingly similar to the situation that preceded the 2008 financial crisis. Just as the EPA has been warned repeatedly about the consequences of failing to fix the RINs program, regulators were warned back in '08 of the great dangers being posed to the economy due to Wall Street's shenanigans in the housing market. Nothing was done then and we all know what happened. Similarly, if regulatory oversight of the "wild west" RINs market, as well as an investigation of the criminal activities identified by Doug Parker, are not brought to bear, a number of small and medium-sized refineries will be driven into bankruptcy, which will do for "Big Oil" what the Federal Trade Commission would never allow them to do for themselves – destroy all of their competitors in the refining business. This will allow them to strengthen their oligopoly power, giving them the ability to cause gasoline prices to spike and squeeze consumers at will, which will start the domino effect, crippling the transportation industry and causing many businesses to suffer and even fail.

One lesson learned from the '08 crisis is that when the smoke clears, everybody will be looking for somebody to blame. The difference between 2008 and the coming RINs scandal is that in 2008 it did not become clear until much later why exactly the crisis had occurred. In this case, however, we already know now who will be to blame when the refining industry comes crashing down and national security is jeopardized – the EPA. The sad fact is that the EPA's reputation and many laudable accomplishments will be overshadowed by a scandal that could have been so easily avoided by making a few relatively minor changes. Hopefully, action will be taken before it is too late to save the refining industry – and our economy.

I respectfully request the opportunity to meet with you at your earliest convenience to discuss this letter. Thank you for your consideration.

Sincerely yours,

Carl Icahn

CARL C. ICAHN