SUTHERLAND

LEGAL ALERT

July 10, 2013

Renewable Fuel Standard Costs Reach Record Levels: Corn-Ethanol RINs at $1.18 per RIN

The federal Renewable Fuel Standard (RFS) requires gasoline and diesel refiners, blenders and importers to purchase and use an ever increasing number of renewable fuel credits (known as RINs) generated by renewable fuel producers to represent volumes of specific types of renewable fuel. RIN prices have increased by more than 2,100% since the end of 2012 to $1.18 for corn-ethanol RINs, representing a cost of approximately $0.11 for every gallon of gasoline and diesel produced at present RIN prices. This year, importers and refiners of gasoline and diesel will be required to purchase and retire 13.8 billion corn-ethanol RINs, representing approximately 85% of the overall number of RINs that these parties must purchase.

In past years, corn-ethanol RINs were very inexpensive and traded at less than $0.01 per RIN. Corn-ethanol RINs remained inexpensive due to relatively low production costs and ease of blending ethanol into gasoline. Prices for these RINs steadily skyrocketed in the first quarter of 2013, however, to slightly more than $1.00 per RIN. Since March prices dropped slightly and traded generally between $0.60 and $0.90 per RIN, but prices have rallied in July to $1.18 per RIN.

The rise in the price of corn-ethanol RINs has been linked to reaching the "ethanol blend wall," the point at which no more ethanol can be added to the transportation fuel pool in the United States. For legal and liability reasons, in the United States ethanol generally is not blended into gasoline in concentrations greater than 10%. With the Environmental Protection Agency (EPA) and many in the industry predicting that the RFS mandates will require the use of renewable fuel in excess of that "blend wall" in either 2013 or 2014, corn-ethanol RIN prices have increased exponentially over concerns on whether higher blending is feasible.

The recent spike in prices may be a result of the market reacting to a lack of action on the part of EPA to reduce the 2013 and 2014 RFS mandates below the anticipated blend wall. The spike may also be due to market realities of the RIN generation that has occurred to date. RIN generation data through May released by the EPA indicates that if RIN generation rates remain constant through the remainder of 2013, the market will fall short of generating RINs equal to the 2013 renewable fuel mandate by approximately 1.5 billion RINs (unless carryover RINs from 2012 are used). In addition, recently proposed RFS amendments would significantly restrict the ability of importers to generate RINs.

Increased RIN prices will force industry to use creative RFS compliance strategies, such as increased: (1) blending of biodiesel into diesel fuel; (2) imports of sugarcane-ethanol; (3) production and use of biogas (e.g., landfill gas, dairy digester gas) as a transportation fuel; and (4) gasoline and diesel exports.

Sutherland Asbill & Brennan LLP has more than 30 years of experience in assisting refiners, blenders and importers of petroleum products and renewable fuel with innovative strategies to comply with the EPA's fuel standards, and has been at the forefront of assisting industry in complying with the RFS.

■ ■ ■

If you have questions about this Legal Alert, please feel free to contact either of the attorneys listed below or the Sutherland attorney with whom you regularly work.

Susan G. Lafferty	202.383.0168	susan.lafferty@sutherland.com
David M. McCullough	202.383.0853	david.mccullough@sutherland.com