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CVR ENERGY INC
Form SC TO-C
February 17, 2012

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

SCHEDULE TO
(RULE 14D-100) TENDER OFFER STATEMENT UNDER SECTION 14(D) (1) OR 13(E) (1)
OF THE SECURITIES EXCHANGE ACT OF 1934

CVR ENERGY, INC.
(NAME OF SUBJECT COMPANY (ISSUER))

Icahn Partners LP
Icahn Partners Master Fund LP
Icahn Partners Master Fund II L.P.
Icahn Partners Master Fund III L.P.
High River Limited Partnership
Hopper Investments LLC
Barberry Corp.
Icahn Onshore LP
Icahn Offshore LP
Icahn Capital L.P.
IPH GP LLC
Icahn Enterprises Holdings L.P.
Icahn Enterprises G.P. Inc.
Beckton Corp.
Carl C. Icahn

(NAMES OF FILING PERSONS (OFFEROR))

COMMON STOCK, PAR VALUE \$0.01
(TITLE OF CLASS OF SECURITIES)

12662P108
(CUSIP NUMBER OF CLASS OF SECURITIES)

KEITH L. SCHAITKIN, ESQ.
GENERAL COUNSEL
ICAHN CAPITAL LP
767 FIFTH AVENUE, 47TH FLOOR
NEW YORK, NEW YORK 10153
(212) 702-4380

(NAME, ADDRESS AND TELEPHONE NUMBER OF PERSON AUTHORIZED TO RECEIVE NOTICES
AND COMMUNICATIONS ON BEHALF OF FILING PERSONS)

CALCULATION OF FILING FEE

Transaction Valuation: Not applicable Amount of Filing Fee: Not applicable

/ / Check the box if any part of the fee is offset as provided by Rule 0-11(a) (2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount previously paid: Not applicable Filing Party: Not applicable
Form or registration no.: Not applicable Date Filed: Not applicable

/X/ Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the

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statement relates:

/X/ third-party tender offer subject to Rule 14d-1.
/ / issuer tender offer subject to Rule 13e-4.
/ / going-private transaction subject to Rule 13e-3.
/ / amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer: / /

On February 16, 2012, Carl C. Icahn issued a press release relating to CVR Energy, Inc., a copy of which is filed as Exhibit I hereto and is incorporated herein by reference.

THE ATTACHED PRESS RELEASE IS FOR INFORMATIONAL PURPOSES ONLY AND DOES NOT CONSTITUTE AN OFFER TO PURCHASE NOR A SOLICITATION FOR ACCEPTANCE OF THE OFFER DESCRIBED THEREIN. THE OFFER WILL BE MADE ONLY PURSUANT TO THE OFFER TO PURCHASE, LETTER OF TRANSMITTAL AND RELATED MATERIALS THAT CARL C. ICAHN AND CERTAIN OF HIS AFFILIATES (THE "ICAHN GROUP") WILL DISTRIBUTE TO HOLDERS OF COMMON STOCK OF CVR ENERGY, INC. AFTER THESE DOCUMENTS ARE FILED WITH THE SEC AS EXHIBITS TO ITS SCHEDULE TO. HOLDERS OF COMMON STOCK SHOULD READ CAREFULLY THE OFFER TO PURCHASE, LETTER OF TRANSMITTAL AND RELATED MATERIALS BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION, INCLUDING THE VARIOUS TERMS OF, AND CONDITIONS TO, THE OFFER. AFTER THE ICAHN GROUP FILES ITS SCHEDULE TO AND ASSOCIATED EXHIBITS WITH THE SEC, HOLDERS OF COMMON STOCK MAY OBTAIN A FREE COPY OF THE TENDER OFFER STATEMENT ON SCHEDULE TO, THE OFFER TO PURCHASE, LETTER OF TRANSMITTAL AND OTHER DOCUMENTS THAT THE ICAHN GROUP WILL BE FILING WITH THE SEC AT THE SEC'S WEB SITE AT WWW.SEC.GOV.

Exhibit I

FOR IMMEDIATE RELEASE

ICAHN ANNOUNCES TENDER OFFER FOR ALL OF THE OUTSTANDING SHARES OF CVR ENERGY AT \$30 PER SHARE IN CASH, PLUS CASH CONTINGENT VALUE RIGHT

ICAHN PROPOSES FULL SLATE OF 9 DIRECTORS FOR CVR ENERGY BOARD

CONTACT: SUSAN GORDON, (212) 702-4309

New York, New York, February 16, 2012 - Carl C. Icahn today announced a tender offer through one or more of his affiliated companies for all of the outstanding shares of common stock, and related stock purchase rights, of CVR Energy, Inc. (the "Company"). Tendering shareholders will be paid \$30 per share in cash, plus a Contingent Value Right. The Contingent Value Right will entitle holders to an additional payment, in cash, equal to the value that the Company is sold for in excess of \$30 per share. Mr. Icahn also announced his intent to nominate a slate for all 9 directorships on the CVR Energy board of directors.

CVR ENERGY SHOULD BE SOLD

As previously announced, Mr. Icahn believes that the Company should be put up

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for sale. If the current Board puts the Company up for sale before the initial expiration date of our tender offer (expected to be on or about March 23), then Mr. Icahn reserves the right to withdraw the tender offer and proxy fight. However, if the Company is not put up for sale, Mr. Icahn will proceed with the tender offer and proxy fight, in an effort to elect a new Board that will have a shareholder mandate to sell the Company.

THE TENDER OFFER

Closing of the tender offer will not be subject to any due diligence or financing conditions. The tender offer will be subject to there being validly tendered and not withdrawn at least 35.76% of the issued and outstanding shares of the Company. That number of shares, when added to the shares already owned by the offeror and its affiliates, represents a majority of the issued and outstanding shares of the Company. The tender offer will also be conditioned upon the election of the Icahn slate of directors, the elimination of the Company's poison pill (which the Icahn directors intend to do upon their election), and other typical conditions. The tender offer will include withdrawal rights so that a tendering shareholder can freely withdraw any shares prior to the acceptance of such shares for payment under the tender offer.

THE CONTINGENT VALUE RIGHT

In the event that a definitive agreement for the sale of the Company is executed within nine months following the closing of the tender offer, all tendering shareholders whose shares were purchased in the tender offer will receive an additional cash payment, through a non-transferable Contingent Value Right, equal to the amount (whether in cash or securities) in excess of \$30 per share for which the Company is sold. Shareholders whose shares are purchased in the tender offer are thus guaranteed a minimum payment of \$30 per share - plus upside potential.

ICAHN SAYS: LET THE SHAREHOLDERS DECIDE

Mr. Icahn stated: "We are launching this tender offer and proxy fight to provide shareholders the opportunity to obtain the value that we believe can be obtained in a sale of the Company. We are offering shareholders a minimum of \$30 per share now, a new board with a shareholder mandate to put the Company up for sale, and the upside from a sale of the Company in the form of the Contingent Value Right. This is a win-win-win for shareholders."

WHY WE BELIEVE THE CONTINGENT VALUE RIGHT COULD DELIVER EVEN MORE VALUE

Mr. Icahn believes that a sale of the Company should attract the interest of potential buyers such as Western Refining, Inc., HollyFrontier, Tesoro Corp., Valero, Marathon Petroleum Corp. or ConocoPhillips, among others. MR. ICAHN INTENDS TO INITIATE DIALOGUES WITH A NUMBER OF THESE POTENTIAL ACQUIRERS DURING THE NEXT SEVERAL WEEKS. Based on the analysis below, Mr. Icahn believes that a price of at least \$37 per share should be achieved in such a sale. A price of \$37 would represent a premium of 34.1% over the closing price of \$27.60 on February 15, 2012. At that price, the Company's market capitalization would be \$3.25 billion, implying an enterprise value of \$2.79 billion for the refinery assets (after backing out the tax-adjusted market value of the Company's CVR Partners units) (1). The Company's refineries generated \$809 million of LTM

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EBITDA, implying a 3.4x EV/EBITDA multiple, which we believe is a modest discount to current comparable trading multiples (2). As a result, Mr. Icahn believes the Contingent Value Right could provide at least an additional \$7.00 of cash per share to tendering shareholders in the context of a sale of the Company based upon public comparables, before considering synergies. The Company's management has projected 2012 synergies of \$32.4 million from the Wynnewood acquisition. Further, we believe that an acquirer of the Company should be able to realize higher synergies, largely due to corporate cost savings and other potential operating synergies, as well as a greater ability to hedge high crack spreads. In light of the foregoing, we believe that the combined value of the tender offer cash price of \$30 per share and the Contingent Value Right offer a substantial value opportunity to shareholders beyond the latest closing market price of \$27.60.

NOTICE TO INVESTORS

CARL C. ICAHN'S AFFILIATES HAVE NOT YET COMMENCED THE TENDER OFFER REFERRED TO IN THIS PRESS RELEASE. UPON THE COMMENCEMENT OF ANY TENDER OFFER, THESE ENTITIES WILL FILE A TENDER OFFER STATEMENT WITH THE SECURITIES AND EXCHANGE COMMISSION. THOSE DOCUMENTS WILL CONTAIN IMPORTANT INFORMATION ABOUT THE TENDER OFFER AND SHOULD BE READ BY SECURITY HOLDERS. IF THE TENDER OFFER IS COMMENCED, SECURITY HOLDERS WILL BE ABLE TO OBTAIN AT NO CHARGE (I) THE TENDER OFFER STATEMENT AND OTHER DOCUMENTS WHEN THEY BECOME AVAILABLE ON THE SECURITIES AND EXCHANGE COMMISSION'S WEBSITE AT [HTTP://WWW.SEC.GOV](http://www.sec.gov), AND (II) THE OFFER TO PURCHASE AND ALL RELATED DOCUMENTS FROM THE OFFERORS.

SECURITY HOLDERS ARE ADVISED TO READ THE PROXY STATEMENT AND OTHER DOCUMENTS RELATED TO THE SOLICITATION OF PROXIES BY CARL C. ICAHN, HIGH RIVER LIMITED PARTNERSHIP, HOPPER INVESTMENTS LLC, BARBERRY CORP., ICAHN PARTNERS LP, ICAHN PARTNERS MASTER FUND LP, ICAHN PARTNERS MASTER FUND II L.P., ICAHN PARTNERS MASTER FUND III L.P., ICAHN ENTERPRISES G.P. INC., ICAHN ENTERPRISES HOLDINGS L.P., IPH GP LLC, ICAHN CAPITAL L.P., ICAHN ONSHORE LP, ICAHN OFFSHORE LP, BECKTON CORP. AND CERTAIN OF THEIR RESPECTIVE AFFILIATES FROM THE STOCKHOLDERS OF CVR ENERGY, INC. FOR USE AT ITS 2012 ANNUAL MEETING WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION, INCLUDING INFORMATION RELATING TO THE PARTICIPANTS IN SUCH PROXY SOLICITATION. WHEN COMPLETED, A DEFINITIVE PROXY STATEMENT AND A FORM OF PROXY WILL BE MAILED TO STOCKHOLDERS OF CVR ENERGY, INC AND WILL ALSO BE AVAILABLE AT NO CHARGE AT THE SECURITIES AND EXCHANGE COMMISSION'S WEBSITE AT [HTTP://WWW.SEC.GOV](http://www.sec.gov). INFORMATION RELATING TO THE PARTICIPANTS IN A PROXY SOLICITATION IS CONTAINED IN EXHIBIT 1 TO THE SCHEDULE 13D TO BE FILED WITH THE SECURITIES AND EXCHANGE COMMISSION ON FEBRUARY 16, 2012.

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- (1) Based on the closing price for CVR Partners of \$29.00 per unit on February 15, 2012, CVR's 50.92 million units would be valued at \$1.48 billion. Adjusted for taxes of 40% (assuming zero cost basis), the after-tax value for the units would be \$886 million. The Company's pro forma net debt is \$431 million (based on net debt excluding CVR Partners as of September 30, 2011 plus the \$607 million closing price for Wynnewood). Subtracting \$886 million for CVR Partners and adding \$431 million of net debt to the market capitalization of \$3.25 billion yields an adjusted enterprise value of \$2.79 billion.
 - (2) As of February 15, 2012, EV/LTM EBITDA multiples were 3.5x for Valero, 3.5x for Marathon, 4.7x for HollyFrontier, and 3.9x for Western Refining (per Bloomberg).