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*Via Electronic Submission on Regulations.gov*

**RE: Comments on Modifications to Fuel Regulations to Provide Flexibility for E15; Modifications to RFS RIN Market Regulations; Proposed Rule, 84 Fed. Reg. 10,584 (Mar. 21, 2019), EPA-HQ-OAR-2018-0775; FLR-0001-04-OAR**

Monroe Energy, LLC (“Monroe”) respectfully submits these comments on EPA’s Notice of Proposed Rulemaking with respect to Modifications to RFS Renewable Identification Number (“RIN”) Market Regulations. Monroe owns a refinery in southeastern Pennsylvania and is an obligated party under the Renewable Fuel Standard (“RFS”) program that relies on RIN purchases to meet its annual renewable volume obligation (“RVO”).

#### **EXECUTIVE SUMMARY**

As currently structured, the RIN market is highly susceptible to speculation and manipulation, resulting in nearly \$1 billion in fraudulent costs as of 2016. The market, designed solely to facilitate regulatory compliance for obligated parties, has become highly volatile, likely as a result of market manipulation by outside speculators. This anti-competitive behavior severely harms merchant refiners, who depend on the RIN market to meet statutory obligations and are hindered in making capital-investment decisions due to the unpredictable nature of RIN prices. To

address these shortcomings, EPA should implement position limits rather than its proposed reporting requirements. In addition, EPA should adopt several of its proposed reforms—including limiting participation in the RIN market and restricting the duration non-obligated parties can hold RINs. EPA should also:

- work with the Commodity Futures Trading Commission (“CFTC”) to regulate the RIN market;
- adopt a price collar or cap;
- institute a RIN-waiver credit; and
- allow RINs separated from exported renewable fuel to be used for RFS compliance.

As demonstrated by a new study that analyzes the RIN market—a report that was not previously available to EPA—instituting position limits, as well as restrictions on market participants and on the duration non-obligated parties can hold RINs, would significantly mitigate the RIN market’s vulnerability to manipulation while simultaneously alleviating EPA’s concerns about the possibility that non-obligated parties might abuse the system to avoid the proposed restrictions.<sup>1</sup> Increased CFTC scrutiny of the RIN market would be a powerful deterrent to market abuse and would reduce volatility, manipulation, and fraud. A collar or cap on the price of a RIN based on 2012 average RIN prices—the last year in which RIN prices were unaffected by speculation—would provide predictability to obligated parties and would substantially reduce the incentives and opportunity for market manipulation and fraud. In addition, making RINs separated from exported renewable fuel available for RFS compliance is consistent with the statutory goal

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<sup>1</sup> Matthew C. Roberts, *Reforms to Renewable Fuel Standard Compliance System to Improve Functioning of Renewable Identification Number (“RIN”) Market* (Apr. 25, 2019) (attached as Exhibit A).

of furthering American energy independence because it would incentivize further investments in domestic biofuel production facilities.

Monroe submits no formal comment on EPA’s proposed E15 reforms, but instead notes its support for the comment submitted by American Fuel & Petrochemical Manufacturers (“AFPM”).<sup>2</sup>

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<sup>2</sup> See AFPM, *Comments on Modifications to Fuel Regulations to Provide Flexibility for E15: Modifications to RFS RIN Market Regulations*, EPA-HQ-OAR-2018-0075 (Apr. 29, 2019).

## TABLE OF CONTENTS

	<b>Page</b>
EXECUTIVE SUMMARY .....	I
EXHIBITS .....	V
COMMENTS .....	1
I.    THE RIN MARKET IS OPAQUE, VOLATILE, AND IN NEED OF REFORM .....	1
A.    The RIN Market Is Highly Volatile, Which Harms Merchant Refiners .....	1
B.    The Price Volatility In The RIN Market Indicates That It Is Subject To Market Manipulation .....	4
II.   EPA HAS A DUTY TO MAINTAIN AN EFFICIENT RIN MARKET FREE OF ANTI-COMPETITIVE BEHAVIOR AND SHOULD ADOPT REFORMS TO MEET THIS OBLIGATION .....	10
A.    EPA Should Adopt Position Limits .....	11
B.    If EPA Does Not Adopt Position Limits, It Should Lower The Reporting Threshold And Add Meaningful Enforcement Mechanisms .....	17
C.    EPA Should Limit RIN Purchases To Specified Parties .....	19
D.    EPA Should Limit The Duration That Non-Obligated Parties Can Hold RINs .....	22
E.    If Quarterly Retirement by Obligated Parties Is Adopted, That Reform Must Be Coupled With Other Market Reforms.....	23
III.  EPA SHOULD ADOPT ADDITIONAL PROPOSALS TO IMPROVE THE EFFICIENCY OF THE RIN MARKET .....	23
A.    EPA Should Work With The CFTC To Actively Monitor The RIN Market.....	23
1.    EPA Should Work With The CFTC To Enhance RIN Market Oversight .....	23
2.    The CFTC Should Aid In Enforcing Position Limits .....	25
B.    EPA Should Institute A RIN Price Cap Or Collar Based On The 2012 RIN Price And Establish A RIN Waiver Credit .....	25
C.    EPA Should Allow RINs Separated From Exported Renewable Fuel To Be Used For Compliance By Obligated Parties .....	29
CONCLUSION.....	30

## EXHIBITS

Exhibit A: Matthew C. Roberts, *Reforms to Renewable Fuel Standard Compliance System to Improve Functioning of Renewable Identification Number (“RIN”) Market* (Apr. 25, 2019).

Exhibit B: Craig Pirrong, *Analysis of the RFS Program and the 2019 Proposed Standards* (Aug. 17, 2018)

Exhibit C: Doug Parker, *E&W Strategies, White Paper Addressing Fraud in the Renewable Fuels Market and Regulatory Approaches to Reducing This Risk in the Future* (Sept. 4, 2016).

Exhibit D: Charles River Associates, *Re-examining the Pass-through of RIN Prices to the Prices of Obligated Fuels* (Oct. 2016).

## COMMENTS

### I. THE RIN MARKET IS OPAQUE, VOLATILE, AND IN NEED OF REFORM.

EPA has requested comment on proposed regulatory changes affecting gasoline blended with up to 15 percent ethanol, and on reforms to the RIN market to improve its functioning and to prevent manipulation.<sup>3</sup> As for the proposed E15 regulatory reforms, Monroe hereby incorporates and adopts by reference AFPM's comments on that subject. As AFPM explains, EPA lacks the statutory authority to modify its interpretation of the Clean Air Act to extend the E10 volatility waiver to E15.<sup>4</sup>

This comment letter will address EPA's proposed reforms to the RIN market. As a result of inadequate monitoring and safeguards, the RIN market has grown into an unregulated \$6–\$15 billion market (depending on the price of RINs) in which RINs are being hoarded and bought and sold for profit. Volume is thin, price signals are opaque, and the market is too easily subject to manipulation. Monroe urges EPA to adopt several reforms to the RIN market. Most notably, Monroe encourages EPA to adopt position limits.

#### A. The RIN Market Is Highly Volatile, Which Harms Merchant Refiners.

EPA designed RINs to serve as both a compliance tool and a tradable credit in the EPA-created RIN market. Yet the current RIN market is largely unregulated and is uniquely subject to manipulation, with the result that "RIN prices are highly volatile."<sup>5</sup> Since 2013, when D6 RIN prices departed from their stable position hovering around \$0.10 per RIN, D6 RIN prices have

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<sup>3</sup> EPA, *Modifications to Fuel Regulations to Provide Flexibility for E15; Modifications to RFS RIN Market Regulations*, 84 Fed. Reg. 10,584 (Mar. 21, 2019).

<sup>4</sup> AFPM, *supra* note 2, at 1–3.

<sup>5</sup> Craig Pirrong, *Analysis of the RFS Program and the 2019 Proposed Standards* 6 (Aug. 17, 2018) (attached as Exhibit B).

fluctuated from \$0.06 to more than \$1.40.<sup>6</sup> As academic observers have noted, “[t]he combination of high and volatile RIN prices is in a sense the worst of both worlds: because RIN prices are the vehicle for compliance, the total cost of compliance, as measured by the total cost of RINs, is high—but because those prices are volatile, producers and retailers of renewable fuels cannot count on a reliable RIN value when making capital expenditure decisions.”<sup>7</sup>

In a recent study analyzing RIN market price data from Argus and OPIS, the National Economic Research Associates (“NERA”) emphasized that “price volatility for D6 RINs is significantly higher than that of comparable energy markets, with average lifetime volatilities about six times higher than same-expiry oil, ethanol, and natural gas futures.”<sup>8</sup> “Over some vintages, lifetime D6 RIN volatility reached more than twelve times the volatility of comparable energy futures.”<sup>9</sup> These conclusions were consistent with prior studies, which had also concluded that RIN prices are highly unstable.<sup>10</sup>

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<sup>6</sup> See EPA, *RIN Trades and Price Information*, available at <https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rin-trades-and-price-information>.

<sup>7</sup> James H. Stock, Columbia Center on Global Energy Policy, *Reforming the Renewable Fuel Standard* 9 (Feb. 2018), available at [https://energypolicy.columbia.edu/sites/default/files/pictures/CGEPRFSReformStock218\\_1.pdf](https://energypolicy.columbia.edu/sites/default/files/pictures/CGEPRFSReformStock218_1.pdf).

<sup>8</sup> NERA Economic Consulting, *Ethanol RIN Market Analysis and Potential Reforms* 8 (Oct. 18, 2018) [hereinafter *NERA Report*].

<sup>9</sup> *Id.*

<sup>10</sup> See NERA Economic Consulting, *Effects of Moving the Compliance Obligation Under RFS2 to Suppliers of Finished Products* 32 (“[T]he high volatility of RIN prices means that there is great uncertainty around RIN prices.”), available at [https://www.nera.com/content/dam/nera/publications/2015/Valero%20Report\\_RFS2\\_FINAL\\_July\\_2015.pdf](https://www.nera.com/content/dam/nera/publications/2015/Valero%20Report_RFS2_FINAL_July_2015.pdf); Charles River Associates, *Ethanol RIN Waiver Credits: Improving Outcomes of the Renewable Fuels Standard Through a Price Containment Mechanism* 1 (Mar. 2018) [hereinafter *2018 CRA Report*] (“Since 2013, the ethanol RIN market has experienced high and volatile prices.”), available at [http://www.fuelingusjobs.com/library/public/CRA\\_RIN\\_PriceContainment\\_March\\_2018.pdf](http://www.fuelingusjobs.com/library/public/CRA_RIN_PriceContainment_March_2018.pdf).

This price volatility is particularly detrimental to merchant refiners such as Monroe, which have limited capacity to blend renewable fuel and are therefore dependent on the RIN market to meet their statutory compliance obligations. In the past, Monroe has received phantom offers that suddenly vanished and reappeared at higher prices when Monroe attempted to buy at the purported asking price. And Monroe in some years spends more on RINs for RFS compliance than it spent to purchase its refinery, and more than its annual costs for labor and capital investments. RFS compliance costs remain one of Monroe's top three expenses to this day. Thus, in a volatile market, it is difficult for merchant refiners to plan capital investments because they do not know how much cash they must keep on hand for the purchase of RINs. Yet merchant refiners and other obligated parties have no choice but to participate in this market because they need to acquire RINs to demonstrate compliance with the RFS.

The unpredictability of RIN prices is particularly harmful to merchant refiners' businesses because there is only limited pass-through of RIN prices to consumers, meaning that merchant refiners such as Monroe are not able to fully recover the costs they spend on RINs. Indeed, an analysis by Charles River Associates ("CRA") concluded that from March 10, 2015 to May 31, 2016, refiners were unable to fully pass through RIN costs to blenders.<sup>11</sup> The CRA Report used the same econometric model specifications as did a prior study that had concluded that refiners fully passed through RIN prices from January 1, 2013 to March 10, 2015.<sup>12</sup> The CRA Report showed that market conditions changed after the prior study, with the result that pass-through rates

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<sup>11</sup> Charles River Associates, *Re-examining the Pass-through of RIN Prices to the Prices of Obligated Fuels* 1, 8 (Oct. 2016) [hereinafter *2016 CRA Report*] (attached as Exhibit D).

<sup>12</sup> *Id.* at 1; see also Christopher R. Knittel, Ben S. Meiselman & James H. Stock, *The Pass-Through of RIN Prices to Wholesale and Retail Fuels under the Renewable Fuels Standards* (July 2015).

since March 2015 “were significantly lower” and “cast significant doubt on any claim of full RIN price pass-through in current market conditions.”<sup>13</sup> Later studies have confirmed these findings, concluding that refiners lose billions of dollars “in transfers to biodiesel producers” as a result of RIN prices, and cannot recoup the full costs of RINs in the form of higher gasoline prices.<sup>14</sup> And even if there were “a high RIN price pass-through rate, refiners’ profits [still] can be adversely affected in a way that may affect their survival” because those RIN costs that are not passed through can dramatically affect refiners’ bottom lines.<sup>15</sup> To be sure, EPA reached a contrary conclusion in the 2019 RFS Rule.<sup>16</sup> But for the reasons given in the 2016 CRA Report and in Dr. Pirrong’s Expert Report, Monroe believes that EPA’s conclusion was not supported by evidence in the administrative record.

Thus, the RIN market is unregulated, highly volatile, and includes numerous obligated parties that are compelled to purchase a government-mandated minimum number of RINs each year. This captive market results in an inelastic demand curve, but there are neither any restrictions on who may participate in the market, nor any limits on how large each party’s position may be, thus exposing the RIN market to manipulation and abuse.

**B. The Price Volatility In The RIN Market Indicates That It Is Subject To Market Manipulation.**

This extreme price volatility, coupled with the opaque and unregulated nature of the RIN market, strongly suggests that some parties are engaging in anti-competitive market

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<sup>13</sup> *2016 CRA Report*, *supra* note 11, at 2.

<sup>14</sup> Pirrong, *supra* note 5, at 28.

<sup>15</sup> *Id.* at 27.

<sup>16</sup> See *Renewable Fuel Standard Program: Standards for 2019 and Biomass-Based Diesel Volume for 2020*, 83 Fed. Reg. 63,704, 63,742 (Dec. 11, 2018).

manipulation—such as speculation, hoarding, or seeking to corner the market—which drives up RIN prices.<sup>17</sup> As CRA has explained, “the relatively inelastic supply of RINs due to the characteristics of the RFS program and supply conditions past the ‘blendwall’ tends to make manipulation issues more serious.”<sup>18</sup> For instance, RIN prices’ “skyrocket[ing] 20-fold in just six months” in 2013 can be explained by market speculation.<sup>19</sup> That year, the New York Times published an in-depth article on financial institutions’ “exploit[ation]” of the RIN market, emphasizing that “Wall Street’s activity in this market reflects a larger effort by financial institutions to exert their influence over loosely regulated markets.”<sup>20</sup> Because “rules that apply to almost every other market—on transparency, disclosure and position limits, for example—are not imposed on the trade of RINs,” numerous non-obligated entities such as major financial institutions have “registered with the E.P.A. to trade the credits.”<sup>21</sup>

In fact, an investigative study completed in September 2016 by a former Director of EPA’s Criminal Investigation Division concluded that speculation and fraudulent manipulation in the RIN market is likely responsible for \$1 billion in fraudulent costs.<sup>22</sup> That study found that, as of 2016,

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<sup>17</sup> See Gretchen Morgenson & Robert Gebeloff, *Wall St. Exploits Ethanol Credits, and Prices Spike*, N.Y. TIMES (Sept. 14, 2013), available at <https://www.nytimes.com/2013/09/15/business/wall-st-exploits-ethanol-credits-and-prices-spike.html>; see also James Osborne, *As Price of Biofuel Credits Spike, Refiners Suspect Market Manipulation*, HOUS. CHRON. (updated Sept. 6, 2016), available at <https://www.houstonchronicle.com/business/article/As-price-of-biofuel-credits-spike-refiners-9125281.php>.

<sup>18</sup> Charles River Associates, *RINs Market Frictions and the RFS Point of Obligation 3* (Feb. 2017), available at <https://www.smallretailerscoalition.com/wp-content/uploads/2016/08/Studies-by-Charles-River-Associates.pdf>.

<sup>19</sup> Morgenson & Gebeloff, *supra* note 17.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Doug Parker, E&W Strategies, *White Paper Addressing Fraud in the Renewable Fuels Market and Regulatory Approaches to Reducing This Risk in the Future 2* (Sept. 4, 2016), EPA-HQ-

RFS fraud cases resulted in “approximately \$271 million in documented fraud loss” as well as “\$71 million in seizures of illicit profits by federal authorities.”<sup>23</sup> The RIN market is vulnerable to such illicit conduct because, “unlike traditional commodity markets with market oversight and participant limits, the RINs market is opaque and was enacted without appropriate safeguards.”<sup>24</sup> It is “[s]tructural vulnerabilities in the regulations, limited agency oversight, and a lack of market transparency within the RFS” that have “made this program a ripe target for massive fraud and illicit gain” at the expense of “taxpayers, consumers, and market participants.”<sup>25</sup>

Another analysis has identified particular movements in RIN prices as attributable to market manipulation.<sup>26</sup> That report concluded that, “[b]ecause the RINs are an expense to parties that do not blend as much as they refine or import, there is a distortion that causes undue financial harm to those parties and rewards other parties that do not have any role in the production and distribution of renewable fuels in the United States.”<sup>27</sup> Accordingly, speculation and market manipulation have become a serious problem in the RIN market: “Market speculators are present

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OAR-2016-0544-0063 (“I believe the cost of these fraud schemes to victims and consumers, including taxpayers and obligated parties, is approaching \$1 billion.”) (attached as Exhibit C).

<sup>23</sup> *Id.* at 7.

<sup>24</sup> *Id.* at 5.

<sup>25</sup> *Id.* at 4–5.

<sup>26</sup> See Ramon M. Benavides, Global Renewable Strategies and Consulting, LLC, *The US Renewable Identification Number: RINs Trading Market* 8–10, 13, available at <https://smallretailerscoalition.com/wp-content/uploads/2016/08/Ramon-M.-Benavides-Global-Renewable-Strategies-and-Consulting-LLC-The-US-Renewable-Indentification-Number-RINs-Trading-Market-August-2016.pdf>.

<sup>27</sup> *Id.* at 15.

throughout the market and impact RIN prices even though they have no connection to the RFS program nor any interest in its goals.”<sup>28</sup>

A wide range of members of Congress have also expressed concern that the RIN market is vulnerable to manipulation and have called for government action to prevent such anti-competitive behavior. In 2017, a group of legislators, including Senators Thomas R. Carper (Delaware), Christopher A. Coons (Delaware), Robert P. Casey, Jr. (Pennsylvania), and Cory A. Booker (New Jersey) appealed to the Federal Trade Commission (“FTC”) to investigate and end RIN market manipulation.<sup>29</sup> The legislators stated: “We believe RIN market manipulation—and the resulting market volatility—is negatively affecting the economic stability of East Coast refineries.”<sup>30</sup> The letter further explained:

Over the past four years, RIN prices have fluctuated wildly. Since earlier this year alone, they have spiked over 200 percent. This price volatility creates great uncertainty for obligated parties, especially for merchant refineries like the ones along the East Coast that have limited capability to blend biofuels into their products and need RINs to comply with the RFS program’s requirements. East Coast refineries already face slim profit margins, in part, due to their dependence on international markets for crude feedstocks, high gasoline inventories and the competition they face from global refiners. Volatility in the RIN market only adds to the East Coast refineries’ economic concerns.<sup>31</sup>

Similarly, Senator Debbie Stabenow (Michigan) wrote to the Chair of the CFTC: “I am concerned that a lack of transparency in these markets has made them more susceptible to

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<sup>28</sup> *Id.*

<sup>29</sup> Letter from Sens. Thomas Carper et al. to Maureen Ohlhausen, Acting Chair, FTC (Nov. 7, 2017), *available at* <https://www.carper.senate.gov/public/cache/files/24e80903-d42f-4db3-b14e-1feeaeaeabd3/ftc-letter-11.7.17.pdf>.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

manipulation,” leading to “extraordinary volatility in the price of RINs.”<sup>32</sup> And even Senator Charles Grassley (Iowa), one of the most vocal supporters of the RFS program, has informed EPA:

I’m concerned about recent reports of manipulation or exploitation of the RIN market by non-obligated parties, including financial institutions. Allegations that the opaqueness of this market is leading to abuse and exploitation by individuals or firms simply to generate profits at the expense of refiners, other obligated parties, and perhaps consumers is troubling.<sup>33</sup>

The presence of market manipulation is further demonstrated by RIN prices’ failure to adhere to ordinary economic principles. For instance, the recent NERA report found that “RINs of a nearer expiry date” were repeatedly priced higher “than identical RINs of later vintage with more optionality,” a result that defies logic and raises the likelihood that the market is subject to outside forces that are undermining economic fundamentals.<sup>34</sup>

The market manipulation to which the RIN market is subject may take several forms. One potential cause of price volatility is hoarding, in which parties withhold RINs in an effort to effect short-term price spikes.<sup>35</sup> By analyzing the price activity of D6 and D4 RINs along with the conservative estimate that non-obligated parties hold 5%–10% of available RINs at any given time, NERA has concluded that the step function of the RIN market supply curve could be caused by hoarding, as “it is possible for non-obligated parties to withhold and release RINs in a manner

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<sup>32</sup> Letter from Sen. Debbie Stabenow to Gary Gensler, Chairman, CFTC (Sept. 24, 2013) [hereinafter *Stabenow Letter*], available at <https://www.agriculture.senate.gov/newsroom/press/release/chairwoman-stabenow-calls-on-cftc-to-review-possible-manipulation-of-renewable-fuels-market>.

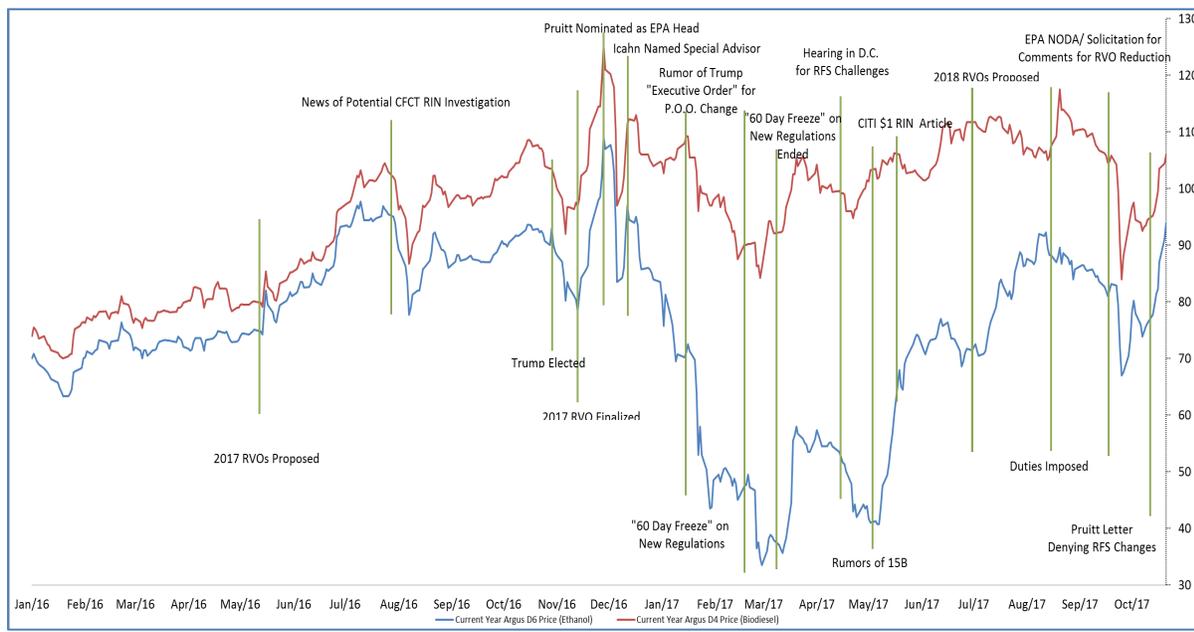
<sup>33</sup> Letter from Sen. Charles Grassley to Gina McCarthy, Administrator, EPA (Sept. 25, 2013), available at <https://www.grassley.senate.gov/sites/default/files/issues/upload/Ethanol-09-25-13-RIN-letter-to-EPA-transparency-possible-market-manipulation.pdf>.

<sup>34</sup> *NERA Report*, *supra* note 8, at 19.

<sup>35</sup> *Id.* at 20.

which moves supply across hypothesized supply curve steps, resulting in jumps in price disproportionate to the change in available RINs.”<sup>36</sup>

The chart below exemplifies how actions or statements can affect the RIN market.<sup>37</sup> For example, the news of a potential CFTC investigation into the RIN market in August 2016 caused RIN prices to fall dramatically, indicating that many entities were trying to quickly sell their RIN holdings. This price drop can be attributed only to sales of RINs by non-obligated financial institutions, as there was no accompanying change in volume obligations or other development in EPA policy.



In a recent white paper, lawyers from Covington & Burling LLP, writing on behalf of the American Petroleum Institute, argued that the RIN market follows supply and demand for biodiesel, and that any volatility is a response to annual RFS rulemaking and other “policy

<sup>36</sup> *Id.* at 26.

<sup>37</sup> Source: Argus.

shocks.”<sup>38</sup> But this extreme volatility in response to perceived or anticipated regulatory action by EPA is equally—if not more—consistent with the conclusion that large quantities of RINs are held by banks and other financial intermediaries that are not obligated parties. These entities have no compliance-based reason to buy or sell RINs; instead, their interest is in speculating on changes in RIN prices, and they respond swiftly in order to reap a financial windfall from perceived policy developments. Indeed, in a recent expert study analyzing the RIN market commissioned by Monroe, Dr. Matthew Roberts explains that “excess volatility can be an indication of market dysfunction.”<sup>39</sup> Dr. Roberts is a nationally renowned expert on commodity and agricultural markets, and has spent the past two decades analyzing those markets since completing his Ph.D. in economics at North Carolina State University in 2001.<sup>40</sup>

In sum, an extensive body of evidence demonstrates that the RIN market is subject to wildly volatile and unpredictable RIN prices that are likely attributable to market manipulation, speculation, hoarding, and other anti-competitive conduct. It must be reformed.

## **II. EPA HAS A DUTY TO MAINTAIN AN EFFICIENT RIN MARKET FREE OF ANTI-COMPETITIVE BEHAVIOR AND SHOULD ADOPT REFORMS TO MEET THIS OBLIGATION.**

EPA established the RIN market so that parties could meet their annual RFS compliance obligations in a cost-effective manner. As the agency charged with administering the RFS, EPA has an obligation to ensure that the RIN market functions efficiently. EPA has acknowledged that it “designed the RIN system to operate as a relatively ‘open’ trading market in order to maximize

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<sup>38</sup> See Covington & Burling LLP, *An Analysis of the Renewable Fuel Standard’s RIN Market* (Feb. 15, 2019), available at <https://www.epa.gov/~media/Files/Policy/Fuels-and-Renewables/2019/RIN-market-paper.pdf> [hereinafter *Covington White Paper*].

<sup>39</sup> Roberts, *supra* note 1, at 3.

<sup>40</sup> See *id.* at Appendix A.

liquidity and ensure a robust marketplace for RINs.”<sup>41</sup> EPA would best fulfill this obligation and vindicate the underlying objectives of the RIN market by adopting position limits as well as its proposed reforms limiting participation in the RIN market and restricting the duration non-obligated parties can hold RINs. Additionally, EPA should: work with the CFTC to actively regulate the RIN market; institute RIN price caps and establish a RIN waiver credit; and allow RINs separated from exported renewable fuel to be used for compliance by obligated parties.

**A. EPA Should Adopt Position Limits.**

EPA has proposed a requirement that, if non-obligated parties’ end-of-day separated D6 RIN holdings exceed three percent of that year’s total implied conventional biofuel volume requirement, they must notify EPA of the exceedance at the end of the quarter.<sup>42</sup> Similarly, if an obligated party triggers that threshold and also holds end-of-day separated D6 RINs in excess of 130% of its individual implied conventional RVO, it must also notify EPA of the exceedance at the end of the quarter.<sup>43</sup> EPA proposes publishing the names of any parties exceeding the thresholds on its website at the end of the quarter.<sup>44</sup> EPA has sought comment on whether, instead of this reporting system, it should adopt position limits on RIN holdings.

EPA should establish position limits. Position limits can be an important tool to prevent any one entity from gaining enough market power to allow it to manipulate the market.<sup>45</sup> Agencies such as the CFTC recognize that position limits are “intended to protect the markets and market

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<sup>41</sup> 84 Fed. Reg. at 10,605.

<sup>42</sup> *Id.* at 10,609.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> H. Kent Baker et al., *Commodities: Markets, Performance, and Strategies* 168 (2018).

participants from manipulation and excessive speculation.”<sup>46</sup> They do so by preventing “the accumulation of extraordinarily large positions that could potentially cause unreasonable price fluctuations even in the absence of manipulative conduct.”<sup>47</sup> Similarly, “[s]ince the Commodity Exchange Act of 1936, Congress has repeatedly expressed confidence in the use of position limits as an effective means of preventing unreasonable and unwarranted price fluctuations.”<sup>48</sup> Not only are they effective, position limits “are necessary . . . to prevent price distortions that can potentially occur due to excessively large speculative positions even in the absence of manipulative conduct.”<sup>49</sup>

Dr. Roberts—an expert in commodity markets and regulation for almost twenty years whose experience includes working as a visiting economist for the Office of the Chief Economist at the CFTC—has analyzed the RIN market and concluded that EPA’s proposed reporting thresholds “are not sufficient to prevent participants from acquiring excessive market power and engaging in anti-competitive conduct,” and that, instead, “[p]osition limits that cap the number of RINs an entity and its affiliates can hold would be a more effective RIN market reform.”<sup>50</sup> As Dr. Roberts emphasizes, the problem of manipulation in the RIN market makes position limits a useful and appropriate tool.<sup>51</sup> And the unique size and nature of the RIN market indicate that position limits would be successful in easing price volatility by reducing the opportunities for anti-

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<sup>46</sup> CFTC, *Position Limits for Derivatives: Certain Exemptions and Guidance*, 81 Fed. Reg. 38,458, 38,498 (June 13, 2016).

<sup>47</sup> CFTC, *Position Limits for Derivatives*, 78 Fed. Reg. 75,680, 75,693 (Dec. 12, 2013).

<sup>48</sup> *Id.* at 75,681.

<sup>49</sup> *Id.* at 75,693.

<sup>50</sup> Roberts, *supra* note 1, at 7.

<sup>51</sup> *Id.* at 8.

competitive behavior. “[B]y design, the RIN market is inherently not a free market because the EPA mandates create demand floors by setting annual” obligations.<sup>52</sup> Buyers exist in a captive market, in which their demand remains constant even in the face of wild swings in RIN prices. In such artificially constructed markets, position limits are an effective mechanism to prevent any one party from accumulating too much power to the detriment of others.

Numerous other similarly artificial markets have successfully adopted position limits and thereby avoided the rampant volatility and market manipulation that plague the RIN market. The California Air Resources Board established position limits in the California Cap-and-Trade Program for greenhouse gas emissions “to prevent market participants from acquiring market power.”<sup>53</sup> And as Dr. Roberts discusses, “the CFTC maintains limits on the number of open positions both in all contracts and in contracts that mature in the given month (i.e., spot-month),” which “are meant to assist in preventing any single market participant from cornering or squeezing the market during the delivery month of the contract.”<sup>54</sup>

The RIN market is similar to these markets in relevant respects, strongly suggesting that position limits would also be effective here. Like futures contracts, RINs are intangible, and there is no storage limitation, meaning that holdings are not limited by the inherent physical characteristics of the commodity. The only cost of carrying a large inventory “is the opportunity cost of the position.”<sup>55</sup> This feature makes the RIN market, like futures markets, “more susceptible

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<sup>52</sup> *Id.* at 19.

<sup>53</sup> California Environmental Protection Agency, *Cap and Trade: Market Oversight and Enforcement* (Oct. 20, 2011), available at [https://www.arb.ca.gov/cc/capandtrade/market\\_oversight.pdf](https://www.arb.ca.gov/cc/capandtrade/market_oversight.pdf).

<sup>54</sup> Roberts, *supra* note 1, at 12 (citing 17 C.F.R. § 150.2).

<sup>55</sup> *Id.* at 19.

to attempts at manipulation” and indicates that position limits would have the same beneficial result of reducing market manipulation in the RIN market as in futures markets. As a result, “the rationale for position limits in the futures markets applies with equal force to the RIN market.”<sup>56</sup> Moreover, this reform should be applied to every category of RINs. It is not expensive or burdensome to implement and would provide greater transparency and accountability in the trading of RINs.

Environment Canada’s Federal Renewable Fuels Regulations, Canada’s version of the RIN market, is even more closely analogous to the RIN market and thus highly instructive. Environment Canada enforces position limits on the number of renewable fuel credits (called “compliance units”) that primary suppliers can own at the end of each month.<sup>57</sup> The agency explains that these position limits are intended to ensure that “the compliance units are readily accessible to primary suppliers,” and to “minimize the possibility of parties manipulating the market for compliance units and speculating on the price of these units.”<sup>58</sup> As discussed further below, in addition to position limits, Environment Canada also allows only primary suppliers (the regulated parties under the Canadian program) and certain other closely related entities to participate in the compliance-unit market.<sup>59</sup> Dr. Roberts’s expert study—which included interviews with Environment Canada—concludes that Canada’s position limits have been

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<sup>56</sup> *Id.*

<sup>57</sup> 84 Fed. Reg. at 10,610.

<sup>58</sup> Environment Canada, *Questions & Answers on the Federal Renewable Fuels Regulations* 87 (Feb. 16, 2012) [hereinafter *Canada Q&As*], available at [https://www.canada.ca/content/dam/eccc/migration/main/lcpe-cepa/052b3fdb-c560-4383-a792-902e186d970e/20120119\\_q-a\\_renewable\\_fuels\\_regulations-eng.pdf](https://www.canada.ca/content/dam/eccc/migration/main/lcpe-cepa/052b3fdb-c560-4383-a792-902e186d970e/20120119_q-a_renewable_fuels_regulations-eng.pdf).

<sup>59</sup> *Id.* at 69.

successful, resulting in a well-functioning market, with no indication of price volatility as seen in the U.S. market. As Dr. Roberts explains:

In designing its Renewable Fuels Regulations, Environment Canada considered the same concerns of hoarding, market power, and market manipulation that currently exist in the U.S. RIN market. These concerns led to position and participant limits, which have proven successful. There is no discernible controversy about the operation of the Canadian market based on conversations with Environment Canada and an examination of trade publications, which indicates that the market is operating well. Discussions with Environment Canada revealed that Renewable Fuels Regulation has operated without controversy; in particular, the compliance unit trading system was designed to avoid market participant concerns about the ability to obtain the necessary compliance units.<sup>60</sup>

The similarity in the design and purpose of the U.S. and Canadian markets indicates that these reforms would have similarly positive effects on the U.S. RIN market. Accordingly, Dr. Roberts recommends that EPA apply binding position limits set at levels that are sufficiently low to eliminate hoarding and other manipulative behavior.<sup>61</sup> In particular, Dr. Roberts recommends that EPA set position limits at the levels “set by Environment Canada for their compliance unit trading system”: limits of “the greater of (i) 120 percent of the prior compliance period’s RIN obligation to permit carry forward or (ii) 120 percent of the to-date incurred obligations based on a good-faith estimate.”<sup>62</sup> Position limits for non-obligated parties would not be necessary if EPA adopts its proposal to limit the holding duration of RINs for such parties, which Monroe proposes should be a 30-day limit.<sup>63</sup>

The Covington White Paper argues that position limits would be ineffective, contending that the RIN market is not analogous to the other markets in which position limits have been

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<sup>60</sup> Roberts, *supra* note 1, at 23–24.

<sup>61</sup> *Id.* at 9–10.

<sup>62</sup> *Id.* at 10 & n.29.

<sup>63</sup> *Id.* at 4.

deployed.<sup>64</sup> Yet, as discussed above, the RIN market shares fundamental characteristics with commodity-futures markets, making reforms such as position limits a promising way to control volatility.

Nor is it convincing to argue that parties need excessive RIN holdings to hedge against risk or that they might accidentally exceed EPA-imposed position limits during “refinery outages or supply disruptions.”<sup>65</sup> The position limits would not be set so low as to implicate the first concern. Rather, with the proposed level of 120% of either the prior compliance period’s obligation or the to-date incurred obligations based on a good-faith estimate, parties would have breathing room to hold more RINs than strictly necessary for compliance to allow for precisely such situations, while also avoiding the prospects of hoarding. And, as Dr. Roberts explains, the second concern demonstrates the advantage of position limits: If excess RINs are generated, they should be sold, increasing market liquidity for obligated parties who must acquire RINs to satisfy their RVO.<sup>66</sup>

The Covington White Paper further points to testimony from CFTC Chairman Giancarlo that the agency was “not able to find any misbehavior in the [RIN] market.”<sup>67</sup> But the paper fails to mention that the explanation Chairman Giancarlo gave was not that such misbehavior was absent, but that “the data was both limited and not of sufficient quality.”<sup>68</sup> The lack of data

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<sup>64</sup> See *Covington White Paper*, *supra* note 38, at 32.

<sup>65</sup> *Id.* at 31.

<sup>66</sup> Roberts, *supra* note 1, at 18.

<sup>67</sup> See *Covington White Paper*, *supra* note 38, at 17.

<sup>68</sup> CFTC Chairman J. Christopher Giancarlo, Testimony before the United States Senate Committee on Agriculture, Nutrition, and Forestry, at 1:03:35 (Feb. 15, 2018) [hereinafter *Giancarlo Testimony*], available at <https://www.agriculture.senate.gov/hearings/state-of-the-cftc-examining-pending-rules-cryptocurrency-regulation-and-cross-border-agreements>.

produced in an opaque market does not detract from the powerful evidence, discussed at length above, indicating that the market is ripe for manipulation. That is why position limits are critical.

**B. If EPA Does Not Adopt Position Limits, It Should Lower The Reporting Threshold And Add Meaningful Enforcement Mechanisms.**

Although Monroe believes that position limits would prevent manipulative behavior more effectively than reporting requirements would, if EPA decides not to adopt position limits and instead implements its proposed reporting regime, the agency should both lower the reporting thresholds, require monthly reporting, and create a binding enforcement mechanism to ensure that those reporting requirements are followed.

As EPA has recognized, its proposed reporting thresholds would rarely, if ever, be triggered.<sup>69</sup> This means that, at the proposed levels, the thresholds could not possibly alleviate the RIN market's defects.<sup>70</sup> Accordingly, Monroe urges EPA to lower the reporting thresholds to require parties to indicate if their daily calculations revealed holdings in excess of 0.5% of the annual implied conventional biofuel volume requirement for non-obligated parties and 120% of RVO for obligated parties. These two thresholds should remain separate because there is no need for both a primary and a secondary threshold. Additionally, entities should report holdings that exceed the threshold limits monthly rather than quarterly.

As an alternative approach that does not rely on self-reporting, Monroe proposes that EPA reprogram the EPA Moderated Transaction System's ("EMTS") Daily RIN Balance Calculations to consolidate the holdings of affiliated companies and to automatically flag holdings that exceed the specified thresholds. The EMTS system already captures daily information regarding each

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<sup>69</sup> See 84 Fed. Reg. at 10,611–13.

<sup>70</sup> Roberts, *supra* note 1, at 9.

company's RIN holdings.<sup>71</sup> With the addition of information on company affiliations, EPA has all the data necessary to perform these calculations under existing reporting. EPA would then publish the names of companies that exceed either of these thresholds on a monthly, rather than a quarterly, basis, and EPA and the CFTC would initiate detailed reviews of companies that exceed the thresholds. EPA could even implement this change without any regulation at all, as it would not require EPA to collect any additional information about RIN holdings. In this way, monitoring the threshold would be streamlined and would allow a real-time view into RIN market activity. These modifications to EPA's proposal would create thresholds that—while far less effective than position limits—have a greater potential than the current proposal to meaningfully influence market behavior.

Disclosure mechanisms alone, however—without any threat of enforcement—may not be adequate to incentivize regulated entities to comply with the thresholds and, even if the reporting requirements are followed, may not sufficiently deter hoarding and other manipulative behavior.<sup>72</sup> Thus, as a second modification to its reporting proposal, EPA should establish CFTC-led enforcement mechanisms, such as initiating investigations into a party's RIN holdings if they exceed the threshold in two consecutive months. Involvement of the CFTC in reviewing a party's RIN holdings would add a credible enforcement threat with the potential to alter market behavior.<sup>73</sup>

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<sup>71</sup> Memo from Ben Larson, Office of Transp. & Air Quality, EPA, to Docket No. EPA-HQ-OAR-2018-0075 (Mar. 8, 2019), *available at* <https://www.regulations.gov/document?D=EPA-HQ-OAR-2018-0775>.

<sup>72</sup> Roberts, *supra* note 1, at 6–8.

<sup>73</sup> *Id.* at 24–25.

### C. EPA Should Limit RIN Purchases To Specified Parties.

EPA also has proposed limiting which parties can purchase separated D6 RINs, allowing only obligated parties, corporate or contractual affiliates of obligated parties, exporters, and non-obligated parties needing to replace invalid RINs to participate in the market.<sup>74</sup> Monroe supports this reform and urges EPA to adopt it.

Limiting the categories of parties that can purchase RINs would help to eliminate the opportunity for outside entities to influence the market in ways that harm obligated parties. As discussed above, Monroe believes that much of the current market volatility is due to speculation by non-obligated parties, which drives up RIN prices disconnected from RVOs. Given the specialized nature of the RIN market—which was designed solely for the purpose of regulatory compliance<sup>75</sup>—there is no reason for outside parties to participate.

After analyzing the RIN market, Dr. Roberts concluded that this reform would be beneficial.<sup>76</sup> Dr. Roberts took into account that, as with position limits, Environment Canada has already adopted a similar limitation, restricting the parties that may participate in the compliance-unit market. Canada permits only primary suppliers—the regulated parties—and registered entities that blend renewable fuel or produce or import certain liquid petroleum fuel to sell compliance units.<sup>77</sup> Canada has imposed these limitations “to ensure that compliance units flow to persons obligated to meet the requirements for renewable content in the gasoline and distillate pools,” to increase liquidity by making the compliance units “fluid and obtainable by primary

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<sup>74</sup> 84 Fed. Reg. at 10,618–20.

<sup>75</sup> See *Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Program*, 72 Fed. Reg. 23,900, 23,944 (May 1, 2007).

<sup>76</sup> Roberts, *supra* note 1, at 14.

<sup>77</sup> *Canada Q&As*, *supra* note 58, at 69.

suppliers,” and to “minimize the possibility of some parties manipulating the market for compliance units and speculating on the price of these units.”<sup>78</sup>

As Dr. Roberts explains, these limitations will likely be just as successful in the U.S. RIN market as in the Canadian compliance-unit market, because the two markets are highly similar. Both the United States and Canada “require entities to comply with federal regulations on renewable fuel blending and both employ trading systems to facilitate entities obtaining the required credits.”<sup>79</sup> “Because of the similarities in the two markets and the proven success of position limits and participant limits in the Canadian market, these same rules should be applied to the U.S. RIN market.”<sup>80</sup>

The Covington White Paper, which was not written by an economist, argues that limiting the participation of non-obligated parties in the RIN market could result in a consolidation of market power or hinder market liquidity.<sup>81</sup> Yet, as Dr. Roberts explains, this misunderstands the fundamental nature of the RIN market—an artificial market established for regulatory compliance. Parties that participate in the market are sophisticated and have electronic trading systems that obviate the need for outside parties to match buyers and sellers.<sup>82</sup> “In the world of electronic trading systems and sophisticated obligated parties, limiting the number of entities that can purchase separated D6 RINs will not harm market liquidity.”<sup>83</sup> The RIN market does not need independent dealers. Instead, the obligated parties “have large balance sheets and sophisticated

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<sup>78</sup> *Id.* at 89–90.

<sup>79</sup> Roberts, *supra* note 1, at 24.

<sup>80</sup> *Id.*

<sup>81</sup> See *Covington White Paper*, *supra* note 38, at 30.

<sup>82</sup> Roberts, *supra* note 1, at 14–15.

<sup>83</sup> *Id.* at 15.

trading desks” that provide all the liquidity necessary.<sup>84</sup> Furthermore, if the need for a middle man arises, brokers can play the same role in the RIN market that they play in many physical markets without taking ownership of RINs.<sup>85</sup>

EPA requested comment on whether its proposal to limit RIN market participation would produce gaming opportunities for a non-obligated party to create a contract with an obligated party at a minimal level simply to qualify as an obligated party that may participate in the RIN market.<sup>86</sup> This concern is easily addressed by adopting Monroe’s suggestion of position limits. An individual that becomes an obligated party at a minimal level would be precluded from acquiring a large RIN holding, since it would be constrained by position limits linked to its minimal obligation. Restricting RIN holdings would thus greatly curtail the attractiveness of this potential loophole, as parties could not amass sufficient RINs to manipulate the market, thereby making it less likely that they would seek to game the system. EPA could further mitigate the prospect of gamesmanship by limiting holdings by contractual affiliates to the level necessary to fulfill their contractual obligation. Alternatively, under the modified reporting requirements proposed by Monroe—which would provide for reduced reporting thresholds as well as a CFTC investigation following two consecutive months of threshold exceedances—parties trying to game the system would be quickly identified.

Ultimately, whether EPA adopts position limits or reporting requirements, it should also adopt its proposed reform restricting participation in the RIN market.

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<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> 84 Fed. Reg. at 10,620.

**D. EPA Should Limit The Duration That Non-Obligated Parties Can Hold RINs.**

Monroe supports EPA's proposal to require non-obligated parties to sell the RINs they hold at regular intervals, which would further protect against market manipulation by increasing market liquidity at regular intervals.<sup>87</sup> Instead of allowing non-obligated parties to build up their RIN holdings in advance of a retirement period, this requirement would compel them to sell their RINs to obligated parties that need RINs to meet their regulatory obligations. Indeed, Monroe believes that EPA should strengthen this proposal to require non-obligated parties to sell RINs within thirty days of their acquisition, rather than on a quarterly basis, as currently proposed. More frequent RIN sales would maximize obligated parties' access to the RINs they need to satisfy the RFS requirements, especially if EPA adopts its proposal to require quarterly RIN retirement for obligated parties. EPA should thus also be mindful of the interconnected nature of its proposed reforms. In particular, if EPA requires obligated parties to retire RINs on a quarterly basis, it is critical that EPA also require non-obligated parties to make those RINs available for obligated parties when needed, by mandating that non-obligated parties sell RINs within thirty days of acquisition. This restriction on the duration of RIN holdings by non-obligated parties would help foster the liquidity essential to obligated parties' compliance efforts.

As with the proposed restriction on non-obligated parties' purchase of RINs, EPA sought comment on the potential that parties would try to evade this duration limitation by taking minimal steps to qualify as an obligated party.<sup>88</sup> Once again, these concerns would be addressed by the adoption of the position limits proposed by Monroe. Position limits would deny parties the

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<sup>87</sup> See Roberts, *supra* note 1, at 14.

<sup>88</sup> *Id.* at 10,621.

opportunity to amass enough RINs to exercise market power, thereby reducing any incentives for non-obligated parties to take strategic steps to circumvent the duration limitation.

**E. If Quarterly Retirement by Obligated Parties Is Adopted, That Reform Must Be Coupled With Other Market Reforms.**

In order to maximize compliance flexibility and market liquidity, EPA should adopt quarterly retirement as a reform only if done in conjunction with other RIN market reforms that will ensure that unnecessary burdens are not placed on obligated parties. Specifically, if obligated parties are required to retire RINs on a quarterly basis, EPA must also require non-obligated parties to dispose of their RINs after thirty days and limit the purchase of RINs to obligated parties in order to maximize liquidity for obligated parties.

**III. EPA SHOULD ADOPT ADDITIONAL PROPOSALS TO IMPROVE THE EFFICIENCY OF THE RIN MARKET.**

**A. EPA Should Work With The CFTC To Actively Monitor The RIN Market.**

EPA should work with the CFTC to enhance its oversight of the RIN market, including by actively assisting in reviewing RIN market data on a daily basis to identify speculative trading activity and to monitor compliance with position limits.

**1. EPA Should Work With The CFTC To Enhance RIN Market Oversight.**

The CFTC entered a Memorandum of Understanding (“MOU”) with EPA in March 2016 regarding oversight of the RIN market.<sup>89</sup> In the MOU, EPA and the CFTC announced that they can share information, pursuant to 40 C.F.R. § 2.209(c)(1), and conduct joint or separate

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<sup>89</sup> *Memorandum of Understanding Between the Environmental Protection Agency and the Commodity Futures Trading Commission on the Sharing of Information Available to EPA Related to the Functioning of Renewable Fuel Standard and Related Markets* (Mar. 16, 2016), available at <https://www.epa.gov/sites/production/files/2016-03/documents/epa-cftc-mou-2016-03-16.pdf>.

investigations into potential fraud, market abuse, deceptive practices, commodity market manipulation, or other violations relating to the generation of, and trading in, the RIN market.<sup>90</sup> In particular, under the MOU, the CFTC “will use the information to advise EPA on techniques that could be employed to minimize fraud, market abuses or other violations, and to conduct appropriate oversight in RIN and renewable fuel markets to aid EPA in successfully fulfilling the EPA’s statutory functions under Clean Air Act § 211(o)(2)(A)(i).”<sup>91</sup>

EPA should engage the CFTC to exercise more extensive oversight of the RIN market under this agreement. If a problematic trade or pattern of trades is identified in other markets, the CFTC makes contact with the entity to inquire about the trading, confirm positions, or alert brokers or traders to any regulatory concern. The CFTC could perform the same function in the RIN market.

The CFTC has extensive experience and expertise in market regulation and would also add a credible enforcement threat to the proposed RIN market reforms. The CFTC should be provided with daily trading data and should aid EPA in identifying and addressing problematic trading practices. These functions could be carried out by the CFTC’s Market Surveillance Branch, which focuses on monitoring trading activity to “protect[] market users and the public from fraud, manipulation and abusive practices.”<sup>92</sup> To do so, it “monitors the daily activities of large traders, key price relationships, and relevant supply and demand factors in a continuous review for potential market problems.”<sup>93</sup> It should do the same for the RIN market.

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<sup>90</sup> *Id.* at 2.

<sup>91</sup> *Id.*

<sup>92</sup> CFTC, *CFTC Market Surveillance Program*, <https://www.cftc.gov/IndustryOversight/MarketSurveillance/CFTCMarketSurveillanceProgram/index.htm>.

<sup>93</sup> *Id.*

## 2. The CFTC Should Aid In Enforcing Position Limits.

The CFTC should also aid EPA in enforcing position limits. CFTC staff currently monitors limits in other markets on a daily basis and is therefore well prepared to undertake the same oversight of RIN position limits.<sup>94</sup> CFTC oversight would encourage compliance to a greater degree than would monthly or quarterly self-reporting system unaccompanied by a credible enforcement threat.

Monroe is not alone in urging greater CFTC involvement in the RIN market. Members of Congress also have called on the CFTC to take a more active role in the RIN market, especially after the price spikes in 2013 and 2016 raised concern that market manipulation was occurring and that RIN prices did not reflect economic fundamentals.<sup>95</sup> EPA should take steps to engage the CFTC in active market oversight.

In the past, the CFTC has expressed concerns about the quality of accessible data on the RIN market.<sup>96</sup> But EPA's proposed transparency and data-collection measures should provide the CFTC with data of the quality that it said in February 2018 was required to properly analyze the RIN market.

### **B. EPA Should Institute A RIN Price Cap Or Collar Based On The 2012 RIN Price And Establish A RIN Waiver Credit.**

EPA should also impose a cap or collar on RIN prices. A price cap or collar would reduce volatility in the market, discourage speculation, and promote the objectives of the RIN system.

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<sup>94</sup> *See id.*

<sup>95</sup> *See, e.g., Stabenow Letter, supra* note 32.

<sup>96</sup> *See Giancarlo Testimony, supra* note 68, at 1:03:35 (“Based upon the data, we were not able to find any misbehavior in the market, but the data was both limited and not of sufficient quality.”).

As noted above, the dysfunction in the RIN market is due in part to the fact that RIN prices are highly responsive to speculation regarding EPA regulatory actions and disconnected from economic fundamentals concerning the relative cost of producing renewable fuel and individual obligated parties' RVOs. The resulting price volatility imposes enormous risks on obligated parties, which depend on the secondary RIN market to meet regulatory requirements. The costs associated with this uncertainty cannot be overstated; the cost of RINs for compliance is one of Monroe's top three annual expenses. Volatility in RIN prices makes it difficult for obligated parties to evaluate whether to make capital investments that will be recovered over many years because the cost of their RFS compliance is unpredictable. It is challenging for Monroe and other refiners to make capital investments when they need to preserve cash on hand to mitigate the risk of an unanticipated, significant increase in RIN prices.

Placing a cap or collar on the price of RINs would not only reduce price volatility but would also significantly reduce the incentives for speculation by non-obligated parties and the ability of such parties to engage in market manipulation. Monroe proposes that the price of a RIN be capped at the average price in 2012, which was \$0.028 per D6 RIN; \$0.617 per D5 RIN; \$1.097 per D4 RIN; and \$0.77 per D3 RIN.<sup>97</sup> That cap is appropriate because 2012 was the last year in which RIN prices reflected the economic fundamentals of blending renewable fuel in place of petroleum. Beginning in 2013, RIN prices were strongly influenced by speculation concerning the degree to which EPA would set volume requirements in excess of the E10 blendwall, thereby drawing down on the RIN bank and introducing the prospect of RIN scarcity.

Experts recognize the utility of price-containment systems such as price caps as a tool for addressing structural dysfunction in markets such as the RIN market. As CRA has noted, "[w]ell-

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<sup>97</sup> Source: Argus.

designed price containment mechanisms can effectively limit the societal costs of environmental and energy policies, while also supporting the attainment of policy goals.”<sup>98</sup> These price-containment “mechanisms are also most beneficial in markets where high prices lead to negative impacts on most stakeholders.”<sup>99</sup> Price caps can help “[r]educe volatility and RIN cost uncertainty,”<sup>100</sup> and thus could be an ideal solution for some of the problems that plague the RIN market.

Additionally, a RIN waiver-credit program would further stabilize the market and lower compliance costs. Under a waiver-credit program, EPA would sell waiver credits “at a set price to obligated parties.”<sup>101</sup> Those parties could then decide to comply with the RFS by: “(1) submitting/retiring RINs that were separated during ethanol blending, similar to the current approach, (2) submitting waiver credits, or (3) submitting/retiring a combination of RINs and waiver credits.”<sup>102</sup> For the reasons described above, these waivers should be sold at 2012 average prices. Too high of a price would “lead to underutilization of the waiver credits and likely a continued breaching of the blend wall,” which “would defeat the cost minimization goal of the mechanism.”<sup>103</sup> Because the 2012 RIN prices reflect economic fundamentals, that price should be adopted as a reflection of a healthy market price. Additionally, enough waiver credits should be available so as to avoid breaching the blendwall.<sup>104</sup>

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<sup>98</sup> *2018 CRA Report, supra* note 10, at 12.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* at 16.

<sup>101</sup> *Id.* at 18.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

Currently, the RFS program incentivizes imports of biodiesel and imposes significant burdens on obligated parties without realizing the statutory goals of decreased greenhouse gas emissions and increased energy independence.<sup>105</sup> Price-containment mechanisms such as waiver credits are beneficial for “reducing regulatory burden, decreasing price volatility, and creating a source of revenue that can be used to address policy constraints, thereby improving long-term cost and policy outcomes. All of these are reasons present in the RIN market.”<sup>106</sup> EPA’s waiver authority alone has not been effective in preventing market distortion.<sup>107</sup> A waiver credit program, by contrast, could easily be designed for the RIN market and “is a natural fit for the RFS.”<sup>108</sup> It could eliminate long-term uncertainty, which is necessary for stabilizing the market.

From the beginning of the RFS program, EPA has recognized the importance of a neutral compliance mechanism that applies to all obligated parties equally. For example, when EPA first set a 20% rollover RIN limit in its 2007 regulation, EPA declared that the limit would “apply equally to all obligated parties,” thus “provid[ing] the certainty all parties desire in implementing the program.”<sup>109</sup> Instituting a price cap or collar, as well as a waiver credit, would promote similar goals by enabling the RIN market to serve as an efficient and neutral mechanism for obligated parties to comply on an equal footing regardless of whether they blend renewable fuel.<sup>110</sup>

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<sup>105</sup> *Id.* at 1.

<sup>106</sup> *Id.* at 3.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.* at 18.

<sup>109</sup> 72 Fed. Reg. at 23,934–35.

<sup>110</sup> 42 U.S.C. § 7545(o)(5); 72 Fed. Reg. at 23,904, 23,908.

**C. EPA Should Allow RINs Separated From Exported Renewable Fuel To Be Used For Compliance By Obligated Parties.**

Under current regulations, an exporter of renewable fuel must retire RINs associated with that exported renewable fuel and cannot use those export RINs to demonstrate compliance with its RFS obligations.<sup>111</sup> This system penalizes domestically produced, exported renewable fuel in comparison to foreign-produced, imported renewable fuel. EPA should instead allow these RINs to be used for compliance by obligated parties.

As a presentation by CRA explained, EPA should allow RINs for exported volumes of ethanol to be used for compliance purposes because “[p]roviding RIN value” for exported ethanol would “improve[] the price position of US-produced ethanol in global markets.”<sup>112</sup> Because of the restrictions of the blendwall, there is a limit on the amount of ethanol that can be used domestically. But if EPA allowed RINs for exported volumes to be used for compliance, the “increased exports would result in a net increase in ethanol demand.”<sup>113</sup> Allowing RINs for exported biofuel to be used for compliance purposes would thus increase ethanol demand while also easing the burden caused by the blendwall.

EPA has the statutory authority to adopt this change. The Energy Independence and Security Act of 2007 (“EISA”) expressly authorizes EPA to provide for “the generation of an appropriate amount of credits by any person that refines, blends, or imports gasoline” that contains renewable fuel.<sup>114</sup> But the statute does not limit EPA to providing credits only to these parties.

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<sup>111</sup> 40 C.F.R. §§ 80.1427(c), 80.1430.

<sup>112</sup> Charles River Associates, *Unobligated RINs for Renewable Fuel Exports: Impact on Ethanol Volumes 2* (Oct. 16, 2017), available at [http://www.fuelingusjobs.com/library/public/1-CRA\\_EthanolVolumes\\_ExportProposal\\_10\\_17\\_2017.pdf](http://www.fuelingusjobs.com/library/public/1-CRA_EthanolVolumes_ExportProposal_10_17_2017.pdf).

<sup>113</sup> *Id.*

<sup>114</sup> 42 U.S.C. § 7545(o)(5).

There is no reason EPA could not allow an appropriate amount of credits to be used for compliance by an entity that exports renewable fuel as well.

Making this change would enhance RIN market liquidity and provide financial incentives for biofuel producers to invest in expanded production facilities, thus furthering the goal of energy independence. The proposed change would also advance EISA's environmental goal of reducing greenhouse gas emissions. By promoting the production of additional renewable fuel for export, the program would reduce greenhouse gas emissions abroad through the substitution of renewable fuel for petroleum—reductions that Americans would benefit from no less than if they had occurred within our geographic boundaries.

### **CONCLUSION**

Monroe appreciates the opportunity to submit comments on the proposed RIN market reforms. While those proposed reforms are a step in the right direction, Monroe urges EPA to strengthen those reforms by adopting position limits as well as the additional reforms proposed by Monroe in these comments.

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Respectfully submitted,

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