United States Senate

WASHINGTON, DC 20510

May 9, 2017

The Honorable J. Christopher Giancarlo
Acting Chairman
Commodities Futures Trading Commission
Three Lafayette Centre
1155 21st St. NW
Washington, DC 20581

The Honorable Jay Clayton
Chairman
Securities and Exchange Commission
100 F St. SE
Washington, DC 20549

The Honorable Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20004

Dear Acting Chairman Giancarlo, Chairman Clayton, and Administrator Pruitt:

We are writing to request that your agencies investigate whether Carl Icahn violated insider trading laws, anti-market manipulation laws, or any other relevant laws based on his recent actions in the market for renewable fuel credits.

On December 21, 2016, President Trump named Mr. Icahn "special advisor to the President on issues relating to regulatory reform."[1] Despite this role, Mr. Icahn continues to retain his massive business interests, including serving as the majority owner of CVR Energy, a petroleum refining company that is heavily involved in the renewable fuel credit market.

Mr. Icahn "made a massive bet in 2016" that the price of the renewable fuel credits would drop.[2] He then – as an unpaid adviser to President Trump – recommended personnel and policies that did in fact cause the price of these credits to drop. The net result was an "impossible" "rare profit" on the credits, "a $50 million turnaround" from Mr. Icahn's initial investment.[3]

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[1] Trump Transition Press Release, President-Elect Donald J. Trump Names Carl Icahn Special Advisor to the President on Regulatory Reform (Dec.21, 2016). (http://www.presidency.ucsb.edu/ws/index.php?pid=119884).

[2] Reuters, Chris Prentice and Jarrett Renshaw, Inside Edge – Trump Advisor Icahn's Big Bet against Biofuels Credits (Apr. 12, 2017) (http://www.reuters.com/article/us-usa-biofuels-icahn-exclusive-idUSKBN17E0D6).

[3] Reuters, Jarrett Renshaw and Chris Prentice, Big Short Position on Biofuels Generated Profit for Icahn's Refiner (May 1, 2017) (http://www.reuters.com/article/us-cvr-energy-biofuels-idUSKBN17X2HX).

These actions, and the massive profit earned by Mr. Icahn, raise clear questions about whether he may have violated conflict-of-interest rules that apply to government officials.[4] These questions are best addressed by the Office of White House Counsel, the Office of Government Ethics, and the Department of Justice.

But questions regarding insider trading and market manipulation of renewable fuel credits fall squarely within your agencies' jurisdiction. The issuance and trading of renewable fuel credits (referred to as Renewable Identification Numbers, or RINs) falls within the jurisdiction of the EPA, and the EPA and the CFTC work together to ensure integrity in the RIN market.[5] The Dodd-Frank law also granted CFTC broad authority to prevent insider trading and other market manipulation in commodities markets and futures markets.[6] Finally, to the extent that any actions taken by Mr. Icahn in his capacity as an adviser to President Trump affected CVR's stock value, or the accuracy of the company's annual and quarterly financial reporting and disclosure, the SEC has jurisdiction to investigate these matters.

Renewable fuel credit insider trading and market manipulation hurts all parties, including biofuel producers and refineries, and publicly available evidence raises serious questions about Mr. Icahn's conduct. Over the course of 2016, including the months immediately prior to and following President Trump's election, CVR Energy delayed purchases of necessary renewable fuel credits and instead sold millions of them. This "counterintuitive trading strategy… [was] a bet that it could buy the credits it would need later at lower prices."[7]

Mr. Icahn secured a position as a senior adviser to President Trump, from which he was, according to press reports, able to influence decisions that drove down the price of the credits. Detailed reporting by Reuters noted "several political events" that drove down the price of the credits and benefitted CVR and Mr. Icahn.[8] Mr. Icahn reportedly advised President Trump to choose Mr. Pruitt, a critic of the renewable fuel credit program, as EPA Administrator.[9] When President Trump did so, the price of the credits dropped by approximately 20%. Then, after February 27, 2017, when press reports indicated that Mr. Icahn had presented the White House with executive language to modify the renewable fuel credit program, RIN market prices dropped again, by approximately a third, reaching a 17-month low that represented about a 70% decline from the November 2016 peak cost of the credits.[10]

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[4] *See, e.g.*, 18 U.S.C. §§ 201-209; 5 U.S.C. app. §§ *et seq.*; 5 CFR Part 2635.
[5] EPA, CFTC-EPA Memorandum of Understanding (March 17, 2016) (https://www.epa.gov/renewable-fuel-standard-program/cftc-epa-memorandum-understanding).
[6] P.L 111-203 § 753.
[7] Reuters, Chris Prentice and Jarrett Renshaw, Inside Edge – Trump Advisor Icahn's Big Bet against Biofuels Credits (Apr. 12, 2017).
[8] Reuters, Chris Prentice and Jarrett Renshaw, Inside Edge – Trump Advisor Icahn's Big Bet against Biofuels Credits (Apr. 12, 2017).
[9] CNBC, Trump Names Icahn as Special Advisor on Regulation, Vows to Shred Obama Rules (Dec. 21, 2016) (http://www.cnbc.com/2016/12/21/trump-to-name-icahn-as-special-adviser-on-regulatory-overhaul-report.html).
[10] Reuters, Chris Prentice and Jarrett Renshaw, Inside Edge – Trump Advisor Icahn's Big Bet against Biofuels Credits (Apr. 12, 2017).

While this was occurring, most refiners were accumulating credits to satisfy renewable fuel standards – but CVR was offloading credits they would need to purchase again later in 2017 in a bet that the price for RINs would continue to plummet and they could buy them at that later date at a discount.[11]

The net result was a $50 million windfall for CVR and Mr. Icahn. One analyst described this windfall as "impossible… No one has ever done anything like this… You're essentially betting that that you really believe there's a strong probability the government will make a change for the (biofuels) program. Most people are uncomfortable making a directional bet like that."[12] But Mr. Icahn was in a unique position to know and impact the direction of government policy – and evidence suggests that he did so.

We have no way of knowing at this time whether Mr. Icahn made any of his renewable fuel credit trades or decisions about trades based on material, non-public information or otherwise manipulated the market. But the publicly available evidence is troubling, and based on this evidence, we ask that your agencies investigate whether Mr. Icahn's conduct violated any laws under your jurisdiction. Specifically, we ask that your investigation include:

1. The precise nature and extent of Mr. Icahn's communications with President Trump and other Administration officials during and after the Presidential transition.

2. The extent to which Mr. Icahn influenced the Trump administration's decisions that affected the market for renewable fuel credits and associated markets.

3. The extent, timing, and rationale for Mr. Icahn's decisions relating to CVR's purchases and sales of renewable fuel credits, and the outcome of these decisions.

4. The extent to which Mr. Icahn had access to material, non-public information or provided such information to the media or the public, and whether he might have used this information in his decisions regarding renewable fuel credits.

5. An analysis of whether CVR's SEC quarterly and annual reports appropriately disclosed information relevant to Mr. Icahn's decisions regarding renewable fuel credit investments and their impact on the market and on CVR stock prices.

An additional complication of this matter will be potential recusals of Administrator Pruitt and Chairman Clayton from issues involving Mr. Icahn. Mr. Icahn was reported to be heavily involved in interviewing candidates to for SEC Chairman, and Chairman Clayton has acknowledged that he met with Mr. Icahn after he was nominated as SEC Chair.[13] Similarly, Mr. Icahn was

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[11] Reuters, Chris Prentice and Jarrett Renshaw, Inside Edge – Trump Advisor Icahn's Big Bet against Biofuels Credits (Apr. 12, 2017).

[12] Reuters, Jarrett Renshaw and Chris Prentice, Big Short Position on Biofuels Generated Profit for Icahn's Refiner (May 1, 2017) (http://www.reuters.com/article/us-cvr-energy-biofuels-idUSKBN17X2HX).

[13] Reuters, Exclusive – Wall Street Lawyer Jay Clayton Emerges as Trump's Top SEC Choice (Jan. 4, 2017) (http://uk.reuters.com/article/uk-usa-trump-sec-exclusive-idUKKBN14N1Y4); Reuters,

involved in President Trump's choice of Administrator Pruitt for EPA Administrator, and reportedly discussed renewable fuel permits issues with him on several occasions prior to his nomination.[14] These contacts, and Mr. Icahn's role in selecting both Chairman Clayton and Administrator Pruitt, may mean that recusals are necessary in order to prevent conflicts of interest, or the appearance of conflicts of interest, as your agencies investigate this matter. We therefore ask that you provide us with information on whether Administrator Pruitt or Chairman Clayton will be recusing themselves from this matter, and how the EPA and SEC will handle their decisions about whether to do so.

We also ask that you provide us with a briefing on this matter no later than June 9, 2017.

Sincerely,

Elizabeth Warren
United States Senator

Debbie Stabenow
United States Senator

Thomas R. Carper
United States Senator

Sherrod Brown
United States Senator

Sheldon Whitehouse
United States Senator

Tammy Baldwin
United States Senator

Tammy Duckworth
United States Senator

Amy Klobuchar
United States Senator

Senate Panel Presses SEC Nominee Clayton on Conflicts (Mar. 23, 2017) (http://www.reuters.com/article/us-usa-sec-clayton-idUSKBN16U0DL).

[14] Bloomberg, Icahn Pressed EPA Candidates on Ethanol Rule He Wants Scrapped (Mar. 17, 2017) (https://www.bloomberg.com/news/articles/2017-03-17/icahn-pressed-epa-candidates-on-ethanol-rule-he-wants-scrapped?bcomANews=true).