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March 8, 2017

Julie E. Adams
Secretary of the Senate
232 Hart Senate Office Building
Washington, D.C. 20510-7116
lobby@sec.senate.gov

Karen L. Haas
Clerk of the House of Representatives
U.S. Capitol, Room H154
Washington, DC 20515-6601
karen.haas@mail.house.gov

Re: Failure of Carl C. Icahn, Icahn Enterprises, CVR Energy and related affiliates to register as a lobbyists

Dear Ms. Adams and Ms. Haas,

The Lobbying Disclosure Act of 1995 (2 USC § 1603) requires non-governmental entities to register their lobbying activities with the U.S. Congress upon passing each of three thresholds: (i) receiving compensation of more than \$3,000 or making expenditures in excess of \$13,000 per quarter for a lobbying effort; (ii) making more than one lobbying contact with a covered official; and (iii) spending an individual employed by the entity spends more than 20 percent of his or her work time on preparation, research, writing and other activities to facilitate a lobbying contact.

Icahn Enterprises, CVR Energy and their related affiliates appear to be in violation of the LDA because there is no record of their compliance with it. Carl C. Icahn as an individual may also be in violation of the LDA for failing to register as a lobbyist, depending on the extent to which Icahn initiated policy proposals as opposed to being asked for advice from the government.

Carl C. Icahn serves as Chairman of the Board of Icahn Enterprises. Mr. Icahn owns 90.1% of Icahn Enterprises' outstanding depository units. Icahn Enterprises is a diversified holding company, structured as a master limited partnership, controlling subsidiaries engaged in an array of industries, including energy, investment, automotive, railcars, gaming, metals, mining, food packaging, real estate and home fashion. Mr. Icahn has also served as Chairman of the Board of CVR Energy, Inc. since Icahn Enterprises acquired a controlling stake in 2012. Icahn Enterprises currently owns 82% of

the total outstanding common stock of CVR Energy. Trump Entertainment Resorts Inc. is also a wholly owned subsidiary of Icahn Enterprises.¹

On December 21, 2016, President-Elect Donald J. Trump named Icahn “special advisor to the President on Regulatory reform.”² According to the Icahn Enterprises annual report filed with the U.S. Securities and Exchange Commission on March 1, 2017, Mr. Icahn continues to serve as a special advisor to President Trump on regulatory reform. As special advisor, Icahn is an uncompensated private individual who does not serve as a government official subject to the requirements and exemptions applicable to government employees.

On February 27, 2017, Mr. Icahn submitted a formal proposal to President Trump to overhaul the Renewable Fuel Standard (RFS), which is administered by the U.S. Environmental Protection Agency (EPA) under the Energy Independence and Security Act of 2007.³ If adopted, Mr. Icahn’s proposal would save Icahn Enterprises and CVR Energy hundreds of millions of dollars a year.⁴

The RFS requires oil refiners to either blend ethanol and biodiesel into their gasoline or purchase credits known as renewable identification numbers (RINs).

CVR Energy operates two oil refineries, Coffeyville in Kansas and Wynnewood in Oklahoma.⁵ CVR’s refineries are unable to blend enough ethanol and biodiesel as required by the EPA and therefore must purchase RINs to comply with the RFS. From 2013 through 2016, CVR Energy spent \$637.5 million buying RINs.⁶

On August 9, 2016, Mr. Icahn wrote to the EPA asking it to move the point of obligation under the RFS from refiners like his CVR Energy to rack sellers, which are akin to wholesalers.⁷ During this time, Mr. Icahn served as a formal advisor to the Presidential campaign of Donald J. Trump, and in September 2016 the campaign briefly posted an RFS fact sheet on its website that echoed Icahn’s support of a shift in the point of obligation.”⁸

By November 2016, however, the EPA proposed to reject the request by CVR and others to shift the point of obligation.⁹

Recently, *Politico* reported that the Trump Administration is considering an executive order that would reverse the point of obligation under the RFS in the manner that Icahn has been urging.¹⁰

¹ www.sec.gov/Archives/edgar/data/813762/000081376217000010/a10k-fy2016.htm

² <https://greatagain.gov/icahn-advisor-regs-cd3c949af118>

³ www.bloomberg.com/news/articles/2017-02-28/icahn-s-126-million-gain-on-biofuel-deal-prompts-criticism

⁴ <https://theintercept.com/2017/03/02/crony-capitalism-at-work-trump-adviser-carl-icahn-strong-arms-ethanol-lobby-to-save-his-company-millions/>

⁵ www.cvrrefining.com

⁶ www.sec.gov/Archives/edgar/data/1376139/000137613917000019/cvi2016form10-kx12312016.htm

⁷ <https://assets.bwbx.io/documents/users/iqjWHBFdfxIU/rS7fHVTINeH0/v0>

⁸ www.politico.com/story/2016/09/donald-trump-energy-icahn-228257

⁹ www.epa.gov/sites/production/files/2016-11/documents/420d16004.pdf

¹⁰ www.politico.com/tipsheets/morning-energy/2017/02/trump-administration-pushing-massive-epa-changes-218965

This potential reversal of the EPA position comes on the heels of an extensive lobbying campaign by Icahn, CVR Energy and other Icahn business affiliates. In its most recent SEC filing, CVR Energy stated that it spent \$205.9 million last year on renewable fuel credits as required by the RFS.¹¹ Icahn and CVR Energy have long sought to change this policy, shifting the obligation to wholesalers instead of refiners like CVR. Apparently at the urging of Icahn and CVR Energy, the Renewable Fuels Association, the top lobbying entity on this issue, announced that it had reached an agreement with Icahn and reversed its position to now support the CVR language. Icahn and CVR Energy presented their policy language to Trump,¹² and *Politico Pro* reported that the Trump Administration would soon issue an executive order in kind.¹³

In addition to the lobby campaign by Icahn and his business affiliates to change the EPA policy on the Renewable Fuels Standard, Mr. Icahn is personally involved in restructuring the EPA and environmental regulatory regime in order to affect public policy. On December 4, 2016 the *Wall Street Journal* reported that Mr. Icahn was “among several people talking to the president-elect about who should lead the EPA...and having Mr. Icahn vet EPA candidates.”¹⁴

On December 7, President-elect Trump selected Oklahoma Attorney General Scott Pruitt to serve as EPA Administrator.¹⁵

That same day, Mr. Icahn gave a television interview with Bloomberg where he said: “[President-elect] Donald [Trump] asked my opinion on it ...I've spoken to Scott Pruitt four or five times, got to know him, I really think he's a great pick. I told Donald [Trump] that [Pruitt] is somebody who will do away with many of the problems at the EPA...I do think he feels pretty strongly about the absurdity of these obligations, and I feel that this should be done immediately.”¹⁶

The factual record shows that Mr. Icahn played a leading role shaping the Trump campaign's position on the point of obligation for the RFS, and served to “vet” candidates to run the EPA, the agency in charge of administering the RFS. It is not lobbying to advise a candidate, but once Trump became president, Trump then became a covered official subject to the lobbying disclosure law. President-elect Trump then selected Mr. Icahn as a special advisor on regulatory policy, and in that capacity has now provided formal recommendations to President Trump to change the RFS point of obligation in a manner that could save Mr. Icahn's businesses hundreds of millions of dollars annually.

All of this has occurred with no record of any LDA filings by or on behalf of Mr. Icahn, Icahn Enterprises or CVR Energy. It is unlikely that all these activities occurred without some individual or entity being obligated to report lobbying activity under the LDA.

¹¹ www.sec.gov/Archives/edgar/data/1376139/000137613917000019/cvi2016form10-kx12312016.htm

¹² www.bloomberg.com/news/articles/2017-02-28/trump-said-to-consider-biofuel-plan-between-icahn-ethanol-group

¹³ www.politico.com/tipsheets/morning-energy/2017/02/trump-administration-pushing-massive-epa-changes-218965

¹⁴ Rebecca Ballhaus, Amy Harder and David Benoit, “A critic of the EPA is helping Trump shape it.”

¹⁵ www.nytimes.com/2016/12/07/us/politics/scott-pruitt-epa-trump.html

¹⁶ www.bloomberg.com/politics/videos/2016-12-07/icahn-pruitt-a-great-pick-for-epa

Icahn and his businesses remain subject to the registration and disclosure requirements of the Lobbying Disclosure Act.

We therefore request an investigation into whether or not Mr. Icahn, Icahn Enterprises and/or CVR Energy are in noncompliance with the LDA.

Respectfully submitted,

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