

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C.
1985, c. C-36 as amended

AND IN THE MATTER OF a Plan of Compromise or Arrangement of
Crystallex International Corporation

CRYSTALLEX INTERNATIONAL CORPORATION

Applicant

**MOTION RECORD OF
CRYSTALLEX INTERNATIONAL CORPORATION
Re: Amended Protective Motion
(November 18, 2021)**

October 25, 2021

DAVIES WARD PHILLIPS & VINEBERG LLP

155 Wellington Street West
Toronto ON M5V 3J7

Robin B. Schwill (LSO #384521)

Tel.: 416.863.5502
rschwill@dpwpv.com

Natalie Renner (LSO #55954A)

Tel.: 416.863.5502
nrenner@dpwpv.com

Maureen Littlejohn (LSO #570100)

Tel.: 416.367.6916
mlittlejohn@dpwpv.com

Lawyers for the Applicant

TO: STIKEMAN ELLIOTT LLP
5300 Commerce Court West
199 Bay Street
Toronto, ON M5L 1B9

David Byers
Tel: 416.869.5697
dbyers@stikeman.com

Maria Konyukhova
Tel: 416.869.5230
mkonyukhova@stikeman.com

Lawyers for Ernst & Young Inc., in its capacity as the Monitor

AND TO: GOODMANS LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Peter Ruby
Tel: 416.597.4184
pruby@goodmans.ca

Robert Chadwick
Tel: 416.597.4285
rchadwick@goodmans.ca

Chris Armstrong
Tel: 416.849.6013
carmstrong@goodmans.ca

Lawyers for Computershare Trust Company of Canada, in its capacity as Trustee for the holders of 9.375% holders of unsecured Notes of Crystalex International Corporation and the Ad Hoc Committee of holders of the Notes

AND TO: CASSELS BROCK & BLACKWELL LLP
2100 Scotia Plaza
40 King Street West
Toronto ON M5H 3C2

Shayne Kukulowicz
Tel: 416.860.6463
skukulowicz@casselsbrock.com

Ryan C Jacobs
Tel: 416.860.6465
rjacobs@casselsbrock.com

Jane Dietrich
Tel: 416.860.5223
jdietrich@casselsbrock.com

Michael Wunder

Tel: 416.860.6484
mwunder@casselsbrock.com

Tim Pinos

Tel: 416.869.5784
tpinos@casselsbrock.com

Lawyers for the DIP Lender

AND TO: ERNST & YOUNG INC.

222 Bay Street, P.O. Box 251
Toronto, ON M5K 1J7

Brian M. Denega

Tel: 416.943.3058
brian.m.denega@ca.ey.com

Fiona Han

Tel: 416.943.3739
Fiona.Han@ca.ey.com

Court-Appointed Monitor

AND TO: GOWLING WLG

1 First Canadian Place
100 King Street West, Suite 1600
Toronto, Ontario M5X 1G5

David Cohen

Tel: 416.369.6667
david.cohen@gowlings.com

Clifton Prophet

Tel: 416.862.3509
clifton.prophet@gowlings.com

Nicholas Kluge

Tel: 416.369.4610
nicholas.kluge@gowlings.com

Lawyers for Steven Kosson, Robert Danial, David Werner, Colin Murdoch, Edesio Biffoni, Gerald Cantwell, Grant Watson, Justin Fine, and Lyn Goldberg

AND TO: KBA LAW

43 Front Street East, Suite 400
Toronto, ON M5E 1B3

Kimberly Boara Alexander

Tel: 416.855.7076
kalexander@kbalaw.ca

Lawyers for Robert Crombie

AND TO: FASKEN MARTINEAU DuMOULIN LLP

Bay Adelaide Centre
333 Bay Street, Suite 2400
Bay Adelaide Centre, Box 20
Toronto, ON M5H 2T6

Aubrey E. Kauffman

Tel: 416.868.3538
akauffman@fasken.com

Lawyers for Robert Fung and Marc Oppenheimer

AND TO: THORNTON, GROUT, FINNIGAN

Canadian Pacific Tower
100 Wellington Street West, Suite 3200
P.O. Box 329, TO Centre
Toronto, ON M5K 1K7

John T. Porter

Tel: 416.304.0778
jporter@tgf.ca

Lawyers for Juan Antonio Reyes

AND TO: BLANEY McMURTRY

2 Queen Street East, Suite 1500
Toronto, ON M5C 3G5

Lou Brzezinski

Tel: 416.593.2956
lbrzezinski@blaney.com

Lawyers for the Members of the Ad Hoc
Committee of Shareholders

AND TO: FORBES & MANHATTAN

Suite 805, 65 Queen Street West
P.O. Box 71
Toronto, ON M5H 2M5

Ryan Ptolemy

Tel: 416.861.5800
yanp@fmfinancialgroup.com
Fax: 416.861.8165

Lawyers for Forbes & Manhattan Inc.

AND TO: **OSLER, HOSKIN & HARCOURT LLP**

100 King Street West
1 First Canadian Place
Suite 4600, P.O. Box 50
Toronto, ON M5X 1B8

Alexander Cobb

Tel: 416.862.5964

Fax: 416.862.6666

acobb@osler.com

Lawyers for Greywolf Loan Participation LLC

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C.
1985, c. C-36 as amended

AND IN THE MATTER OF a Plan of Compromise or Arrangement of
Crystallex International Corporation

CRYSTALLEX INTERNATIONAL CORPORATION

Applicant

I N D E X

| TAB | DOCUMENT | PAGE |
|------------|---|-------------|
| 1. | Notice of Motion, returnable November 18, 2021 | 1-8 |
| 2. | Affidavit of Robert Fung, sworn October 25, 2021 | 9-67 |
| (a) | Exhibit "A" Sales Process Order and Sales Process Opinion dated January 14, 2021 | 68-110 |
| (b) | Exhibit "B" Special Master Appointment Order dated May 27, 2021 | 111-121 |
| (c) | Exhibit "C" Special Master Confidentiality Order dated July 6, 2021 | 122-135 |
| (d) | Exhibit "D" US Disclosure Order dated September 8, 2021 | 136-147 |
| (e) | Exhibit "E" Proposed Sales Order and Special Master's Report (Public Version) | 148-302 |
| (f) | Exhibit "F" Bloomberg Article dated September 2, 2021, entitled, "Why Venezuela's 'Two Presidents' Are Ready to Talk" | 303-309 |
| (g) | Exhibit "G" Bloomberg Article dated October 17, 2021, entitled, "Venezuela's Government Halts Talks After Ally Extradition" | 310-312 |
| (h) | Exhibit "H" Globe and Mail Article dated October 17, 2021, entitled, "Venezuelan Opposition, Norway Urge Maduro Government to Resume Talks" | 313-317 |
| (i) | Exhibit "I" Letter to the US Department of Justice from Elliott Abrams dated July 26, 2020 | 318-322 |

| TAB | DOCUMENT | PAGE |
|------------|--|-------------|
| (j) | Exhibit "J" The White House Office of the Press Secretary, Fact Sheet re Venezuela Executive Order dated March 9, 2015 | 323-327 |
| (k) | Exhibit "K" Declaration of Carlos Vecchio dated August 20, 2021 | 328-332 |
| (l) | Exhibit "L" US Department of the Treasury – OFAC FAQ 78 dated June 16, 2006 | 333-335 |
| (m) | Exhibit "M" OFAC License Denial Letter dated September 10, 2021 | 336-344 |
| (n) | Exhibit "N" US Department of the Treasury – OFAC FAQ 76 dated September 10, 2002 | 345-347 |
| (o) | Exhibit "O" Examiner Motion filed July 26, 2021 | 348-379 |
| (p) | Exhibit "P" Crystallex's Objection to Examiner Motion filed August 13, 2021 (Without Exhibits) | 380-396 |
| (q) | Exhibit "Q" Crystallex's Supplemental Briefing (Without Exhibits) filed September 20, 2021 and Mr. Adrianza's Reply Briefing filed October 7, 2021 | 397-444 |
| (r) | Exhibit "R" Letter to Crystallex from the DIP Lender dated October 18, 2021 | 445-447 |
| (s) | Exhibit "S" Confidential | 448-449 |
| (t) | Exhibit "T" Confidential | 450-451 |
| (u) | Exhibit "U" Sales Answering Process Brief filed July 7, 2020 | 452-480 |
| (v) | Exhibit "V" Venezuela's Proposed Redactions to Proposed Sales Process Order and Special Master's Report | 481-663 |
| (w) | Exhibit "W" Venezuela's Sealing Request (Public Version) | 664-669 |
| (x) | Exhibit "X" Letter to the Monitor from Crystallex dated September 22, 2021 | 670-672 |
| (y) | Exhibit "Y" Letter to the Ad Hoc Committee from Crystallex dated July 9, 2021 | 673-708 |
| (z) | Exhibit "Z" Venezuela Parties' Response to Objections to Special Master's Proposed Order | 709-739 |
| (aa) | Exhibit "AA" Public Letter from Carlos Lopez to Juan Guaido | 740-747 |
| (bb) | Exhibit "BB" Efecto Cocuyo Article dated September 28, 2021, entitled "Interim Government Attorney Warns That Assets Abroad Are at Risk" | 748-753 |

Court File No. CV-11-9532-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF *THE COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c.C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF CRYSTALLEX INTERNATIONAL
CORPORATION**

CRYSTALLEX INTERNATIONAL CORPORATION

Applicant

NOTICE OF MOTION

TAKE NOTICE THAT the Applicant, Crystallex International Corporation ("Crystallex" or the "Company"), will make a motion before The Honourable Madam Justice Conway on November 18, 2021 at 10:00 a.m., or as soon thereafter as the motion can be heard, by way of videoconference due to the COVID-19 crisis via Zoom at Toronto.

PROPOSED METHOD OF HEARING:

The motion is to be heard orally.

THE MOTION IS FOR AN ORDER:

- (a) extending the Stay Period as defined in the Initial Order until November 18, 2022;
- (b) approving the 16th Credit Agreement Amendment, to the extent that an extension is granted by the DIP Lender;

- (c) continuing the sealing of the Company's Statement of actual receipts and disbursements compared to the forecasted amounts for the expected period April 2021 to September 2021 (in the Monitor's 38th Report), until six months after the end of such period;
- (d) sealing the cash flow forecast for the expected period December 2021 to November 2022 (in the Monitor's 38th Report);
- (e) continued sealing of certain explanatory notes to the Company's cash flows in the Monitor's 35th, 36th and 38th Reports, and related text in the body of such Reports;
- (f) sealing the strategic information of Crystallex found in the materials filed in respect of the various motions before the Court on November 18, 2021 (found in the Affidavits of Robert Fung, in the Monitor's Reports, in the transcripts of cross-examinations and the written submissions filed by the parties);
- (g) continuing the sealing of forward-looking cash flow projections for the period from April 2021 to November 2021 (Confidential Appendix C to the Monitor's 36th Report);
- (h) sealing the confidential version of the 37th Report of the Monitor, and the confidential versions of any other reports of the Monitor filed in connection with this motion;

- (i) sealing the confidential versions of such further evidence or documents filed (including the confidential versions of transcripts of any cross-examinations on such evidence) and the confidential versions of written submissions on this motion;
- (j) that any materials subject to a sealing order not form any part of the public record in this proceeding;
- (k) to the extent necessary, abridging the time for, and validating the service of the motion such that it is properly returnable on November 18, 2020; and
- (l) such further and other relief as counsel may request and this Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

A. Background

2. Crystallex engaged in the business of exploring and developing the Las Cristinas gold project in Venezuela until 2011, when the Venezuelan government expropriated the mine and purported to terminate the mining operation contract that gave rise to the Company's mining rights. Crystallex's only significant asset was its rights against the government of Venezuela in respect of the expropriation;

3. On December 23, 2011, an order (the "**Initial Order**") was made granting Crystallex protection from its creditors under the *Companies' Creditors Arrangement Act* (the "**CCAA Proceeding**"). Pursuant to the Initial Order, Ernst & Young Inc. was appointed as the monitor (the "**Monitor**"). Crystallex subsequently obtained an order of the United States Bankruptcy Court (the "**US Bankruptcy Court**") for the District of

Delaware on December 28, 2011, recognizing this CCAA Proceeding as a foreign main proceeding;

4. The Initial Order granted the Stay Period against Crystallex, which was most recently extended by Order of the Court on October 8, 2021 to November 18, 2021;

5. The Company is in the process of realizing on an arbitral award in the amount of US\$1.202 billion, plus interest, that was rendered against Venezuela on April 4, 2016 by a tribunal of the Additional Facility of International Centre for the Settlement of Investment Disputes of the World Bank. Crystallex obtained a writ of attachment against significant assets of Venezuela in the United States (specifically, shares which control CITGO Petroleum Corp., a major U.S. oil refiner and distributor (the “**PDVH Shares**”)), and is proceeding through a sales process in the U.S. courts with a view to realizing on the PDVH Shares;

6. Crystallex seeks an extension of the Stay Period until November 18, 2022 to permit Crystallex sufficient time to continue to pursue its strategies to retain and maximize stakeholder value;

7. Crystallex has been operating in good faith and with due diligence, including its efforts to monetize the Award and to resolve various stakeholder issues and will continue to operate in good faith and with due diligence during the proposed Stay Period extension, if such extension is granted by the Court;

8. Crystallex believes that a one-year extension is appropriate at this time, including because:

- (a) The Company needs to focus its attention on enforcement efforts, to the benefit of all stakeholders;
- (b) No material steps are expected to occur in the U.S. enforcement proceedings until later in 2022;
- (c) The Company's stakeholders will be kept abreast of developments through filings in the U.S. enforcement proceedings, and through a continued six-month reporting cadence in the CCAA Proceedings;
- (d) The Company is not in a position to make distributions to stakeholders at this time; and
- (e) A 12-month stay extension will reduce the costs to the Company and allow it to focus its resources on enforcement.

9. Accordingly, Crystallex requests that the Stay Period be extended to November 18, 2022 and does not believe that any stakeholder would be materially prejudiced if the Stay Period was so extended;

10. The Company's cash flow forecasts show that the Company will have sufficient funds to meet its projected liquidity requirements throughout the requested stay extension period;

B. Sealing Requested by Crystallex

11. The information sought to be sealed by Crystallex would, if made public, pose a serious risk to the Company's enforcement efforts, and, in some cases, would pose a serious risk to human safety;

12. The release of the information sought to be sealed by Crystallex would unduly prejudice the Company and the making of the requested sealing order would not unduly prejudice the company's creditors;

13. The order sought is necessary in order to prevent serious risks to important public interests, including the commercial interests of Crystallex and its stakeholders, and reasonably alternative measures will not prevent the risk;

14. The making of an order preventing disclosure of the information sought to be sealed by Crystallex (which sealing is, in the case of its financial information, of limited duration) would not unduly prejudice the Company's creditors, who

- (a) have access to certain historical financial information regarding Crystallex;
- (b) are able to obtain further information from Crystallex at any time on a confidential basis; and
- (c) in any event have and continue to participated fully in this CCAA proceeding;

15. The salutary effects of the confidentiality order outweigh its deleterious effects, including the public interest in open and accessible court proceedings;

C. Other Grounds

16. Sections 10(3), 11 of the CCAA;

17. S. 137(2) of the *Courts of Justice Act*;

18. The *Rules of Civil Procedure*, including rules 1.04(1), 37.01 and 37.02(1);
and

19. Such further and other grounds as counsel may advise and this Court may
permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the
motion:

- (a) the Affidavits of Robert Fung sworn:
 - (i) October 28, 2020;
 - (ii) May 21, 2021;
 - (iii) July 9, 2021; and
 - (iv) October 25, 2021; and
- (b) Such further and other materials as counsel may advise and this Court may
permit.

October 25, 2021

DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto, Ontario M5V 3J7

Robin Schwill (LSO#38452I)
Tel: 416.863.5502
rschwill@dwpv.com

Natalie Renner (LSO#55954A)
Tel: 416.367.7489
nrenner@dwpv.com

Maureen Littlejohn (LSO#570100)
Tel: 416.367.6916
mlittlejohn@dwpv.com

Lawyers for Crystallex International
Corporation

TO: ATTACHED SERVICE LIST

Crystallex International Corporation

Applicant

Commercial List File No: CV-11-9532-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding commenced at Toronto

NOTICE OF MOTION

DAVIES WARD PHILLIPS & VINEBERG LLP

155 Wellington Street West
Toronto, Ontario M5V 3J7

Robin Schwill (LSO#38452I)

Tel: 416.863.5502
rschwill@dwpv.com

Natalie Renner (LSO#55954A)

Tel: 416.367.7489
nrenner@dwpv.com

Maureen Littlejohn (LSO#570100)

Tel: 416.367.6916
mlittlejohn@dwpv.com

Lawyers for Crystallex International Corporation

Court File No. CV-11-9532-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

IN THE MATTER OF the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C- 36 as amended

AND IN THE MATTER OF a Plan of Compromise or Arrangement of Crystallex International Corporation

CRYSTALLEX INTERNATIONAL CORPORATION

Applicant

**AFFIDAVIT OF ROBERT FUNG
Sworn October 25, 2021**

I, Robert Fung, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the Chairman and CEO of Crystallex International Corporation ("**Crystallex**" or the "**Company**"). I have also been a director of Crystallex since 1996, Chairman of the Board of Directors of Crystallex since 1998 and CEO since June 2008. As such, I have knowledge of the matters to which I hereinafter depose, which knowledge is either personal to me, obtained from a review of the documents to which I refer, or, where indicated, based on information and belief, in which case I verily believe such information to be true.

- 2 -

2. In order to provide context for my evidence in this Affidavit, I am providing more information here concerning my background and experience than I have previously done, as well as further details regarding the manner in which Crystallex obtains information concerning the situation in Venezuela.

3. Before my tenure at Crystallex I had a long career in the Canadian capital markets sector. I began my career in the investment industry in 1964 with Wood Gundy, and served as Vice-President and a Director of Dominion Securities Limited from 1967 to 1978, with responsibilities for its investment activities in Asia and the Middle East. I was Vice-Chairman and a senior partner of Gordon Capital Corporation from 1980 to 1998, and a senior partner at Capital West from 1998 to 2001. I also served as a member of the Advisory Board of Macquarie Capital Markets Canada Ltd. and Deputy Chair of Orion Securities. I previously served as Chair of the Globe Foundation of Canada and Deputy Chair of Sunwah International Kingsway Canada Corporation.

4. I have also served in a number of roles in relation to government. I was a member of the Prime Minister of Canada's Advisory Committee on Asia Pacific Economic Cooperation, as well as a member of the Government of Canada's Department of Industry International Trade and Agriculture Team Canada Inc. Advisory Board. I served as Director of Canada's Export Development Bank for three terms, and also served for a decade as Director and Deputy Chair of a think tank in relation to Canada's relations with Asia.

5. Because of my work history, I have – and maintain – personal connections to the highest levels of government in Canada, the United States and China. I have

- 3 -

relationships with three of Canada's former Prime Ministers and multiple Ambassadors to Canada.

6. I also have a long personal history with Venezuela. I was born in Trinidad, and have been travelling to Venezuela for as long as I can remember – I began taking trips there when I was approximately 6 years old. I have many family members and friends both in Venezuela and connected to Venezuela. I travelled there in connection with my work for Crystallex at least 4 to 5 times per year from 1999 until approximately 2016. I also have deep political connections in Venezuela. I met former President Hugo Chavez on multiple occasions (both in Canada and in Venezuela), met with several of his Ministers, and knew all of Canada's Ambassadors to Venezuela well. Over the years I have also met and had serious, in-depth conversations with several members of the Venezuelan Opposition leadership on behalf of Crystallex.

7. Because of the importance of the political climate in Canada, the U.S. and Venezuela to the Company's enforcement efforts, Crystallex makes significant efforts to stay abreast of relevant developments both in Venezuela and abroad. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] Our enforcement and sanctions advisors at Gibson Dunn include Robert Weigel, the co-head of the firm's Judgment and Arbitral Award Enforcement Practice Group, who was ranked by Chambers Litigation Support 2021 in Global-wide Asset Tracing and Recovery; and Adam Smith, who served in the Obama Administration as the Senior Advisor to the Director of the U.S. Department of Treasury's Office of Foreign Assets Control ("**OFAC**") (the branch

- 4 -

of the government that administers and enforces sanctions) from 2010-2015. Law360 recently awarded the Gibson Dunn international arbitration team the "International Arbitration Group of the Year" and Legal500 ranks Gibson's international arbitration group as one of the best in Latin America. We also have excellent contacts with respect to the on-the-ground situation in Venezuela.

8. As a result of the multiple sources from which I draw information about Venezuela and about Crystallex's enforcement efforts on a day-to-day basis, I cannot always identify with specificity the source of any given piece of information that I have with respect to the relevant political situation. However, my job for the last 10 years has been to understand the state of play in Venezuela in order to maximize the value of the Award (as defined below). To the extent that I have included information in this Affidavit, I verily believe it to be true, and have made best efforts either to identify the source of the information or to corroborate it using publicly available sources. Those publicly available sources, however, are not (and should not be taken as) my only sources of such information. Nothing in my Affidavit is intended to waive the Company's privilege.

9. I swear this Affidavit in support of the various motions by the Company that are currently scheduled to be heard by the CCAA Court on November 18, 2021, and for no other purpose.

EXECUTIVE SUMMARY¹

10. In an effort to simplify the review of the evidence filed on the various motions for this Court, I have endeavoured to include in a single Affidavit all evidence relevant to the Company's various motions that are scheduled to be heard on November 18, 2021, as the scope of those motions has been narrowed by recent events. I understand from my counsel Natalie Renner at Davies Ward Phillips & Vineberg LLP and believe that most of the issues that were initially in dispute between the parties in respect of disclosure and sealing have now been fully resolved. My understanding is that the matters that remain to be dealt with at the November 18 hearing are as follows:

- (a) an extension of the Stay Period for 12 months;
- (b) approval of the 16th DIP Credit Agreement Amendment, to the extent that an extension is granted by the DIP Lender (which is the subject of ongoing negotiation, and would among other things extend the maturity date of the DIP);
- (c) sealing for a limited period of time of the Company's actual receipts and disbursements, which would be publicly disclosed on a six-month rolling basis;
- (d) sealing of the Company's strategic information (which the Company believes is unopposed);

¹ Capitalized terms used in this overview and not otherwise defined have the meaning ascribed to them below in this Affidavit.

- 6 -

- (e) [REDACTED]
[REDACTED]; and
- (f) whether the Contingent Value Rights (“**CVR**”) retention amounts payable to Crystallex management personnel – and approved and sealed by the Court – should now be unsealed. This issue was raised in the Cross-Motion brought by the ad hoc committee of the holders of the Company's 9.37% Unsecured Notes (the “**Ad Hoc Committee**”).

11. Through the proposed mechanics of rolling public disclosure, the Company is attempting to balance the demands of its unsecured noteholders for unfettered public access to information against the significant and immediate risks that public disclosure presents to its litigation and enforcement strategy against Venezuela. In addition, Crystallex is proposing a 12-month extension of the Stay Period on the basis that there is limited CCAA relief that is necessary at this juncture in the proceeding (and for the foreseeable future) while critical enforcement steps remain to be completed in the United States. Stay extension hearings in this proceeding have unfortunately become an opportunity for stakeholders to threaten collateral litigation and cause the Company to incur significant costs.

A. Background

12. On December 23, 2011, an order (the “**Initial Order**”) was made granting Crystallex protection from its creditors under the *Companies' Creditors Arrangement Act* (the “**CCAA Proceeding**”) and appointing Ernst & Young Inc. as the monitor (the “**Monitor**”). Crystallex subsequently obtained an order of the United States Bankruptcy

- 7 -

Court (the “**US Bankruptcy Court**”) for the District of Delaware on December 28, 2011, recognizing this CCAA Proceeding as a foreign main proceeding.

13. Crystallex’s only assets are an award of USD \$1.202 billion, plus interest, rendered by the World Bank’s International Centre for the Settlement of Investment Disputes against the government of Venezuela (the “**Award**”) and the related proceeds of recovery on the Award received to date. The Award was rendered on April 4, 2016 in respect of Venezuela’s expropriation from Crystallex of its rights in respect of the Las Cristinas gold mine.

14. In the more than five years since the Award was granted, Crystallex has been engaged in complex legal and international political proceedings aimed at enforcing or otherwise realizing the value of the Award, in the face of opposition from large, well-funded adversaries (competing creditors of Venezuela), two competing government regimes in Venezuela (being the Nicolás Maduro-led government and the opposition government led by Juan Guaidó), as well as obstacles to enforcement created by the U.S. government. The Company’s success in enforcing the Award is the single most important issue in this CCAA Proceeding; Crystallex’s success on this front will dictate its ability to provide any meaningful recovery to its stakeholders.

15. Crystallex has made significant progress in its enforcement efforts to date – it is currently first in line for recovery relative to Venezuela’s other creditors. A critical component of Crystallex’s enforcement strategy and a key to its success has been the Company’s [REDACTED]

[REDACTED]

- 8 -

Accordingly, the Company has sought orders of this Court on 14 prior occasions to seal certain of its information. Most recently, the Company had brought the June 23 Sealing Motion (defined below) to maintain the sealing of certain financial information filed in connection with two stay extension motions and orders made on November 3, 2020 and May 4, 2021.

16. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This strategy has never been directed at Crystallex's stakeholders. This is precisely why Crystallex has offered to provide all of its information to any of its stakeholders and their advisors, on a confidential basis, so as to not undermine its enforcement strategy or provide Venezuela with information that (as described below) it has been actively seeking. This is also why, when information is made public in the U.S. enforcement proceedings, such information becomes available to its stakeholders in this CCAA proceeding and continued redaction is no longer necessary.

17. Crystallex has three possible avenues of recovery for its stakeholders: (i) settlement with Venezuela, (ii) monetization of the Initial Payment Securities (as defined below), and (iii) enforcement of the Writ (as defined below). For the reasons that are explained more fully below, the Writ currently represents the best (and perhaps the only realistic) prospect for recovery to stakeholders. The PDVH Shares underpinning the Writ represent an indirect 100% ownership interest in CITGO – a major U.S. oil company valued at over US\$7 billion and Venezuela's largest overseas asset.

18. In order for Crystallex to realize on the PDVH Shares through the Writ, there are two prerequisites [REDACTED]

[REDACTED] If Crystallex ultimately fails on either of these fronts, I believe that there will be no recoveries for its stakeholders.

B. Recent Developments

19. Since September 3, 2021, there have been two significant developments in the U.S. enforcement litigation which have altered the enforcement and information disclosure landscape in this proceeding and resolved many of the issues that were originally in play on the June 23 Sealing Motion and the Cross Motion:

- (a) an order of Judge Stark in the Delaware Court on September 8, 2021 that led to the disclosure of certain details of the payments that Crystallex has received from Venezuela to date on account of the Judgment; and
- (b) the denial by OFAC on September 10, 2021 of the license that Crystallex had applied for in order to enforce on the Writ and sell the PDVH Shares (although the letter from OFAC invited Crystallex to reapply for an OFAC license in January 2022).

20. I explain both of these developments in greater detail below.

C. Limited Sealing Relief Sought in Light of Recent Developments

(i) June 23 Sealing Motion

21. In light of these developments and the passage of time, the only information at issue in the Company's motion originally scheduled to be heard on June 23, 2021 (the "**June 23 Sealing Motion**") that the Company still seeks to seal is:

- 10 -

- (a) a single explanatory note in the cash flow statements [REDACTED], along with related text in the body of the Monitor's Reports (the continued sealing of which Crystallex believes is not controversial);
- (b) certain strategic information regarding Crystallex's enforcement efforts (the continued sealing of which Crystallex believes is not controversial); and
- (c) the Company's cash flow forecast for the period of April 2021 to November 2021 found at Confidential Appendix C to the Monitor's 36th Report (which, based on Crystallex's go-forward intentions concerning disclosure, will be disclosed publicly at the end of May 2022 in the manner outlined later on in this affidavit).

(ii) November Stay Extension

22. The materials filed in connection with this motion (the "**November Stay Extension Motion**") also contain information that Crystallex seeks to seal, including:

- (a) descriptions of the Company's monetization and enforcement strategy, including views and predictions by Crystallex about positions taken by Venezuela, competing creditors and the U.S. government (the sealing of which Crystallex believes is not controversial, since similar information has been sealed on prior occasions); and

² This footnote is found in appendices B and C of both the 35th Report of the Monitor and the 36th Report of the Monitor.

- 11 -

- (b) a statement of actual cash flows compared to forecasted amounts for the expected period of April 2021 to September 2021, which Crystallex seeks to maintain under seal for a period of six months from the end of the period covered by the relevant statement; and
- (c) a cash flow forecast for the period December 2021 to November 2022 which Crystallex seeks to maintain under seal, although portions of it will become public over time via the disclosure contemplated by the Monitor's six month reporting mechanic discussed below.

(iii) Motion Materials

23. Finally, the Company has filed evidence (including Affidavits and transcripts of cross-examinations) and submissions in respect of the June 23 Sealing Motion, the Ad Hoc Committee's Cross-Motion and this November Stay Extension Motion that are also subject to a request for sealing, on the basis that they similarly reveal the Company's confidential strategic and financial information, and provide a road map for how certain disclosures could be used by Venezuela and competing creditors to harm Crystallex.

(iv) Summary of Reasons for Sealing and 12-Month Stay Extension

24. The financial information that Crystallex seeks to seal [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 12 -

25. I am also concerned that if the strategic information is disclosed, and if the financial information is disclosed now, [REDACTED]

[REDACTED]

[REDACTED]

26. My understanding is that the Ad Hoc Committee opposes the sealing of the financial information but does not currently oppose the sealing of the strategic information. My understanding is that the Ad Hoc Committee also opposes the Company's request to extend the Stay Period for 12 months.

27. The Company's main activities at this time are all centered in the U.S. and with the exception of regular stay extension motions, there is no substantive relief necessary right now in the CCAA Proceeding. There are also no proceeds to distribute to creditors at this time. In circumstances where:

- (a) the Ad Hoc Committee has full access to information filed in the U.S. proceedings;
- (b) the Ad Hoc Committee has access to a substantial amount of the Company's current and historical financial information;
- (c) the Company still intends to report its financial information every six months (subject to (d));
- (d) the actual cash flow for the past six months compared to forecasted amounts will be made public six months after the end date of the relevant six-month cash flow period; and

- 13 -

- (e) Crystallex has offered (and remains prepared) to share *all* of its financial information *at any time* with any stakeholder (including the Ad Hoc Committee) on a confidential basis so as to prevent it falling into the hands of Venezuela or other competing parties that could use it to harm Crystallex,

I do not know what prejudice the Ad Hoc Committee could possibly suffer at this time from a 12-month extension of the Stay Period.

28. The Company's only object in sealing the financial and strategic information at issue is to protect its enforcement efforts and to succeed against Venezuela for the benefit of all of its stakeholders – including the members of the Ad Hoc Committee. [REDACTED]

29. The paragraphs that follow this Overview are divided into two parts:

- (a) the first part of this Affidavit will provide an update on the Company's ongoing enforcement efforts with respect to the Award and this CCAA Proceeding and provide critical background information to support the Company's request for an extension of the Stay Period and the sealing order, and
- (b) the second part of this Affidavit will address the relief sought and the basis for such relief.

PART I ~ UPDATE

A. Update on Settlement and Enforcement Efforts with respect to the Award

30. As described in previous Affidavits filed in this CCAA Proceeding and in the reports of the Monitor, Crystallex, in consultation with the Monitor, developed and implemented a dual-track strategy for a negotiated resolution with Venezuela and enforcement of the Award. These efforts continue for the benefit of the Company's stakeholders and are set out in detail below.

(i) Settlement with Venezuela

31. As described in my previous Affidavits filed in this CCAA Proceeding, in November 2017, Crystallex concluded a settlement agreement with Venezuela (the "**Settlement Agreement**") to resolve all of the outstanding issues between the parties, which was approved by Order of this Court on November 24, 2017. While Crystallex received certain payments under the Settlement Agreement, the terms of that agreement were not fulfilled by Venezuela.

32. As a result of Crystallex's success in enforcement initiatives, which included the Writ described below, the Company and Venezuela engaged in further efforts to negotiate an amendment to the Settlement Agreement. As a result of these efforts, the parties reached an Amended and Restated Settlement Agreement dated September 10, 2018 (the "**Amended Settlement Agreement**"), which was approved by this Court on September 17, 2018.

33. Pursuant to the Amended Settlement Agreement, Venezuela agreed to make an initial payment in securities or cash with a combined market value equal to US\$425,000,000 (the "**Initial Payment**"). The Initial Payment was received in securities

- 15 -

(the “**Initial Payment Securities**”) and cash. As will be discussed below, the Initial Payment Securities do not represent a good prospect of recovery for the Company’s stakeholders at this time because, in light of OFAC’s position, current Sanctions (as defined below) affect the ability of Crystallex to providently monetize the Initial Payment Securities. Also, the current economic and political situation in Venezuela, which is described in greater detail below, makes it difficult for Crystallex to pursue a negotiated settlement with Venezuela. Accordingly, although Crystallex is continuing to pursue the possibility of a negotiated resolution with Venezuela, the Company’s primary focus is maximizing stakeholder recovery through its enforcement efforts.

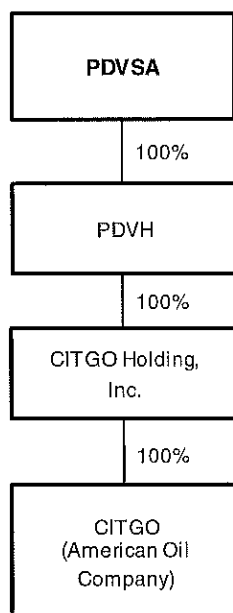
(ii) Enforcement of the Award

34. On March 25, 2017, the United States Federal Court for the District of Columbia confirmed the Award and entered judgment in Crystallex’s favour in the amount of approximately US\$1.4 billion (the “**Judgment**”), which became final and binding in the United States in 2019.

35. As part of its enforcement efforts, Crystallex registered the Judgment in the United States District Court for the District of Delaware (the “**Delaware Court**”) and thereafter obtained orders (collectively, the “**Writ Order**”) declaring that Petroleos de Venezuela, S.A. (“**PDVSA**”), Venezuela’s national oil company, was the alter ego of Venezuela. The Writ Order authorized the attachment (the “**Writ**”) of PDVSA’s shares in its U.S. subsidiary PDV Holding, Inc. (“**PDVH**” and the “**PDVH Shares**”). As shown in the organizational chart below, if the Company successfully realizes on the PDVH Shares, the acquirer of the shares will effectively gain control of CITGO Petroleum Corp. (“**CITGO**”). CITGO is an

- 16 -

American oil company and Venezuela's largest overseas asset, valued at billions of dollars.



36. In July 2019, the United States Court of Appeals for the Third Circuit affirmed the Writ Order finding that PDVSA was an alter ego of Venezuela and authorizing the Writ (the “**Third Circuit Decision**”), which was upheld on appeal making the Writ Order final.

37. In September 2020, the Delaware Court held a hearing to address the sales process for the PDVH Shares (the “**Sales Process**”). On January 14, 2021, Judge Stark of the Delaware Court issued an opinion and corresponding order in establishing some of the procedures that would be followed in conducting a sale of the PDVH Shares (collectively, the “**Delaware Sales Procedures Order**”). The Delaware Sales Procedures Order is attached as **Exhibit “A”** to my Affidavit.

38. The Delaware Sales Procedures Order set the general parameters for the Sales Process, which are more particularly set out therein and in the Thirty-Sixth Report of the

- 17 -

Monitor. The parties were also required to identify a special master to oversee the Sales Process, which ultimately resulted in the appointment of Robert B. Pincus (the "**Special Master**") by the Delaware Court on April 14, 2021. On May 27, 2021, Judge Stark made an order (the "**Special Master Appointment Order**") outlining the Special Master's duties, including the requirement to oversee the execution of a protective order to ensure confidential information exchanged during the Special Master's tenure is properly protected from disclosure and to ascertain the total amount outstanding in respect of the Judgment. The Special Master Appointment Order is attached to my Affidavit as **Exhibit "B"**.

39. On July 6, 2021, Judge Stark issued a Special Master Confidentiality Order in connection with the Sales Process that permitted Crystallex to designate to the Special Master its most sensitive financial information as "highly confidential". The Special Master Confidentiality Order is attached as **Exhibit "C"** to my Affidavit.

40. On August 9, 2021, the Special Master submitted a proposed order regarding, among other things, the Sales Process (the "**Proposed Sales Process Order**"), and a report regarding the Proposed Sales Process Order (the "**Special Master's Report**"). As will be discussed in greater detail in Part II of this Affidavit below, Crystallex sought to redact just two paragraphs of the Special Master's Report (which disclosed details of recoveries that Crystallex has obtained from Venezuela to date), while the Venezuela parties sought significant redactions to both documents, including of information that would disclose even the existence of the Sales Process.

- 18 -

41. On September 8, 2021, Judge Stark issued a memorandum order, a copy of which is attached as **Exhibit “D”** to my Affidavit, denying the sealing requests of both the Venezuela parties and Crystallex (the **“US Disclosure Order”**). Following the issuance of the US Disclosure Order, the Proposed Sales Process Order and the Special Master’s Report (and with it, the details of recoveries that the Company has received from Venezuela to date) were made public on September 15, 2021. The Proposed Sales Process Order and the Special Master’s Report are attached to my Affidavit as **Exhibit “E”**. The implications of the US Disclosure Order on the June 23 Sealing Motion and the current motions before this Court are discussed in Part II below.

42. A further hearing in respect of the Sales Process is scheduled before the Delaware Court on November 8, 2021 to consider the recommendations in the Special Master’s Report, including whether the Sales Process should proceed and the timing of that process. The recent denial of the Company’s OFAC license may bear on the outcome of this hearing.

B. Recent Events Relevant to the Company and the Award

43. Although the Judgment and Writ Order are now final and the Delaware Court is proceeding with the Sale Process for the PDVH Shares (the **“CITGO Litigation”**), there continue to be a number of factors that create significant uncertainty and may impact the ability of Crystallex to monetize the Award. These include:

- (i) Competing government regimes in Venezuela;
- (ii) U.S. policy with respect to Venezuela;
- (iii) the PDVSA 2020 bonds; and

- (iv) Venezuela's continuing financial and humanitarian crisis.

These are discussed in detail in the following paragraphs.

(i) The Competing Government Regimes in Venezuela

44. There continues to be a question of who constitutes the legitimate government of Venezuela and who may act on behalf of that country with respect to any discussions with Crystallex: President Nicolas Maduro or Juan Guaido (the "**Guaido Government**"). In January 2019, Juan Guaido, who was then the President of Venezuelan National Assembly, declared himself as the Interim President of Venezuela until free and fair elections could be held.

45. Venezuelan National Assembly elections were held on December 6, 2020 and while Juan Guaido and other opposition parties denounced the election as illegitimate, Maduro was the ultimate victor with 90% of seats now controlled by Maduro allies. At that time, the parliamentary majority that was the basis for Guaido's claim to power as President of the National Assembly and, by extension³ his formal tenure as Interim President of Venezuela, expired. However, the members of the National Assembly that were in place before the 2020 elections enacted a law extending their own mandate until January 2022, with the result that there are now two National Assemblies in Venezuela: the National Assembly that was [REDACTED] elected in the 2020 elections, and the self-appointed National Assembly that recognizes Juan Guaido as the Interim President (whose mandate, as noted above, expires in January 2022).

³ Guaido declared himself as Interim President on the basis that he was the highest elected ranking official in Venezuela at the time (by virtue of being President of the National Assembly).

- 20 -

46. The shift away from legislative authority for the Guaidó-led opposition marks a consolidation of power for Maduro domestically and leaves open the question of what, if any, authority Juan Guaidó has to make decisions on behalf of Venezuela. This continues to leave open the question of which regime ultimately has the power to engage with Crystallex. International and domestic support for Juan Guaidó has declined, and though the United States and Canada still consider Venezuela's legitimate head of state to be Juan Guaidó, it is not clear what will occur after the extended mandate of the Juan Guaidó-led National Assembly expires in January 2022.

47. In recent months, the Guaidó and Maduro regimes have engaged in negotiations to respond to the economic and humanitarian crisis in Venezuela, and have agreed to participate in regional and municipal elections in November 2021.⁴ The parties have engaged in discussions about the timing and details of establishing free and fair elections. Attached as **Exhibit "F"** to my Affidavit is an article from Bloomberg dated September 2, 2021 describing the background of the two-government system in Venezuela and the move towards a negotiated resolution between Maduro and Guaidó. The information in this article is broadly consistent with the information I have received from multiple sources, including Gibson Dunn, our contacts in the U.S. government and our Venezuelan advisors.

48. However, on October 16, 2021, Maduro withdrew from those discussions after Colombian businessman Alex Saab, a Venezuelan envoy, was extradited to the United States on corruption charges. It is not known when or if discussions might resume.

⁴ Notably, in those discussions Guaidó has not referred to himself as the Interim President, but rather as member of the Unitary Platform.

Attached to my Affidavit as **Exhibits "G"** and **"H"** are articles from Bloomberg and the Globe and Mail describing the current situation. Within hours of Saab's extradition, six former executives of CITGO (five of whom are U.S. citizens) who had been under house arrest in Venezuela were taken into custody by Venezuelan security forces in what has widely seen as a retaliatory measure by Maduro.

49. [REDACTED]
[REDACTED] One of the cornerstones of the strategy of the Guaido Government that the Company has seen play out over the last two and a half years is to preserve CITGO by preventing Crystallex's realization of value from the PDVH Shares. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

50. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(ii) **U.S. Foreign Policy Towards Venezuela**

51. As early as 2015 under the Obama administration, U.S. foreign policy towards Venezuela has been influenced by the position that Maduro's government poses a threat to U.S. national security.⁵ U.S. foreign policy under the Trump Administration emphasized diplomatic efforts to bolster Guaido and isolate Maduro through broad Sanctions (as defined below) on the economy and government designed to cut off Maduro's sources of revenue and protect CITGO. In furtherance of its foreign policy objectives and national security interests, the United States under the Trump Administration aided in the protection of CITGO in a number of ways, including by participating in CITGO Litigation and by enhancing the Sanctions.

52. On July 16, 2020, the Department of Justice, on behalf of the the U.S. government under the Trump Administration, filed a statement of interest (the "**Statement of Interest**") in the CITGO Litigation urging the Delaware Court not to authorize the sale of the PDVH Shares. Attached to the Statement of Interest as Exhibit 1 is a letter from Elliott Abrams, which is attached as **Exhibit "I"** to my Affidavit, former U.S. Special Representative for Iran and Venezuela, dated July 16, 2020. In that letter, Mr. Abrams articulated foreign policy and national security risks of allowing the sale to proceed:

[...] the Maduro regime has built a close relationship with foreign adversaries of the United States and which but for the regime's existence would have little foothold in South America, Russia, China and most recently Iran. That these relationships include military and intelligence aspects makes them even more worrying for U.S. national security. [...] Critical to U.S. foreign policy, the United States assesses that **the**

⁵ In March 2015, former President Obama signed an executive order declaring a "national emergency with respect to the unusual and extraordinary threat to the national security and foreign policy of the United States posed by the situation in Venezuela". The White House Office of the Press Secretary Fact Sheet issued in connection with this executive order is attached as **Exhibit "J"** to my Affidavit.

- 23 -

domestic legitimacy of the interim government under Guaido would be severely eroded were a forced sale of CITGO to take place while the illegitimate Maduro regime still attempts to cling to de facto power in Caracas. [emphasis added]

53. The Biden administration has continued to aid in the protection of CITGO in support of the United States' foreign policy objectives and national security interests. Attached as **Exhibit "K"** is a declaration of Carlos Vecchio, who is Guaido's representative in Washington and who describes himself as an ambassador to the United States for Venezuela, filed in the CITGO Litigation in support of Venezuela's motion to keep certain aspects of the Special Masters Report under seal. In the declaration, Mr. Vecchio reiterates a statement made by the United States State Department: "[T]he United States assess that **the domestic legitimacy of the interim government under Guaido would be severely eroded were a forced sale of CITGO take place** while the illegitimate Maduro regime still attempts to cling to de facto power in Caracas". [emphasis added]

54. [REDACTED]

Sanctions

55. The United States has increasingly employed sanctions (as expanded or modified from time to time, the "**Sanctions**") as a policy tool in response to activities of the Maduro-led Venezuelan government. Beginning in January 2019, OFAC under the Trump administration significantly expanded the existing Sanctions on Venezuela through

- 24 -

executive orders⁶ that established financial sanctions directly on the Maduro government (including PDVSA) and prohibited all unlicensed transactions with the Maduro government.

56. Although President Biden has eased some⁷ of the Sanctions, the overwhelming majority of the Sanctions imposed against Venezuela by his predecessors remain in place, including the Sanctions that OFAC asserts prevent Crystallex from realizing on Venezuelan assets. The Biden administration has advocated a negotiated solution between the Maduro- and Guaido-led governments and has indicated that it may ease Sanctions if meaningful progress is made. A more complete discussion of President Biden's foreign policy position and his approach to the Sanctions can be found in **Exhibit "F"**.

57. OFAC has taken the position that the Sanctions prohibit the Company from monetizing the Initial Payment Securities or executing on the PDVH Shares subject to the Writ without first obtaining a license from OFAC. As long as the Sanctions remain in place, the grant of an OFAC license to Crystallex is a critical hurdle on the Company's path to realizing value from the PDVH Shares.

⁶ Notably, on August 15, 2019, President Trump issued an executive order entitled "Blocking Property of the Government of Venezuela", which reaches all property and interests in property of the Government of Venezuela that are subject to the jurisdiction of the United States and further regulates the conduct of any U.S. person with respect to Venezuela's property outside the United States. "U.S. person" is broadly defined, and includes "any person in the United States" – this includes Crystallex as a Chapter 15 debtor, and any person who so much as has a bank account in the United States.

⁷ In July 2021, President Biden allowed companies to export propane to Venezuela due to the humanitarian crisis, which was previously prohibited by the Sanctions.

The OFAC License Denial

58. Crystallex submitted its application for a specific license authorizing the sale of the PDVH Shares on April 9, 2020.

59. OFAC provides scant public information about the approval process for licenses but has indicated that the licensing process is a policy-driven, rather than legal, process. Attached to my Affidavit as **Exhibit "L"** is a copy of the OFAC frequently asked questions and answers FAQ 78 wherein OFAC broadly states that many of its licensing determinations are "guided by U.S. foreign policy and national security concerns".

60. On September 10, 2021 – the day that submissions of the parties were due to the Delaware Court in connection with the Sales Process (and a week after Crystallex served its factum in respect of the June 23 Sealing Motion) – OFAC sent a letter to Crystallex in which it denied the Company a license to sell the PDVH Shares. OFAC stated in the letter that the denial was without prejudice to Crystallex's ability to reapply for such a license in future, and suggested that early 2022 may be an appropriate time for Crystallex to renew its application. Attached as **Exhibit "M"** to my Affidavit is OFAC's license denial letter.

61. Ordinarily, an OFAC license denial would have had grave consequences for Crystallex and its stakeholders.⁸ [REDACTED]

[REDACTED]

[REDACTED]

⁸ As described later in this Affidavit, the DIP Lender has advised that the OFAC license denial constitutes an Event of Default under the DIP Credit Agreement.

- 26 -

[REDACTED] As previously disclosed to this Court in my Affidavit sworn May 21, 2021, OFAC license determinations are considered final agency actions, meaning that OFAC has no formal agency process for appealing the denial of the license. Attached as **Exhibit "N"** to my Affidavit is FAQ 76 wherein OFAC states that it will reconsider its licensing decisions only "for good cause", defined as situations "where the applicant can demonstrate changed circumstances or submit additional relevant information not previously made available to OFAC". [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

62. [REDACTED]

[REDACTED] OFAC

stated in its September 10, 2021 letter:

Negotiations between the unified democratic opposition led by Interim President Guaidó and the Maduro regime regarding the future of Venezuela are currently ongoing, and the National Assembly's mandate ends in January 2022. The United States will reassess whether the sale of the PDVH shares is consistent with United States foreign policy, as the situation in Venezuela evolves. The United States anticipates doing so during the first half of 2022 as warranted by changed circumstances.

63. As described above, the expiration of the Guaido Government's expanded National Assembly mandate in January 2022 – and the termination of Guaido's authority as interim President – is a certainty. Changed circumstances are thus inevitable.

64. [REDACTED]

[REDACTED]

- 27 -

[REDACTED]

65. Crystallex plans to reapply for an OFAC license and has urged the Delaware Court to continue to advance the Sales Process to the fullest extent possible, so that the sale of the PDVH Shares may proceed quickly if the Company is ultimately successful in obtaining an OFAC License. As described above, there is a hearing in the CITGO Litigation scheduled for November 8 to determine whether the Sales Process will proceed at this time.

66. In the near future however, the license denial prevents Crystallex from realizing on the PDVH Shares and in light of OFAC's position, the Sanctions continue to impede the Company's ability to providently monetize the Initial Payment Securities.

(iii) The PDVSA 2020 Bonds

67. As described above, PDVSA, through PDVH and CITGO Holding, owns CITGO, the American oil company. PDVSA pledged a 50.1% interest in its CITGO Holding shares to secure their bonds due in 2020 (the "**2020 Bonds**"). The 2020 Bonds are in default owing to the failure by PDVSA to make a US\$913 million payment that was due on October 28, 2019, placing the holders of the 2020 Bonds (the "**2020 Bondholders**") in

- 28 -

competition with Crystallex for CITGO. As of December 2020, the total principal and interest owing on the 2020 Bonds was approximately US\$1.9 billion.

68. The 2020 Bondholders, unlike Crystallex, have the benefit of an OFAC license (General License 5) entitling them to sell the shares of CITGO ahead of Crystallex's interest in the PDVH Shares. General License 5 was superseded most recently on July 20, 2021 by General License 5H, which prevents the holders of the 2020 Bonds from engaging in any transactions relating to the sale or transfer of the CITGO shares until January 21, 2022 (which, as noted above, coincides with expiration of the expanded mandate of the Guaido National Assembly and the timeframe in which Crystallex was invited to reapply for its OFAC license).

69. The Company cannot predict whether the 2020 Bondholders will be precluded, beyond January 2022, from realizing on the shares of CITGO, but decisions by the U.S. government regarding the Sanctions that apply to the 2020 Bonds are among many factors that could impact the Company's efforts to execute on the Writ.

(iv) Venezuela's Financial and Humanitarian Crisis

70. In considering the developments described above, it is important to recall that Venezuela is facing a major financial and humanitarian crisis, which is further complicated because of the significant ongoing leadership conflict between Maduro and Guaido. This emergency has become much more intense because the coronavirus pandemic reduced global economic activity and resulted in collapsing oil prices, which had grave consequences for Venezuela as a country that relies heavily on oil. Now that oil prices are recovering, Venezuela has found itself unable to capitalize on the recovery as: (i)

- 29 -

Sanctions have limited the market for its oil; and (ii) its production is a fraction of its capability, owing to the poor condition of state-owned oil infrastructure.

71. The humanitarian and economic crises in Venezuela complicate the Company's recovery efforts for a number of reasons. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

C. Next Steps

(i) Enforcement Efforts

72. Currently, Crystallex has three possible avenues of recovery for its stakeholders (i) settlement with Venezuela, (ii) monetization of the Initial Payment Securities, and (iii) enforcement on the Writ.

73. As discussed above, Crystallex continues to explore the possibility of a negotiated settlement to recover on the Award, but the competing government regimes and humanitarian and economic crisis in Venezuela make a settlement difficult and improbable at this time. OFAC's position is that the Initial Payment Securities cannot be monetized at this time due to the Sanctions and as a result, they are highly illiquid with an unknown market value.

74. The Writ therefore currently represents the best prospect for recovery to Crystallex's stakeholders; the PDVH Shares underpinning the Writ represent an indirect ownership interest in CITGO, Venezuela's largest overseas asset. Crystallex remains

- 30 -

focused on protecting the Company's interest in the Writ through the CITGO Litigation and addressing any adverse impacts of the Sanctions on the Company's ability to enforce and monetize the Award. As discussed below however, Crystallex is concerned that the publication at this time of its enforcement and monetization strategy and its current actual and projected cash flows [REDACTED]

[REDACTED]

[REDACTED]

(ii) Taxes

75. The Company's debtor-in-possession credit agreement (the "**DIP Credit Agreement**") contains several key provisions that relate to procedures for Crystallex's tax determination, reporting and filing obligations as well as the priority and timing of any payments to Canada Revenue Agency ("**CRA**"). As described in my prior affidavits sworn in this CCAA Proceeding, under the second step of the Court-approved payment waterfall contained in the DIP Credit Agreement, Crystallex is required "to pay any taxes, payable or required to be withheld by the Borrower or by any government in respect of the settlement, judgment or collection in relation to the Arbitration Proceeding...". As required pursuant to the DIP Credit Agreement, Crystallex engaged leading Canadian accounting and legal tax professionals (the "**Tax Advisors**") to advise Crystallex with respect to (i) the amount of taxes that must be paid or withheld in respect of the Award, prior to the Company making any distributions under the subsequent steps of the waterfall, and (ii) the characterization of the Award by Crystallex in any tax return filed.

76. Based on the detailed advice of its Tax Advisors, and in compliance with the terms of the DIP Credit Agreement, the Company (in consultation with the Monitor, Tenor

- 31 -

Special Situation Fund I, L.P (the “**DIP Lender**”) and the Ad Hoc Committee) filed its tax returns in respect of the fiscal year 2019 on August 7, 2020 (the “**Tax Filing**”).

77. Following the Tax Filing, Crystallex, through its counsel and with the involvement of the Monitor, has started to engage with CRA to address and seek comfort with respect to the tax return filed by Crystallex. The Company continues to update counsel for the DIP Lender and the Ad Hoc Committee on its discussions and progress with CRA.

(iii) Motion Pending before the US Bankruptcy Court

78. On July 26, 2021, Mr. Adolfo Adrianza, one of the Company’s shareholders, filed a motion in the US Bankruptcy Court seeking the appointment of an examiner and independent counsel for the shareholders (the “**Examiner Motion**”), which was heard by the US Bankruptcy Court on August 20, 2021. Attached to my Affidavit as **Exhibit “O”** is the Examiner Motion. On August 13, 2021, Crystallex filed an objection to the Examiner Motion, which is attached to my Affidavit as **Exhibit “P”** without the exhibits attached thereto.

79. At the August 20th hearing, the US Bankruptcy Court directed Crystallex to prepare supplemental briefing regarding the Court’s authority to grant the relief sought in the Examiner Motion and to provide additional information concerning, among other things, the DIP financing and the participation of the Company’s shareholders in the CCAA Proceeding, which was filed by the Company on September 20, 2021. Mr. Adrianza filed reply briefing on October 8, 2021. Attached as **Exhibit “Q”** to my Affidavit is a copy of the Company’s supplemental briefing without the exhibits attached thereto and Mr. Adrianza’s reply briefing. The US Bankruptcy Court did not give any indication of whether

- 32 -

a hearing will be scheduled (if any) or, in the alternative, when it might rule on the Examiner Motion.

(iv) DIP Credit Agreement Maturity and Extension

80. On April 16, 2012, Mr. Justice Newbould made an Order (the “**DIP Order**”) approving a debtor-in-possession loan to the Company (the “**DIP Loan**”) and: (i) a charge on the property of Crystallex to secure all principal and interest obligations under the DIP Credit Agreement and related documents; and (ii) a charge on the property of Crystallex to secure certain CVRs earned by the DIP Lender under the DIP Credit Agreement. The DIP Lender is currently owed in excess of US\$164 million in principal and interest.

81. The DIP Credit Agreement was originally to mature on December 31, 2016, and provides that the DIP Lender may unilaterally extend the Maturity Date (as defined therein) in its sole discretion. The DIP Lender has extended the Maturity Date on a number of occasions (generally consistent with the duration of the extended Stay Period), with the last extension of the Maturity Date set to expire on November 5, 2021.

82. On September 30, 2021, Hon. Sergio Marchi (Crystallex’s Independent Director) requested that the DIP Lender provide Crystallex with a further extension of the Maturity Date. By letter dated October 18, 2021 (a copy of which is attached as **Exhibit “R”** to my Affidavit), the DIP Lender confirmed that it was considering the request and advised the Company that the September 10, 2021 decision by OFAC to deny Crystallex’s application for a license necessary to sell the PDVH Shares had resulted in an Event of Default under section 8.1(y) of the DIP Credit Agreement. Section 8.1(y) of the DIP Credit Agreement provides that it is an event of default upon “any ruling or decision in Canada

- 33 -

or the United States of America by any Governmental Authority, agency or regulatory body which interferes with or negatively affects the Borrower's rights of enforcement and/or collection under or in respect of the Arbitration Entitlement or the Venezuela Settlement". The DIP Lender has not taken or threatened any enforcement steps and the DIP Lender has confirmed its continued support for Crystallex and its efforts to maximize value.

83. The Independent Director and his advisors remain in discussions with the DIP Lender, and the Independent Director has requested a waiver of the default and an extension of the Maturity Date. Crystallex remains hopeful that such an amendment and extension will be reached and approved as part of the relief on the November Stay Extension Motion.

PART II ~ BASIS FOR RELIEF SOUGHT

84. In this motion, Crystallex is requesting two categories of relief: (i) a 12-month extension of the Stay Period and corresponding approval of the 16th DIP Amendment, to the extent that the DIP Lender agrees to the extension, and (ii) a request for a sealing order in respect of certain of its strategic and financial information.

I. REQUEST FOR A 12-MONTH EXTENSION OF THE STAY PERIOD

85. The Initial Order granted a stay of proceedings against Crystallex and its directors and officers during the Stay Period, which was most recently extended on an interim basis by an endorsement of this Court on October 8, 2021 until November 18, 2021.

86. Crystallex seeks an extension of the Stay Period until November 4, 2022 to allow the Company to focus its limited cash and professional resources on its enforcement and negotiation efforts while also dealing with an uncertain and volatile situation in Venezuela and with PDVSA. The Company does not anticipate seeking any substantive relief in the CCAA Proceeding in the near term without further material progress in enforcement in the U.S.

87. In order to ensure that its stakeholders are not prejudiced from an informational perspective due to the longer extension of the Stay Period, Crystallex proposes to have the Monitor continue to report to the Court at six-month intervals (or more frequently to the extent that something material does occur), including with respect to the Company's finances.

88. There are a number of reasons why a 12-month extension Stay Period is appropriate at this time:

- 35 -

- (a) Allow the Company to Focus on Enforcement: All of Crystallex's current recovery efforts are taking place outside of Canada and outside of the CCAA Proceeding, including through the Sales Process and the ongoing CITGO Litigation. The Company has made significant progress to date in monetizing the Award but there are still critical matters that remain unresolved. Given the increasingly [REDACTED] [REDACTED] and other impediments to monetizing the Award, it is critical that the Company be permitted to remain almost entirely focused on its dual-track strategy of enforcement and negotiation for the benefit of all of the Company's stakeholders.
- (b) Nothing Expected to Occur in the U.S. Litigation Until Later in 2022: The Company is still navigating the Sanctions regime and the OFAC reapplication process. The Sales Process is still before the Delaware Court. If the sale of the PDVH Shares is ordered to proceed, Crystallex cannot realize on the PDVH Shares absent a license from OFAC, which it [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] If something material does happen in the U.S. enforcement, the Company will update the Court.
- (c) Ad Hoc Committee Fully Informed of Developments: The Company's U.S. enforcement proceedings are the single most important activity to the

- 36 -

recovery of assets for its stakeholders. To my knowledge, the Ad Hoc Committee and its counsel watch those proceedings closely and are fully abreast of any developments. Notably, members of the Ad Hoc Committee have regularly complimented the members of Crystallex's Board in private on their decision-making and strategic initiatives in Crystallex's enforcement efforts against Venezuela and the success achieved to date. In circumstances where the Company proposes to keep reporting to the Court at six-month intervals (or such shorter interval as a material development may necessitate), its stakeholders will remain appropriately apprised of material developments.

- (d) No Immediate Prospect of Distributions in the CCAA: As described herein, because of the existing Sanctions and positions taken by OFAC, the Company cannot providently monetize Initial Payment Securities or realize on the PDVH Shares at this time. Accordingly, the only relief routinely being sought by Crystallex in the CCAA Proceeding are (i) extensions of the stay of proceedings; (ii) extensions of the DIP Credit Agreement maturity, and (iii) requests to seal confidential information that could imperil its U.S. enforcement strategy. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Crystallex is required to keep the DIP Lender and Ad Hoc Committee apprised of the status of discussions with the CRA. If and when there is a

- 37 -

proposed resolution of the tax issues with the CRA, the Company will bring that resolution for approval before this Court.

- (e) Reduce the Cost of CCAA Stay Period Extensions: Stay extension motions have become a litigation battleground, requiring cross-examinations and factums notwithstanding that the Company remains unable to effect any distributions to stakeholders. These have become a considerable drain on the Company's cash resources, which could be better put to use in enforcement steps. Allowing the Company to move towards 12-month stay extensions will save it considerable time and expense, which benefits all of its stakeholders.

89. The Company will continue to work with the Monitor and its principal stakeholder groups during the Stay Period to continue to respond to information requests or provide updates, as may be appropriate, and to mediate the various issues between the parties in good faith.

90. I believe that Crystallex has acted, and continues to act, in good faith and with due diligence and will continue to do so during the proposed Stay Period extension, if such extension is granted by the Court.

91. In the circumstances, Crystallex requests that the Stay Period be extended to November 4, 2022 and does not believe that any stakeholder would be materially prejudiced if the Stay Period was so extended.

92. The Company's cash flow forecasts in connection with this motion will be filed separately and will be subject to a protective sealing order, if granted. The cash flow

forecasts will show that the Company will have sufficient funds to meet its projected liquidity requirements throughout the requested Stay Period extension. The Company's disbursements during the proposed Stay Period relate almost entirely to professional fees, including for the Company's strategic initiatives related to asset preservation and enforcement and collection strategies in connection with the Award and its monetization and enforcement.

II. REQUEST FOR A SEALING ORDER

93. Crystallex requests that the following materials be filed under a sealing order and not form any part of the public record in this proceeding:

The November Stay Extension Motion

1. Continued sealing of the Company's Statement of actual receipts and disbursements compared to the forecasted amounts for the expected period April 2021 to September 2021 (Appendix to the Monitor's 38th Report), until six months after the end of such period;
2. Sealing of the Cash flow forecast for the period December 2021 to November 2022 (Appendix to the Monitor's 38th Report);
3. [REDACTED] (Explanatory note in Appendix to the Monitor's 38th Report, together with any related reference in the body of the Report) in the Monitor's 38th Report, even when the relevant Appendix is made public; and
4. Sealing the Strategic Information of Crystallex (found in the Affidavits of Robert Fung, Monitor's Reports, Transcripts of Cross-Examination and Facta filed on this motion).

The June 23 Sealing Motion and Cross-Motion

1. Continued sealing of forward-looking cash flow projections for the period from April 2021 to November 2021 (Confidential Appendix C to the 36th Report)
2. [REDACTED] at explanatory note 4 in Confidential Appendix B to the Monitor's 36th Report and explanatory note 3 and 7

- 39 -

in Confidential Appendix B and C, respectively, to the Monitor's 35th Report, along with any related references in the body of each relevant Report; and

3. Sealing the Strategic Information of Crystallex (found in the Affidavits of Robert Fung, Monitor's Reports, Transcripts of Cross-Examination and Facta filed on the June 23 Sealing Motion and Cross-Motion brought by the Ad Hoc Committee).

94. I will explain below the new developments since September 3, 2021 that caused the scope of the June 23 Sealing Motion to be reduced to the foregoing more limited sealing request, as well as why this information is confidential, and the reasons that Crystallex believes that it must remain confidential either indefinitely (with respect to strategic information [REDACTED] or, in respect of the financial information at issue, for a six-month period.

A. The Company's Historical Basis for Sealing in this CCAA Proceeding

95. [REDACTED]

[REDACTED]

96. [REDACTED]

[REDACTED]

[REDACTED] As described above, there are two *competing* government regimes in Venezuela. The Guaido Government does not participate in or have knowledge of actions taken by the Maduro Government and until recently, the Guaido Government (which is the government currently representing Venezuela in the CITGO Litigation) did not know

the details of what Crystallex was paid under the Settlements. For this reason, representatives of Guaido continually sought information [REDACTED]

[REDACTED]

[REDACTED] about the payments and transfers from Venezuela under the Maduro regime, including under the Settlements. By way of example only:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 41 -

97. The Guaido Government has been [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] in Venezuela's answering brief on the Sales Process Motion filed in July 2020 (the "**Sales Process Answering Brief**", a copy of which is attached as **Exhibit "U"** my Affidavit), Venezuela took the following positions concerning the Settlements:

[...] under which Crystallex was paid \$500 million, apparently without releasing its claim. The Court has almost no information about the circumstances of this extraordinarily generous settlement, or about whether Maduro insiders who made the deal are getting a cut.

[...] Crystallex sees a chance for significant upside, in excess of its unpaid judgment, if it can take control of PDVH through these proceedings.

98. The evidence that I filed in connection with the June 23 Sealing Motion articulated in detail the harms that I believed would befall the Company [REDACTED]
[REDACTED] My beliefs in this regard were based on more than a decade of experience in proceedings against Venezuela and the advice of Gibson Dunn, Crystallex's U.S. enforcement counsel. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

B. Recent Events in the U.S. Enforcement Proceedings

99. As I have described throughout this Affidavit, a number of developments have occurred in the U.S. enforcement proceedings that impact in a material way the relief that was sought by Crystallex in its June 23 Sealing Motion and that is now sought in this November Stay Extension Motion. These developments include:

- (a) OFAC's denial of the Company's request for a license that would allow it to realize on the PDVH Shares; and
- (b) The US Disclosure Order made in the Delaware Court that led to the public disclosure of the Proposed Sales Process Order and the Special Master's Report (and with it, the details of recoveries that the Company has received from Venezuela to date).

(i) Denial of the Company's OFAC License

100. As described in Part I, on September 10, 2021, OFAC issued a letter to Gibson Dunn in respect of the application that Crystallex had submitted on April 9, 2020 for a special license to allow it to sell the PDVH Shares. In its letter, OFAC denied Crystallex the requested OFAC license without prejudice to the Company's ability to reapply, which OFAC suggested that the Company may appropriately do in January 2022.

- 43 -

101. As described above and in my previous Affidavits filed with this Court, [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] license determinations are driven by the foreign policy and national security interests of the United States and implicate the importance of supporting the Guaidó Government (and by extension, protecting CITGO).

102. [REDACTED]
[REDACTED] as a result of the events described below, Crystallex has since been required by the Delaware Court to disclose the value of the Initial Payment Securities notwithstanding these concerns.

(ii) The US Disclosure Order

103. As described above in Part I, on August 9, 2021, the Special Master submitted a copy of the Proposed Sales Process Order and the Special Master's Report, portions of which Crystallex and Venezuela sought to keep sealed.

104. Consistent with the Company's U.S. enforcement and litigation strategy, Crystallex sought to redact only two paragraphs in the Special Master's Report (see paras. 49 and 50 of the Special Master's Report found at **Exhibit "E"**) – a chart that discloses the

- 44 -

payments received by Crystallex on account of the Judgment and a statement about the face and market value of the Initial Payment Securities.

105. Conversely, the Venezuela parties sought to maintain *extensive* portions of the Proposed Sales Process Order and Special Master's Report under seal, including the timing and even the existence of the Sales Process. Under Venezuela's proposed redactions to the Proposed Sales Process Order and Special Master's Report (a copy of which is attached as **Exhibit "V"** to my Affidavit), for example, Venezuela would have redacted 180.5 out of 182 pages – effectively everything except the title of proceedings and the title of the Order.

106. Attached to my Affidavit as **Exhibit "W"** is the public version of the letter filed in the Delaware Court on August 20, 2021 by the Venezuela Parties in support of their request to seal portions of the Proposed Order and Special Master's Report ("**Venezuela's Sealing Request**"). In Venezuela's Sealing Request, Venezuela urged that the Delaware Court should adopt its extensive proposed redactions to the Proposed Sales Process Order and Special Master's Report on the basis that the public filings could lead to implications that CITGO – Guaido's main resource to rehabilitate Venezuela post-Maduro – was at risk of being sold to Crystallex through the sale of the PDVH Shares:

As discussed, the public filings would cause "the Venezuelan people to seriously question the interim government's ability to protect the nation's assets" [...] and would further entrench the illegitimate Maduro regime. Such an outcome in direct contravention to American and Venezuelan foreign policy and national security interests, which recognize that as the sale of the PDVH shares, **and the appearance of progress toward a sale**, "would be greatly damaging and perhaps beyond recuperation". [emphasis added]

- 45 -

107. On September 8, 2021, when Judge Stark issued the US Disclosure Order, the two paragraphs that Crystallex sought to seal – including details of the amounts Crystallex received from Venezuela on account of the Judgment, and the issuer, type and face and market value of the Initial Payment Securities, became public. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

108. [REDACTED]

[REDACTED] Although Crystallex has been resisting, for a number of years, the disclosure of this information in both the CITGO Litigation and these CCAA Proceedings, the Company knew that disclosure of this information would be inevitable *at some point* in the future (albeit a point we hoped to delay as long as possible). As I acknowledged in my May 21, 2021 Affidavit:

Eventually, the Company will have to show what was paid under the Settlements but Crystallex intends to resist any such disclosure as long as possible, and ideally until after the sale of the PDVH Shares has occurred. Absent direction from the Delaware Court, Crystallex will not be providing the Financial Information, or any other information that would assist Venezuela in calculating the amounts paid under the Settlements or the balance of the Judgment. If, and when, this information is publicly disclosed in connection with the CITGO Litigation, Crystallex will also make it public in the CCAA Proceeding.

109. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

110. As described above in Part I of this Affidavit, Crystallex's enforcement efforts are complicated by the dual government regimes in Venezuela [REDACTED]

[REDACTED]

111. [REDACTED]

C. Disclosure in these CCAA Proceedings Following the US Disclosure Order

112. Once Crystallex determined that it would not appeal the US Disclosure Order, it promptly turned its mind to the impact of the US Disclosure Order in these CCAA Proceedings. Although the US Disclosure Order did not impact *all* of the relief sought in the June 23 Sealing Motion and the Cross-Motion, the Company took the view that the disclosures that the Company had been required to make to Venezuela by virtue of the US Disclosure Order reduced or eliminated the incremental harm associated with public disclosure of a number of the categories of information that were at issue both in the Cross-Motion and in the June 23 Sealing Motion.

113. Accordingly on September 22, 2021, counsel for Crystallex sent the letter attached as **Exhibit "X"** to my Affidavit where it asked the Monitor to unredact the following information in the public versions of its reports: (i) the Company's *aggregate* statements of actual receipts and disbursements for the periods of April 30, 2020 through September 30, 2020 and October 31, 2020 until March 31, 2021 in Confidential Appendix B to the Monitor's 35th Report and 36th Report, respectively, (ii) the Company's *aggregate* forecasted receipts and disbursements for the period of October 31, 2020 through May 31, 2021 in Appendix C to the Monitor's 35th Report, and (iii) the market value of the Initial Payment Securities referred to in the Monitor's 31st Report.

114. In light of the passage of time, and in consultation with the Monitor, Crystallex has since agreed to produce the *entire* Cash Flow Variance from the Monitor's 35th Report

- 48 -

and the Monitor's 36th Report (in addition to the aggregate actual receipts and disbursements that were disclosed in September), provided however that Crystallex seeks to maintain the sealing of the Cash Flow Forecast from the Monitor's 36th Report until it is publicly disclosed through the Company's reporting in May 2022, and to maintain the sealing of the strategic information [REDACTED]

D. Additional Relevant Context Impacting the Company's Request for Sealing

115. In considering the Company's request for sealing, it is important to understand why Crystallex has taken – and continues to take – a cautious approach in the disclosure of information to the public in this CCAA Proceeding.

116. Venezuela monitors this CCAA Proceeding closely and regularly uses information filed in these proceedings to bolster its case in the CITGO Litigation. For example, to address one aspect of the Cross-Motion, counsel for Crystallex sent a letter dated July 9, 2021 to counsel for the Ad Hoc Committee (a copy of which is attached as **Exhibit "Y"** to my Affidavit) in which Crystallex publicly disclosed the amount of CVR (88.242%)¹⁰ earned by the DIP Lender under the DIP Credit Agreement. Following that letter, on September 20, 2021, the Venezuela parties filed a Response to Objections to the Special Master's Proposed Order the CITGO Litigation (a copy of which is attached as **Exhibit "Z"** to my Affidavit) to which it attached the entirety of Crystallex's public July 9 Reply

¹⁰ The DIP Credit Agreement provides that the DIP Lender has earned 88.242% of any remuneration that the Company receives of any kind or form in respect of the monetization of the Award (including through settlement or collection) after payment of certain prior ranking amounts. The CVR is a risk premium for the DIP Lender financing Crystallex throughout these CCAA Proceedings and recognized that the outcome of the arbitration was uncertain, as was any ability to ultimately collect on the Award.

- 49 -

Motion Record. In taking the position that Crystallex is, in substance, “not a...small Canadian gold miner fighting to recover from a duplicitous, recalcitrant foreign sovereign debtor” but a “hedge fund seeking to turn a claim purchased in the Crystallex bankruptcy...into a massive windfall”,¹¹ Venezuela noted:

“As the Court knows from previous filings, Tenor has long funded Crystallex’s litigation in exchange for a large portion of any recovery Crystallex may receive. **Much of the additional information about Tenor reflected in this brief has recently come to the Venezuela Parties’ attention as the result of a July 2021 filing in the Crystallex bankruptcy**”.¹²
[emphasis added]

117. Even the Company’s stakeholders have, in the past, attempted to circumvent and undermine Crystallex’s enforcement efforts. In 2017, Crystallex learned that a principal of Grey Wolf Loan Participation LLC, which is a current member of the Ad Hoc Committee, had contacted the Government of Venezuela directly in an attempt to circumvent Crystallex and negotiate a deal with respect to the Award.

118. [REDACTED]

[REDACTED]

[REDACTED] On September 23, 2021, three days after the Proposed Sales Process Order and the Special Master’s Report were made publicly available, Carlos Ramirez Lopez wrote a public letter to Juan Guaido and to the Delegate Commission of the National Assembly and their counsel, which is

¹¹ See **Exhibit “Z”**, Venezuela Parties’ Response to Objections to the Special Master’s Proposed Order at p. 2.

¹² See FN 2 of **Exhibit “Z”**, Venezuela Parties’ Response to Objections to the Special Master’s Proposed Order at p. 1.

- 50 -

attached as **Exhibit "AA"** to my Affidavit. In the English translation of the letter, Mr. Lopez states as follows in reference to the face value of the Initial Payment Securities:

The disclosure of the aforementioned secret agreement [the Settlements] provides an extraordinary element to demand not only the nullity of the execution process but also **constitutes a criminal act, a fraud, since Crystallex is pursuing the full payment of a debt that was paid almost in full, since the amount received was \$ 1,347,195,942 million that were delivered in bonds in 2018 but were accounted for as \$ 319,579,394 million in the total debt for the claim, that is, more than BILLION DOLLARS were distributed among them, which is the difference between the face value of those bonds and the value that they gave in the transaction in the file.** Crystallex did not clarify having received that partial payment, it sued as if it had not received anything with which it intends to recover the entire fraudulent ICSID judgment, it is the last straw.

PRISON IS WHAT THEY DESERVE

This revelation from just a few days ago provides us with a powerful instrument to seek the nullity of the process and to take the conspirators to jail because the court has been deceived into using it in a robbery. [emphasis added]

119. [REDACTED]

E. The Company's Current Request for Sealing

120. As noted above, due to recent events in the U.S. enforcement proceedings, Crystallex disclosed a significant portion of the financial information that it had originally sought to seal in the June 23 Sealing Motion (see **Exhibit "X"**). However, some sealing remains appropriate notwithstanding the US Disclosure Order.

- 51 -

(i) **Temporary Sealing of the Company's Current Cash Flows Is Appropriate**

121. Notwithstanding the recent disclosures that the Company agreed to make of its aggregate cash receipts and disbursements, I believe that the disclosure of current cash flow information would cause significant harm if made public at this time, rather than being disclosed on a delayed timetable.

122. As the Company has disclosed in the past, the majority of its monthly expenditures are made in connection with the U.S. enforcement proceedings. [REDACTED]

[REDACTED] This is important background information in understanding the harm associated with public disclosure of both the Company's statements of actual receipts and disbursements compared to forecasted amounts (the "**Cash Flow Variances**") and its forecasts of future cash flows (the "**Cash Flow Forecasts**").

(a) **Cash Flow Forecasts**

123. With respect to the Cash Flow Forecasts, the Company develops these monthly forecasts [REDACTED]

124. There are several reasons why such future-looking litigation spend would harm the Company if disclosed:

(a) First, the amount of the spend itself would disclose [REDACTED]

[REDACTED] Right now, for example, Crystallex's

position is that the Sales Process should continue toward a sale of the PDVH Shares notwithstanding Crystallex's recent receipt of the September 10, 2021 OFAC letter denying its license. [REDACTED]

[REDACTED]

[REDACTED] For obvious reasons, Crystallex does not wish to disclose to its litigation adversaries [REDACTED]

[REDACTED]

(b) Second, disclosure of the Company's projected spend [REDACTED]

[REDACTED]

- 53 -

[REDACTED]

125. However, Crystallex acknowledges that the harm associated with indirect disclosure of its future litigation strategy will abate with the passage of time, [REDACTED] [REDACTED] Accordingly, Crystallex is willing to publicly disclose its Cash Flow Forecasts over time on a six-month delayed basis by way of publicizing six-month Cash Flow Variance statements (*i.e.*, the Cash Flow Forecast for the period from April 2021 to September 2021 would be made public at the same time as the Cash Flow Variance statement for that time period).

(b) Cash Flow Variances

126. Even the Cash Flow Variances, however, which compare the Company's actual receipts and disbursements to earlier projections for the same period, [REDACTED]

[REDACTED]

127. For the same reason that forward-looking projections of litigation spend can [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

128. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

129. It is difficult to say, on a go-forward basis, what an appropriate period would be for the Company's actual disbursements [REDACTED]
[REDACTED] to remain confidential in order to avoid or minimize [REDACTED]
[REDACTED] being disclosed to Venezuela and Crystallex's competing creditors. However, based on my experience on this matter over the last ten years, I believe that although a

period of 12 months after the period to which the spend relates would be most prudent, the Company could, in most instances, live with such information being made public six months after the last date of the cash flow forecast period. On this basis, having consulted, and continuing to consult with the Monitor, the Company is willing to make public its six month actual Cash Flow Variances six months after the period end date of such six-month comparison. Thus, a Cash Flow Variance ending March 2021 showing the Company's actual to forecasted numbers would be disclosed at the end of September 2021.

130. The Company's intention is that disclosure of past Cash Flow Forecasts would occur through the disclosure of these Cash Flow Variances on a six-month delay.

(ii) [REDACTED]

131. [REDACTED]

132. [REDACTED]

[REDACTED]

[REDACTED]

133. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

134. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

135. [REDACTED]

[REDACTED]

[REDACTED]

- 57 -

(iii) Continued Sealing of the Company's Strategic Information Remains Appropriate

136. There has never been a contested motion in this CCAA proceeding concerning the sealing of the Company's strategic information (as opposed to its financial information) – rather, I understand from the Company's counsel Natalie Renner at Davies Ward Phillips & Vineberg LLP and believe that all parties have historically not opposed the sealing of Crystallex's strategic information, which reveals important details about the approach that the Company is taking in the U.S. enforcement proceedings, [REDACTED]

[REDACTED]

[REDACTED]

137. The materials filed in connection with the June 23 Sealing Motion, the November Stay Extension Motion and the Company's last two stay extension motions (which were granted in November 2020 and May 2021) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

138. While I do not believe that the continued sealing of strategic information is contested by the Ad Hoc Committee, the Company has been taken by surprise by positions taken by the Ad Hoc Committee concerning certain disclosure issues in recent months, and I provide this evidence out of an abundance of caution.


F. The Company's Go-Forward Financial Information Disclosure

139. Following the US Disclosure Order, in light of the Company's intention to make public its Cash Flow Variances over time (on a 6-month delay), the Company has determined that, starting from this Stay Period extension and on a go-forward basis, it will produce its cash flows only on an aggregate receipts and disbursements basis.


140. I understand from the Monitor and the Company's CCAA counsel and verily believe that a particular format for cash flow statements is not required by the standards established by the Canadian Association of Insolvency and Restructuring Professionals.

141. Disclosure on this basis provides all reasonably necessary transparency in the circumstances. If any stakeholder seeks more detailed information, it will be available to them on a confidential basis.

SWORN remotely by Robert Fung)
at the City of Toronto, in the)
Province of Ontario, before me on)
the 25th day of October, 2021 in)
accordance with O. Reg. 431/20,)
Administering Oath or Declaration)
Remotely.)



ROBERT FUNG



Commissioner for taking Affidavits
Natalie Renner

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding commenced at Toronto

**AFFIDAVIT OF ROBERT FUNG
(Sworn October 25, 2021)**

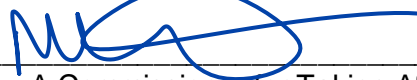
DAVIES WARD PHILLIPS & VINEBERG LLP
155 Wellington Street West
Toronto, ON M5V 3J7

Robin Schwill LSO#384521
Tel: 416.863.5502
rschwill@dwpv.com

Natalie Renner LSO#55954A
Tel: 416.367.7489
nrenner@dwpv.com

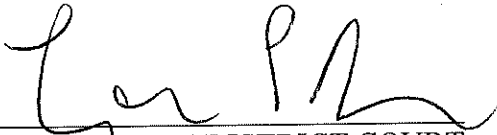
Maureen Littlejohn LSO#570100
Tel: 416.367.6916
mlittlejohn@dwpv.com
Fax: 416.863.0871
Lawyers for the Applicant

THIS IS EXHIBIT "A" REFERRED TO IN THE
AFFIDAVIT OF ROBERT FUNG, SWORN BEFORE
ME THIS 25TH DAY OF OCTOBER, 2021.



A Commissioner for Taking Affidavits
NATALIE RENNER

proceed with respect to determining the specific details of the sales procedures and identifying a special master to oversee the day-to-day and detailed implementation of the sales procedures.



UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CRYSTALLEX INTERNATIONAL
CORPORATION,

Plaintiff,

v.

BOLIVARIAN REPUBLIC
OF VENEZUELA,

Defendant.

C.A. No. 17-mc-151-LPS

Raymond J. DiCamillo, Jeffrey L. Moyer, and Travis S. Hunter, RICHARDS, LAYTON &
FINGER, P.A., Wilmington, DE

Robert L. Weigel, Jason W. Myatt, and Rahim Moloo, GIBSON, DUNN & CRUTCHER LLP,
New York, NY

Miguel A. Estrada and Lucas C. Townsend, GIBSON, DUNN & CRUTCHER LLP,
Washington, DC

Attorneys for Plaintiff Crystallex International Corporation

A. Thompson Bayliss and Stephen C. Childs, ABRAMS & BAYLISS LLP, Wilmington, DE

Donald B. Verrilli, Jr., Elaine J. Goldenberg, and Ginger D. Anders, MUNGER, TOLLES &
OLSON LLP, Washington, DC

George M. Garvey and Seth Goldman, MUNGER, TOLLES & OLSON LLP, Los Angeles, CA

Attorneys for Defendant Bolivarian Republic of Venezuela

Samuel Taylor Hirzel, II and Aaron M. Nelson, HEYMAN ENERIO GATTUSO & HIRZEL
LLP, Wilmington, DE

Nathan P. Eimer and Lisa S. Meyer, EIMER STAHL LLP, Chicago, IL

Attorneys for Intervenor Petróleos de Venezuela, S.A.

Kenneth J. Nachbar and Alexandra M. Cumings, MORRIS, NICHOLS, ARSHT & TUNNELL LLP, Wilmington, DE

Nathan P. Eimer and Lisa S. Meyer, EIMER STAHL LLP, Chicago, IL

Attorneys for Defendant PDV Holding, Inc., and Intervenor CITGO Petroleum Corporation

Garrett B. Moritz and Anne M. Steadman, ROSS ARONSTAM & MORITZ LLP, Wilmington, DE

Michael S. Kim, Marcus J. Green, Josef M. Klazen, KOBRE & KIM LLP, New York, NY

Richard G. Mason, Amy R. Wolf, Michael H. Cassel, WACHTELL, LIPTON, ROSEN & KATZ, New York, NY

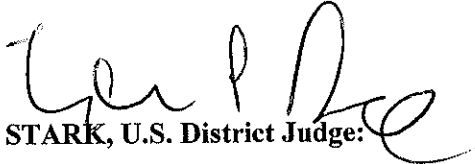
Attorneys for Non-Parties Phillips Petroleum Company Venezuela Limited and ConocoPhillips Petrozuata B.V.

Ethan P. Davis, Acting Assistant Attorney General; David M. Morrell, Deputy Assistant Attorney General; Diane Kelleher, Assistant Branch Director Federal Programs Branch; Joseph E. Borson and Joseph J. Demott, United States Department of Justice, Civil Division, Federal Programs Branch, Washington, DC

Attorneys for Non-Party United States

OPINION

January 14, 2021
Wilmington, Delaware



STARK, U.S. District Judge:

Crystallex International Corp. (“Crystallex”) holds a \$1.4 billion judgment against the Bolivarian Republic of Venezuela (“Venezuela” or “Republic”). Crystallex is seeking to collect on its judgment against Venezuela by executing on property nominally owned by the Republic’s state-owned oil company, *Petróleos de Venezuela, S.A.* (“PDVSA”). The specific property Crystallex asks this Court to attach and eventually sell is PDVSA’s shares of common stock of its wholly-owned subsidiary, *PDV Holding, Inc.* (“PDVH”).

The extensive litigation that has occurred in this action to date has established (among other things) that PDVSA is the alter ego of Venezuela and that PDVSA’s shares of PDVH stock are not immune from attachment or execution. The Court has also issued Crystallex’s requested writ of attachment and ordered the United States Marshals Service to serve it on PDVSA. On an interlocutory appeal, the Court of Appeals for the Third Circuit affirmed this Court’s findings, conclusions, and actions on these points. The Supreme Court then denied Venezuela’s and PDVSA’s petition for a writ of certiorari. Hence, the case is now proceeding here on remand from the Third Circuit.

Several motions are pending before the Court. The first is a motion filed by judgment debtor Venezuela pursuant to Federal Rule of Civil Procedure 60(b). (D.I. 183) Venezuela’s Rule 60(b) motion seeks relief from the Court’s orders of August 9 and 23, 2018, which authorized and directed the Marshal to serve a writ of attachment on PDVSA’s shares of PDVH. By a separate motion, PDVSA, PDVH, and PDVH’s indirect subsidiary, *CITGO Petroleum Corp.* (“CITGO” and, together with Venezuela, PDVSA, and PDVH, hereinafter “the Venezuela Parties”), seek to quash that writ of attachment. (D.I. 178)

Crystallex opposes the Venezuela Parties’ motions. It has also filed a motion for an order of sale of the attached PDVH shares. (D.I. 181) The Venezuela Parties have submitted their

own proposed procedures for such a sale, in the event their motions to alter the judgment and/or quash the writ are denied. (D.I. 188) Nonparties Phillips Petroleum Company Venezuela Limited and ConocoPhillips Petrozuata B.V. (“ConocoPhillips”) – who are also judgment creditors of the Republic and are plaintiffs in their own actions pending in this Court¹ – have also submitted proposed procedures for how the Court should conduct the sale of PDVH shares. (D.I. 180) Additionally, the United States government filed a Statement of Interest (“Statement”) providing its position on aspects of the various motions. (D.I. 212)

The Court received extensive briefing in connection with each of the motions. (*See, e.g.*, D.I. 179, 182, 196, 198-99, 201-02, 204, 206, 219-21, 223, 228-32) The Court also heard telephonic oral argument on two occasions: July 17 and September 17, 2020 (*see* July 17, 2020 Hrg. Tr. (D.I. 214) (“July Tr.”); Sept. 17, 2020 Hrg. Tr. (D.I. 226) (“Sept. Tr.”)).

For the reasons stated below, the Court will: (1) deny the Republic’s Rule 60(b) motion; (2) deny the motion to quash the writ of attachment; and (3) grant in part Crystallex’s motion for an order of sale. The Court sets out the contours of the process it will follow to conduct the sale of PDVH shares. While the parties will have an opportunity to provide additional input with respect to details of the sales procedures, the time has come for those procedures to be established and implemented to the greatest extent feasible under current circumstances.

BACKGROUND

Crystallex’s decade-long collection efforts have been detailed in numerous prior opinions of this Court and the Third Circuit. *See, e.g., Crystallex Int’l Corp. v. Bolivarian Republic of Venezuela*, 333 F. Supp. 3d 380 (D. Del. 2018) (“*Crystallex Writ Op.*”), *aff’d*, 932 F.3d 126 (3d Cir. 2019) (“*Crystallex App. Op.*”). A brief summary will suffice for present purposes.

¹ *See Phillips Petroleum Co. Venezuela Ltd. v. Petróleos de Venezuela, S.A.*, No. 19-mc-342-LPS (D. Del.).

As Judge Ambro wrote for the Third Circuit in July 2019:

Crystallex International Corp., a Canadian gold mining company, invested hundreds of millions of dollars to develop gold deposits in the Bolivarian Republic of Venezuela. In 2011, Venezuela expropriated those deposits and transferred them to its state-owned oil company, *Petróleos de Venezuela, S.A.* (“PDVSA”). To seek redress, Crystallex invoked a bilateral investment treaty between Canada and Venezuela to file for arbitration before the International Centre for Settlement of Investment Disputes. The arbitration took place in Washington, D.C., and Crystallex won; the arbitration panel awarded it \$1.2 billion plus interest for Venezuela’s expropriation of its investment. The United States District Court for the District of Columbia confirmed that award and issued a \$1.4 billion federal judgment. Now Crystallex is trying to collect.

Unable to identify Venezuelan-held commercial assets in the United States that it can lawfully seize, Crystallex went after U.S.-based assets of PDVSA. Specifically, it sought to attach PDVSA’s shares in *Petróleos de Venezuela Holding, Inc.* (“PDVH”), its wholly owned U.S. subsidiary. PDVH is the holding company for CITGO Holding, Inc., which in turn owns CITGO Petroleum Corp. (“CITGO”), a Delaware Corporation headquartered in Texas (though best known for the CITGO sign outside Fenway Park in Boston).

This attachment suit is governed by the Foreign Sovereign Immunities Act of 1976, 28 U.S.C. §§ 1602-1611 (the “Sovereign Immunities Act”). Under federal common law first recognized by the Supreme Court in *First National City Bank v. Banco Para El Comercio Exterior de Cuba* (“*Bancec*”), 462 U.S. 611, 103 S.Ct. 2591, 77 L.Ed.2d 46 (1983), a judgment creditor of a foreign sovereign may look to the sovereign’s instrumentality for satisfaction when it is “so extensively controlled by its owner that a relationship of principal and agent is created.” *Id.* at 629, 103 S.Ct. 2591.

Interpreting *Bancec*, the District Court, per Chief Judge Stark, concluded that Venezuela’s control over PDVSA was sufficient to allow Crystallex to attach PDVSA’s shares of PDVH in satisfaction of its judgment against the country. PDVSA and Venezuela, along with PDVSA’s third-party bondholders as *amici* (the “Bondholders”), challenge this ruling.

Venezuela and the Bondholders do not substantially contest

the District Court's finding that it extensively controlled PDVSA. Rather, they raise various jurisdictional and equitable objections to the attachment. Likewise, PDVSA primarily contends that its tangential role in the dispute precludes execution against its assets under *Bancec* irrespective of the control Venezuela exerts over it.

We affirm the District Court's order granting the writ of attachment and remand for further proceedings consistent with this opinion.

Crystallex App. Op. at 132.

On October 1, 2019, the Third Circuit lifted its stay of this Court's proceedings. (D.I. 136) Thereafter, in November 2019, the Court held a status conference, with all parties to the instant action as well as the parties in other pending actions brought by judgment creditors of the Venezuela Parties. (*See* D.I. 141; *see also* D.I. 139 (joint status report)) On December 12, 2019, the Court issued a memorandum order that, among other things, stayed Crystallex's enforcement efforts until the conclusion of the Venezuela Parties' attempt to obtain Supreme Court review of the Third Circuit's decision. (*See* D.I. 154; *see also* D.I. 166 (modifying stay order)) On May 18, 2020, the Supreme Court denied the petition for a writ of certiorari that the Republic and PDVSA had filed. (*See, e.g.*, D.I. 167) The parties' subsequent disputes about how the Court should proceed culminated in the pending motions.

DISCUSSION

I. The Venezuela Parties' Attempts To Eliminate The Writ of Attachment

The Republic's Rule 60(b) motion asks the Court to vacate the writ of attachment that has been served on PDVSA, which holds shares of PDVH to be sold to satisfy Crystallex's judgment against Venezuela. At the same time, PDVSA, PDVH, and CITGO (the "PDVSA Parties") move for the Court to quash the writ of attachment. Together, the Venezuela Parties' attempts to eliminate the writ of attachment are predicated on new facts and circumstances, which

purportedly render the writ inequitable to maintain, and on new legal arguments that were not presented to the Court before it issued the writ. As the Court explains below, both motions lack merit and will be denied.

A. Venezuela's Rule 60(b) Motion

1. Legal Standards

Federal Rule of Civil Procedure 60(b) provides that a party may file a motion for relief from a final judgment for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief.

A Rule 60(b) motion must be filed within a reasonable time, which for subsections (1), (2), and (3) is one year after the judgment being challenged. *See* Fed. R. Civ. P. 60(c)(1). A motion filed pursuant to Rule 60(b) is committed to the sound discretion of the district court guided by accepted legal principles as applied in light of all relevant circumstances. *See Pierce Assocs., Inc. v. Nemours Found.*, 865 F.2d 530, 548 (3d Cir. 1988). The burden to obtain relief under Rule 60(b) rests on the moving party, and it is a difficult standard to meet. *See generally Bohus v. Beloff*, 950 F.2d 919, 930 (3d Cir. 1991). This reality stems from the judicial system's "overriding interest in the finality and repose of judgments," which only "extraordinary" and "exceptional" circumstances can "overcome." *Mayberry v. Maroney*, 558 F.2d 1159, 1163-1164 (3d Cir. 1977).

2. The Parties' Contentions

The Republic moves for relief from the Court's August 9 and 23, 2018 orders – which authorized the writ of attachment and then ordered it to be issued and served – pursuant to Rule 60(b)(5) and 60(b)(6). In moving for relief, the Republic principally contends that changed circumstances relating to the relationship between Venezuela and PDVSA vitiate the Court's alter ego determination. According to the Republic, since August 2018, it has “resurrected and reinforced PDVSA's independence” as a company. (D.I. 184 at 5) Further, the Republic argues that one of the crucial predicates underpinning the Court's August 2018 orders – namely, that the government of President Nicolás Maduro exerts control over PDVSA – no longer remains true, for reasons including that the United States now recognizes Juan Guaidó as Interim President. According to Venezuela, Guaidó and the National Assembly have taken concrete steps to confirm PDVSA's independence from the Republic. (*Id.* at 9, 13) Relatedly, the Republic points to the U.S. government's 2019 amendment of sanctions it has imposed on Venezuela as rendering the prospective application of the writ issued by this Court no longer equitable. (*Id.* at 15-16) Finally, the Republic contends that continuing the attachment of its U.S.-based assets undermines U.S. efforts to help Venezuela mitigate its humanitarian crisis, restore democracy, and pay all of its many creditors in a fair and just manner. (*Id.* at 19-20)

Crystallex has multiple responses. With respect to Rule 60(b)(5), Crystallex contends that relief is not available to the Republic because the writ is a final legal remedy and not a prospective equitable remedy. (D.I. 199 at 1-2) In any event, according to Crystallex, maintaining the writ of attachment continues to be equitable under the circumstances. (*Id.* at 2) With respect to Rule 60(b)(6), Crystallex argues that the Republic has failed to identify any “exceptional circumstances” to justify relief. (*Id.* at 2-3) In Crystallex's view, a debtor

reforming practices after a court has imposed consequences for past bad behavior cannot be “exceptional” in this context. (*See id.*)

3. Rule 60(b)(5)

The Court agrees with Crystallex that the Republic has failed to show it is entitled to relief under Rule 60(b)(5). Venezuela has not demonstrated that prospective application of the writ is no longer equitable.

Rule 60(b)(5) authorizes relief from a “final judgment, order, or proceeding” where “applying it prospectively is no longer equitable.” The rule “provides a means by which a party can ask a court to modify or vacate a judgment or order if a significant change either in factual conditions or in law renders continued enforcement detrimental to the public interest.” *Horne v. Flores*, 557 U.S. 433, 447 (2009) (internal quotation marks omitted). Rule 60(b)(5) permits modification of a judgment on equitable grounds, however, “only if it is ‘prospective,’ or executory.” *Marshall v. Bd. of Educ.*, 575 F.2d 417, 425 (3d Cir. 1978). “[T]he class of judgments having prospective application” is “restricted to forward-looking judgments, such as injunctions and consent decrees.” *Comfort v. Lynn Sch. Comm.*, 560 F.3d 22, 28 (1st Cir. 2009). Even then, relief is “limited . . . to injunctions and consent decrees that involve ‘long-term supervision of changing conduct or conditions.’” *Id.* (quoting *Paul Revere Variable Annuity Ins. Co. v. Zang*, 248 F.3d 1, 7 (1st Cir. 2001)); *see also Coltec Indus., Inc. v. Hobgood*, 280 F.3d 262, 272-273 (3d Cir. 2002) (distinguishing cases “involv[ing] injunctions or consent decrees regulating ongoing behavior” from cases in which party failed to make promised payments and “attempt[ed] to use its failure . . . to its own advantage”).

The Republic’s motion for relief under Rule 60(b)(5) fails, first, because the writ of attachment that the Court issued and had served on PDVSA is not the type of prospective or

executory order to which this Rule applies. Under Delaware law, the issuance of a writ of attachment is a “purely legal remedy” that represents a legal property interest. *Spoturno v. Woods*, 192 A. 689, 692 (Del. 1937). The attachment is not “prospective” in the sense in which that term is used in Rule 60(b)(5), even though it is a necessary precursor to a sale of shares that has not yet occurred and, plainly, will have some future effect. *See Marshall*, 575 F.2d at 425 n.27 (“A ‘prospective’ injunction envisions a restraint of future conduct, not an order to remedy past wrongs when the compensation payment is withheld from the beneficiaries until some subsequent date.”); *Twelve John Does v. District of Columbia*, 841 F.2d 1133, 1139 (D.C. Cir. 1988) (“[T]he standard we apply in determining whether an order or judgment has prospective application within the meaning of Rule 60(b)(5) is whether it is ‘executory’ or involves ‘the supervision of changing conduct or conditions.’”). While the Court will need to be involved in the sale of PDVSA’s shares of PDVH, the Court’s continuing role is merely to remedy the past wrong committed by the Republic by ensuring compensation for Crystallex; it is not the type of ongoing judicial oversight of future conduct to which Rule 60(b)(5) applies. *See, e.g., Twelve John Does*, 841 F.2d at 1138 (“Virtually every court order causes at least some reverberations into the future, and has, in that literal sense, some prospective effect; even a money judgment has continuing consequences, most obviously until it is satisfied”); *see also Keepseagle v. Vilsack*, 118 F. Supp. 3d 98, 125 (D.D.C. 2015) (finding *cy pres* provision of agreement analogous to unpaid damages but not “prospective” merely because it “[le]ft some administrative responsibilities to be executed”).

The Court is denying Venezuela relief under Rule 60(b)(5) for the further reason that Venezuela has failed to show that continued application of the writ of attachment is no longer equitable. Instead, it would be inequitable to permit the Republic – an adjudicated judgment

debtor, which has acknowledged that it must pay Crystallex what it owes² and evidently has the means to do so (at least through sale of PDVSA's shares of PDVH) – to evade its obligation and, thereby, undermine the authority of the U.S. judicial system. As Crystallex observes, and as other courts have recognized, a party that is inequitably refusing to pay a final judgment of the U.S. courts will rarely (if ever) be able to obtain equitable relief for itself from those same courts. (*See, e.g.*, Sept. Tr. at 54 (“They simply do not want to pay, and they want our courts to aid them in evading our judgments.”); *see also Motorola Credit Corp. v. Uzan*, 561 F.3d 123, 128 (2d Cir. 2009) (faulting foreign defendants for refusing to comply with court orders and then having “the chutzpah to seek post-judgment, equitable relief from complying with those orders”))

In reaching these conclusions about the equities, the Court is not holding that real-world facts or legal consequences are (to borrow the Republic's terminology) “frozen in amber.” (*See, e.g.*, July Tr. at 14; Sept. Tr. at 28-29) Instead, the Court is giving the necessary and proper weight to a final judgment whose validity has been repeatedly recognized in our courts, including the Courts of Appeals for the D.C. Circuit and Third Circuit as well as the District Courts for D.C. and Delaware.

Relatedly, with respect to the equitable analysis, the Court does not see any relevance to the fact that PDVSA has not been held liable for the debts of Venezuela. As Crystallex asked, the Court held only that specified PDVSA property (the shares of PDVH) could be used to satisfy Venezuela's debt to Crystallex. That Crystallex did not seek or receive even more substantial judicial relief does nothing to undermine the equitable importance of enforcing the relief that Crystallex did obtain and ensuring that the final judgment against Venezuela is fully

² *See, e.g.*, July Tr. at 18 (“We've tried to be very clear that the Guaidó government recognizes that Venezuela does have to pay this claim”); *id.* at 52 (“We have said over and over again we acknowledge our responsibility for these debts.”); Sept. Tr. at 58-59.

effectuated.

Finally, the Court is also unpersuaded by the Republic's refrain that "it would be inequitable" for Crystallex to collect on its judgment when "all of those other judgment creditors" who have been injured by the Republic are not (yet) about to be paid. (July Tr. at 22-23) Crystallex has done nothing inequitable in litigating against the Republic for more than a decade and prevailing in every forum that has considered the parties' disputes.³ While the Court joins Crystallex – and, evidently, the United States and the Republic – in hoping that, someday soon, Venezuela will find a way to pay all its debts and also alleviate the terrible suffering in Venezuela, the possibility that this outcome may not be achieved before Crystallex receives what it is owed does not absolve this Court of its duty to comply with the Third Circuit's orders on remand. As the Third Circuit plainly stated, "Venezuela owes Crystallex from a judgment that has been affirmed in our courts. Any outcome where Crystallex is not paid means that Venezuela has avoided its obligations." *Crystallex App. Op.* at 149.

4. Rule 60(b)(6)

Rule 60(b)(6) is a "catch-all" provision, permitting a party to seek reconsideration for "any other reason that justifies relief," i.e., reasons not expressly identified in subsections (b)(1) through (b)(5). The Third Circuit has consistently held that Rule 60(b)(6) provides "extraordinary relief" that is available only in "exceptional circumstances" to address an extreme or unexpected hardship. *Coltec Indus.*, 280 F.3d at 273; *see also Budget Blinds, Inc. v. White*, 536 F.3d 244, 255 (3d Cir. 2008). Here, the Court agrees with Crystallex that the Republic has

³ *See generally* July Tr. at 27 (Crystallex's counsel: "[Crystallex] has had to spend money chasing assets of the Republic because Venezuela refuses to comply voluntarily with a full and final judgment of the D.C. [District Court] that was affirmed with the D.C. Circuit, and it's final and uncontestable. We're having to search for assets of Venezuela everywhere and to seek attachment because Venezuela does not want to comply with a final judgment of the D.C. Circuit.>").

failed to demonstrate the existence of exceptional circumstances that would justify the extraordinary relief that it seeks.

The Republic argues that exceptional circumstances are present because Venezuela has a new government and the new government no longer exercises extensive control over PDVSA. (*See generally* July Tr. at 12, 14-15) Thus, to the Republic, PDVSA is no longer Venezuela's alter ego, so there is no "continuing validity of Crystallex's right to encumber PDVSA's property" based on a debt owed solely by Venezuela. (D.I. 184 at 11) A finding of exceptional circumstances is further supported, according to the Republic, by the fact that the U.S. government recognizes the new Venezuelan government and has imposed stringent sanctions on the Maduro regime in aid of the new Guaidó-led government.

The Court disagrees. Venezuela's motion under Rule 60(b)(6) fails because it is predicated on the Court giving weight (indeed, controlling weight) to events that post-date the situation as it existed at the pertinent time, i.e., the period between the filing of the motion seeking a writ of attachment and the subsequent issuance and service of that writ. Venezuela's arguments are entirely inconsistent with the very purpose of a writ of attachment, which is to hold property of a judgment debtor in the custody of the Court so it can be used for the benefit of the judgment creditor *no matter what happens in the future*. Hence, crediting Venezuela's position could render this entire litigation a nullity – which would be a highly unusual outcome, particularly given that Crystallex has prevailed in every court that has considered any aspect of this case.

The Court agrees with Crystallex that the important dates are the dates on which it filed its motion for a writ of attachment, on which the writ of attachment was issued, and on which the

writ was served. (*See, e.g.*, July Tr. at 32; Sept. Tr. at 19-20)⁴ Before the Court granted Crystallex's motion for a writ, PDVSA was free to alienate its shares of PDVH. After that date, however, the shares were attached; that is, they were (and remain) restricted from alienation by operation of the Court's order. To conclude that the pertinent date of analysis is any date after service of the writ would undermine the entire logic of issuing the writ in the first place.

No party has presented the Court with legal authority, and the Court is aware of none, that requires the Court to reconsider its alter ego determination, a determination that was made based on the record that the parties chose to make, and which was upheld on appeal. As Crystallex persuasively explains:

PDVSA was Venezuela's alter ego when it received Crystallex's expropriated assets for no consideration, when it paid Venezuela's fees in the underlying arbitration with Crystallex, when Venezuela used it to access U.S. credit markets, when Crystallex filed its attachment motion, and when this Court ruled on that motion. No federal or state authority provides any precedent for Venezuela and PDVSA avoiding accountability for that past conduct by changing course *after* this Court has made its dispositive alter-ego finding.

(D.I. 199 at 15) Thus, any change in the status of the relationship between PDVSA and the Republic after the Court's August 2018 rulings does not constitute an exceptional circumstance justifying relief under Rule 60(b)(6). Because all the events on which Venezuela relies – including the Guaidó administration's changes with respect to the PDVSA board, the National Assembly's adoption of new laws, the U.S. government's January 2019 recognition of the Guaidó government, and amendment of U.S. sanctions on Venezuela – post-date August 2018, they do not provide a valid basis for relief. (*See, e.g.*, D.I. 219 at 7; D.I. 224 at 4)

⁴ In so holding, the Court is not suggesting that historical events preceding the filing of the motion for a writ are irrelevant. Historical facts could have an impact, even a substantial or perhaps dispositive impact, on assessing (for example) whether an alter ego relationship exists in the pertinent period.

Venezuela's contrary view is based on little more than suggestions from the Third Circuit and this Court that the record might be expanded with evidence arising after August 2018 (*see* D.I. 184 at 12 (citing *Crystallex App. Op.* at 144; *Crystallex Writ Op.* at 425)), and a citation to *Bancec's* statement that the pertinent inquiry must take account of current circumstances, in light of its design to safeguard international comity. These are, at best, weak support for requiring the Court to reevaluate in 2020 or 2021 an alter ego finding that it made on a record created in 2018, which was the basis for findings that were affirmed in 2019. Adopting Venezuela's position would invite abuse; it would permit a judgment debtor whose alter ego's property has been attached to "fix" whatever facts supported the adverse alter ego determination and then delay, appeal, and ultimately escape having to pay its judgments.

Moreover, courts have held that a change in government is not the type of extraordinary event sufficient to be the basis for relief under Rule 60(b)(6). *See Socialist Republic of Romania v. Widenstein & Co.*, 147 F.R.D. 62, 66 (S.D.N.Y. 1993). To the contrary, such changes occur "regularly, and to allow such . . . event[s] to support a Rule 60(b)(6) motion would wholly negate the finality of judgments." *Id.* at 65-66.

The Court finds further confirmation for its conclusion (that events post-dating the August 2018 issuance and service of the writ of attachment do not constitute exceptional circumstances warranting extraordinary relief under Rule 60(b)(6)) in the reality that Venezuela and PDVSA brought these same "new" facts to the attention of the Third Circuit, which nonetheless affirmed this Court's alter ego finding. Additionally, Venezuela finds itself in its present situation because of its own "deliberate choices" as a litigant, i.e., its refusal to pay judgments that it recognizes that it will eventually have to pay. (July Tr. at 38-39; *see also* Sept. Tr. at 11) Troubling incentives would be created if a party's own inequitable conduct were later

found to create the type of exceptional circumstances justifying relief for that party from a final judgment.

Thus, again, Venezuela's motion for relief under Rule 60(b)(6) will be denied.

5. Interests of the United States

In deciding to deny the Republic's motion, the Court has carefully considered the statement of interest and arguments made by the United States (as the Court has also done in connection with the sales procedures, as discussed below). The U.S. government, like Venezuela, takes the position that "fundamental premises underlying the alter ego ruling no longer hold," which the U.S. says could justify granting the Republic's motion, although it "express[es] no firm legal position on whether [the changed] circumstances require Rule 60(b) relief." (D.I. 212 at 8; *see also* D.I. 220 at 1) For the reasons already explained above, the Court has determined that the changed circumstances post-dating the August 2018 alter ego finding do not justify the relief sought by Venezuela.⁵

Understandably, the government (like the parties) has devoted much attention to the sanctions regime, which is implemented by the United States Department of Treasury's Office of Foreign Assets Control ("OFAC"). In the Court's view, the 2019 changes to the OFAC sanctions do not amount to exceptional circumstances warranting Rule 60(b) relief.⁶ The sanctions are established by Executive Orders and through regulations imposing licensing

⁵ The Court is grateful to the United States Department of Justice for filing a Statement of Interest and a supplemental brief (*see* D.I. 212, 220) and for participating in the oral arguments in July and September 2020. Although the Court has not been persuaded to act in accordance with the government's request, it has been helped by the government's input – which the Court has long sought (*see, e.g.*, D.I. 154 at 9 n.14, 23 n.25) and hopes to continue to receive as this case proceeds.

⁶ Nor does the government contend that they do. (*See* D.I. 220 at 1) (declining to take "firm legal position" on whether Rule 60(b) relief is warranted)

requirements for certain transactions with the Republic. *See, e.g.*, 31 C.F.R. §§ 591.201, 591.202(c), 591.310; *see also* Exec. Order Nos. 13,692 (Mar. 8, 2015), 13,835 (May 21, 2018), 13,850 (Nov. 1, 2018), 13,884 (Aug. 5, 2019). The Court previously held that Executive Order 13,835, which governed the sanctions regime in August 2018, “does not pose a bar to granting relief.” *Crystallex Writ Op.* at 421. Likewise now, the modified sanctions regime does not require a retroactive change in the order granting the writ. While the current sanctions regime does appear to block issuance of new writs of attachment on Venezuelan assets in the United States without an OFAC license – as Crystallex and the Republic agree (*see, e.g.*, July Tr. at 41; D.I. 203 at 9) – neither the Executive Orders nor the regulations require invalidating preexisting judicial orders. *See* Exec. Order No. 13,884 §§ 1(a), 1(c), 6(d); Exec. Order No. 13,850; 31 C.F.R. §§ 591.201, 591.202(e), 591.407, 591.506(c).

The OFAC licensing process is important for another reason: it provides a mechanism by which the interests the government has expressed to the Court can be taken into account by the Executive Branch itself. All involved in this litigation, including Crystallex, recognize that (under current law and policy) a specific license will be required from OFAC before a sale of PDVSA’s shares of PDVH can close. The Court understands that the process by which OFAC reviews an application for such a license includes consideration of the foreign policy and national security interests the government has asked the Court to consider in this litigation. *See Crystallex App. Op.* at 151 (“[I]t is . . . conceivable that short- or long-term U.S. foreign policy interests may be affected by attachment and execution of PDVSA’s assets. The Treasury sanctions provide an explicit mechanism to account for these.”).

Thus, again, the Court will deny Venezuela’s Rule 60(b) motion.

B. PDVSA Parties' Motion To Quash

PDVSA, PDVH, and CITGO (collectively, the "PDVSA Parties") move to quash the writ of attachment that has been served on PDVSA relating to its shares of PDVH. The PDVSA Parties' motion to quash rests on two contentions: (i) under Delaware law, Crystallex cannot attach PDVSA's shares of PDVH to satisfy a judgment against Venezuela without showing fraud, which Crystallex has failed to do; and (ii) even if Crystallex could attach PDVSA's shares of PDVH to satisfy its judgment against Venezuela, the writ is "inoperable" because PDVH does not possess the physical certificates representing the shares owned by PDVSA. (D.I. 179 at 2-4) The Court concludes that PDVSA is collaterally estopped from arguing that the writ of attachment is invalid under Delaware law, as the validity of the writ was already litigated and determined by this Court in 2018 and upheld by the Third Circuit in 2019. The Court also concludes that PDVSA is judicially estopped from pressing its new contention based on lack of physical possession of shares certifying PDVSA's holdings because it contradicts numerous representations PDVSA made to this Court and the Court of Appeals to obtain relief (such as stays and not having to post a bond). PDVSA's wholly-owned subsidiary, PDVH, and PDVH's indirect subsidiary, CITGO, are bound to the same extent as PDVSA. Finally, the Court concludes that the PDVSA Parties' Delaware law challenges are also untimely.

1. Collateral Estoppel Precludes PDVSA from Challenging the Validity of the Writ Under Delaware Law

The PDVSA Parties argue that Federal Rule of Civil Procedure 69(a), which authorizes execution on property in accordance with "the procedure of the state where the court is located," applies to attachment actions involving foreign states, notwithstanding the statutory immunity provisions of the Foreign Sovereign Immunities Act ("FSIA") of 1976, Pub. L. No. 94-583, 90 Stat. 2891 (codified as amended in 28 U.S.C.). (D.I. 179 at 7-8) Thus, according to the PDVSA

Parties, Crystallex's ability to satisfy its judgment against the Republic by executing on PDVSA's shares of PDVH depends on application of Delaware law. (*Id.* at 9) Under Delaware law, the PDVSA Parties continue, (i) Crystallex may not pierce the corporate veil under an alter ego theory and thereby attach PDVSA's shares of PDVH without a showing of fraud; and (ii) Crystallex failed to allege or prove fraud with particularity during any relevant period. (*Id.* at 9-13) Moreover, according to the PDVSA Parties, to this point in the litigation this Court has "only decided that PDVSA was Venezuela's alter ego for purposes of resolving sovereign immunity under the FSIA. It never decided the question of whether Venezuela has an attachable interest in the shares of" PDVH under Delaware law. (July Tr. at 55)

The Court agrees with Crystallex that collateral estoppel precludes the PDVSA Parties from now challenging the validity of the writ under Delaware law. (*See generally* D.I. 199 at 20-24) While the litigation to date has focused on the FSIA, *Bancec*, and federal law, this Court's findings were not limited to issues of federal law. In addition to denying PDVSA's motion to dismiss – which was predicated principally on federal-law issues of jurisdiction and immunities with respect to Venezuela, PDVSA, and the shares of PDVH – the Court also granted Crystallex's motion to issue the writ. The Court rejected whatever challenges PDVSA made to the validity of that writ and ordered the writ to be served. The Court's orders resulting in service of the writ were affirmed on appeal. At this point, then, the PDVSA Parties are collaterally estopped from challenging the validity of the writ under Delaware law.

Collateral estoppel (also known as issue preclusion) applies where "(1) the identical issue was previously adjudicated; (2) the issue was actually litigated; (3) the previous determination was necessary to the decision; and (4) the party being precluded from relitigating the issue was fully represented in the prior action." *Henglein v. Colt Indus. Operating Corp.*, 260 F.3d 201,

209 (3d Cir. 2001) (internal quotation marks omitted). Each of these requirements is satisfied here. (*See generally* D.I. 229 at 1) (Crystallex: “PDVSA and its affiliates are estopped from relitigating these issues because PDVSA actually litigated the merits of the writ of attachment of its own accord and this Court and the Third Circuit actually decided them adversely to PDVSA’s arguments.”) The identical issue that the PDVSA Parties now wish to have adjudicated – the validity of the writ of attachment served on PDVSA to attach its shares of PDVH – was previously adjudicated, was actually litigated, and was necessarily decided in the course of this Court deciding to grant Crystallex’s motion for a writ of attachment, issue that writ, and have it served. Further, it is undisputed that PDVSA has been fully represented at all stages of this litigation ever since it chose to intervene.

That PDVSA now raises *new* arguments in support of its *old* position does not defeat application of collateral estoppel. As the Third Circuit has stated, “Once an *issue* is raised and determined, it is the entire *issue* that is precluded, not just the particular arguments raised in support of it in the first case.” *Alevras v. Tacopina*, 226 F. App’x 222, 231 (3d Cir. 2007) (internal alteration omitted). The issue that PDVSA wants to litigate in its motion to quash – the validity of the writ – is the very issue that this Court already decided. That the earlier part of the litigation focused on federal-law arguments against the validity of the writ and PDVSA now wants to make arguments based on Delaware law does not change the reality that the validity of the writ has already been litigated.⁷

⁷ Although collateral estoppel would apply even if this Court had decided the validity of the writ without any express reference to Delaware law, in fact both parties and the Court did allude to Delaware law in the earlier part of this litigation. For instance, PDVSA argued in opposition to Crystallex’s motion for a writ of attachment that *Bancec* should be applied in accordance with Delaware corporate law, that “Delaware law is crystal-clear that alter ego liability applies only in the rare circumstance where the corporate form is abused to perpetrate a fraud against the plaintiff,” and that a clear-and-convincing-evidence standard applies. (D.I. 26 at 16-17 (citing cases applying Delaware law that require showing of fraud or similar injustice); *see also* D.I. 179

In resolving PDVSA's appeal, the Third Circuit explicitly stated that it was reviewing both "the District Court's denial of PDVSA's motion to dismiss as an immune sovereign *and* the grant of Crystallex's motion for a writ of attachment under Federal Rule of Civil Procedure 69." *Crystallex App. Op.* at 136 (emphasis added). It further observed that its jurisdiction to review the denial of the motion to dismiss arose "under the collateral order doctrine" and that it had appellate jurisdiction over the grant of the writ because that order "amounted to a *final judgment* under 28 U.S.C. § 1291 by leaving the District Court *nothing left to do but execute.*" *Crystallex App. Op.* at 136 (emphasis added; internal quotation marks omitted). The Third Circuit could not have characterized this Court's decision to grant the motion for a writ of attachment as a final order, and as one leaving this Court with "nothing . . . to do but execute," had the Third Circuit required or intended for this Court to permit additional challenges to the validity of the very writ it was describing as "final."⁸

Other statements in the Third Circuit's opinion further confirm that the validity of the writ has been actually, necessarily, and finally resolved. The Court of Appeals held that "so long as PDVSA is Venezuela's alter ego under *Bancec*, the District Court had the power to issue a writ of attachment on that entity's non-immune assets to satisfy the judgment against the country." *Crystallex App. Op.* at 139. This means that if the *Bancec* standard is met – as it has been here – then PDVSA's shares of PDVH are validly attached and can be executed on; no

at 2-3) In rejecting these arguments, the Court considered "cases applying state-law alter ego standards" but found them "unpersuasive" and "unhelpful." *Crystallex Writ Op.* at 396 n.13, 405; *see also id.* at 387-388 (legal standards section quoting 10 Del. C. § 5031; 8 Del. C. § 324(a)); *id.* at 425 n.48 (noting parties' agreement that Delaware law requires execution of writ to take place through public sale of attached shares).

⁸ Crystallex also observes that implicit in Venezuela's filing of a motion pursuant to Rule 60(b) – which, after all, authorizes relief "from a *final judgment*" (emphasis added) – is Venezuela's recognition that everything about the validity of the writ has already been litigated. (*See, e.g.*, July Tr. at 81)

more challenge to the writ is contemplated. Similarly, the Third Circuit said that “[t]he District Court acted within its jurisdiction *when it issued a writ of attachment* on PDVSA’s shares of PDVH to satisfy Crystallex’s judgment against Venezuela.” *Id.* at 152 (emphasis added). This means, again, that the writ is valid – under federal law and, to the extent anyone had a basis to challenge its validity under state law, under state law as well.

Following the September oral argument, PDVSA submitted supplemental authority relating to an issue about which the Court had inquired: whether PDVSA was required to raise merits defenses to Crystallex’s motion for a writ of attachment at the same time PDVSA was briefing its purported entitlement to immunity under the FSIA. (See D.I. 227; see also D.I. 229-32; Sept. Tr. at 40) The case on which PDVSA relies, *Process & Industrial Development Ltd. v. Federal Republic of Nigeria*, 962 F.3d 576, 580 (D.C. Cir. 2020), addresses a situation in which the foreign sovereign, Nigeria, was forced, over its objection, to present all its jurisdictional and merits arguments in a single response to a petition for confirmation of an arbitration award. The Court of Appeals for the D.C. Circuit held that the district court had erred in requiring Nigeria to “brief the merits before resolving a colorable assertion of immunity.” *Id.* at 579. *Process* does not help PDVSA evade the application of collateral estoppel here because the situation is fundamentally different from the one addressed by the D.C. Circuit.

As an initial matter, the analogy between the *Process* scenario and the situation here is imperfect, as it is not entirely clear that what *Process* meant by “merits” is truly analogous to the Delaware law issues PDVSA now seeks to press as a basis for quashing the writ. In any event, even accepting that PDVSA is now raising “merits” defenses, PDVSA is collaterally estopped because PDVSA (unlike Nigeria in *Process*) voluntarily intervened in the earlier stages of this litigation and voluntarily interjected those “merits” defenses into this case at that time. As

already explained, PDVSA opposed Crystallex's motion for a writ of attachment on both jurisdictional and "merits" grounds, under both federal and Delaware law. (*See, e.g.*, D.I. 26 at 2, 20-23, 25, 27) (examples of PDVSA arguing merits of Crystallex's motion for attachment) As *Process* confirms, PDVSA was "free to oppose" the motion in that manner. *See* 962 F.3d at 585. PDVSA was not forced, over its objection, to argue its merits positions simultaneously with its jurisdictional positions; it chose to do so. But that choice has consequently led to the application of collateral estoppel.

Because PDVSA's Delaware law challenges to the validity of the writ are barred by the doctrine of collateral estoppel, the Court will not substantively address them.

2. Judicial Estoppel Bars PDVSA from Prevailing on its Lack of Physical Certificates Argument

As an additional basis to quash the writ of attachment, the PDVSA Parties argue that Delaware law requires physical seizure of stock certificates for an effective attachment of shares of a Delaware corporation, but PDVH does not possess physical certificates representing any property belonging to PDVSA, so this Court's attachment is "not laid." (D.I. 179 at 14-16; *see also* 8 Del. C. § 324(a) (stating that, "[e]xcept as to an uncertificated security . . . attachment is not laid and no order of sale shall issue" unless 6 Del. C. § 8-112 has been satisfied); 6 Del. C. § 8-112(a) ("[T]he interest of a debtor in a certificated security may be reached by a creditor only by actual seizure of the security certificate by the officer making the attachment or levy.")) The Court agrees with Crystallex that PDVSA is judicially estopped from prevailing on this argument. (D.I. 199 at 27-37)

"The doctrine of judicial estoppel prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." *Carlyle Inv. Mgmt. LLC v. Moonmouth Co. SA*, 779 F.3d 214, 221-22 (3d Cir. 2015); *see also*

New Hampshire v. Maine, 532 U.S. 742, 750-751 (2001) (identifying factors commonly considered in assessing whether to apply judicial estoppel, including (1) whether party's current position is "clearly inconsistent" with its earlier position, (2) whether acceptance of later inconsistent position would create "perception" that court had been "misled," and (3) "whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped"). Thus, "absent any good explanation, a party should not be allowed to gain an advantage by litigation on one theory, and then seek an inconsistent advantage by pursuing an incompatible theory." *Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 358 (3d Cir. 1996) (quoting 18 Charles A. Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 4477 (1981)).

Judicial estoppel applies here. In August 2018, PDVSA persuaded the Court not to impose a bond requirement when it stayed proceedings pending PDVSA's interlocutory appeal. (See D.I. 98) PDVSA obtained this relief by assuring the Court that "a bond . . . is unnecessary because the Writ itself is sufficient security in lieu of a bond," adding that "[g]ranting an unconditional stay does not make Crystallex any worse off than it is today" because "a writ of attachment . . . provides the same functional security as a supersedeas bond." (D.I. 98 at 6, 17) PDVSA further assured the Court that it would be "a waste of money" to require a bond because the writ is "more than enough security in lieu of a bond." (*Id.* at 19; *see also* D.I. 118 at 10 (stating on reply that "the current restraint on the PDVH shares by virtue of the Writ . . . could constitute sufficient security in lieu of a bond"))⁹

In making these representations to the Court, PDVSA was stating that the writ was valid

⁹ Likewise, in December 2019, the Court again denied Crystallex's request for a bond, when it stayed these proceedings while the petition for a writ of certiorari was proceeding in the Supreme Court. (D.I. 154) The Court did so based on the Republic's representation that Crystallex was "fully secured for whatever the value is of those assets." (*Id.* at 4 n.4)

and that, unless PDVSA were to prevail on appeal, Crystallex would execute on the writ and collect its judgment. (*See, e.g.*, Sept. Tr. at 55) (Crystallex explaining that PDVSA “affirmatively, factually represented, in order to dispense with the bond, that the writ was effectual to give [Crystallex] security, and that [Crystallex] would have recourse to the shares to sell”) PDVSA’s new contention that the writ is not valid under Delaware law because PDVH does not possess the physical certificate – and, thus, the writ has no value to Crystallex – is inconsistent with PDVSA’s prior assurances that the writ secured Crystallex. There is no good explanation for PDVSA’s change of positions. Instead, allowing PDVSA to prevail based on its new argument would show that the Court was previously misled by PDVSA into believing that the validity of the writ would not be subject to any further post-appeal challenge. It would be inequitable for PDVSA to prevail based on its present position, which is incompatible with its prior position.

Similarly, in opposing Crystallex’s motion to expedite the appellate proceedings, PDVSA told the Third Circuit that “there is nothing that PDVSA can do to ‘prejudice’ or ‘disturb’ the writ of attachment,” and that “Crystallex’s writ of attachment also preclude[s] any transactions in the PDVH shares.” (*Crystallex Int’l Corp. v. Bolivarian Republic of Venezuela*, No. 18-2797, Doc. No. 3113121203 (3d Cir. Dec. 28, 2018), *Opp. to Mot. to Expedite* at 16, 18) At various points, PDVSA likewise made representations to this Court that Crystallex would not be harmed by these proceedings moving slowly because the writ protected Crystallex’s interests. (*See* D.I. 199 at 34-35 (listing representations PDVSA made in November 2019, December 2019, and February 2020, all seeking to slow down proceedings); *see also* Sept. Tr. at 69-73)) It would be inequitable to permit the PDVSA Parties to quash the writ based on PDVH’s lack of physical possession of the share certificates when PDVSA repeatedly relied on the protection of the writ

to persuade this Court not to expedite this litigation.

Relatedly, in August 2018, PDVSA told the Court that “[t]he PDVH shares are located in Delaware, and they are not going anywhere.” (D.I. 98 at 6, 15) PDVSA now asserts that it was merely making a representation about a legal fiction, not a statement of fact. According to PDVSA, all it was saying was that under 8 Del. C. § 169, “for ownership purposes, the location of the shares [is] in Delaware.” (July Tr. at 100) The Court, however, understood PDVSA to be making a factual statement: that the shares were in Delaware, so the Court need not be concerned about prejudice to Crystallex, as Crystallex’s rights were protected by the attached shares that would remain available in Delaware to sell and satisfy Crystallex’s judgment. PDVSA’s current explanation is not credible and, even if it were, it does not render application of judicial estoppel inequitable. PDVSA persuaded the Court not to require a bond by telling the Court that the shares were in Delaware, then later admitted that the shares are not in Delaware (and cannot even be located). To permit PDVSA to avoid attachment and execution based on this lack of candor with the Court would be grossly unfair to Crystallex and would undermine the integrity of these proceedings.

Accordingly, the Court will not quash the writ based on PDVH’s lack of physical possession of a share certificate.

3. PDVH and CITGO Are Estopped To The Same Extent As PDVSA

The PDVSA Parties seeking to quash the writ of attachment include PDVH and CITGO. Even though much of what the Court has said in connection with the motion to quash focuses on PDVSA, the Court’s collateral estoppel and judicial estoppel conclusions also estop PDVH and CITGO from prevailing on this motion.

Estoppel doctrines, including collateral and judicial estoppel, can apply “not only against

actual parties to prior litigation, but also against [those] in privity to a party.” *Milton H. Green Archives, Inc. v. Marilyn Monroe LLC*, 692 F.3d 983, 986 (9th Cir. 2012); *see also Board of Trs. of Trucking Emps. of N. Jersey Welfare Fund, Inc. v. Centra*, 983 F.2d 495, 505 (3d Cir. 1992) (noting that one requirement for collateral estoppel is that “the party against whom the bar is asserted was a party *or in privity* with a party to the prior adjudication”) (emphasis added); *Maitland v. University of Minnesota*, 43 F.3d 357, 364 (8th Cir. 1994); *In re Johnson*, 518 F.2d 246, 252 (10th Cir. 1975). This is because “a party bound by a judgment may not avoid its preclusive force by relitigating through a proxy.” *Taylor v. Sturgell*, 553 U.S. 880, 895 (2008).

PDVH and CITGO are in privity with PDVSA, at least for purposes of this litigation. PDVH and CITGO are wholly-owned subsidiaries of PDVSA. *See Crystallex Writ Op.* at 418 n.36. All three entities share a “commonality of . . . interest in [this] matter” in that all three prefer that Crystallex collect on its judgment against Venezuela without involving PDVSA, PDVH, or CITGO. *See generally Doe v. Urohealth Sys., Inc.*, 216 F.3d 157, 162 (1st Cir. 2000). As Crystallex correctly observes, “both subsidiaries are only in this case because of their corporate relationship with PDVSA – *i.e.*, because PDVSA nominally owns the PDVH shares, and CITGO issued debt with change-of-control provisions.” (D.I. 199 at 40) Further, “[g]iven that PDVSA brought this motion to quash jointly with its subsidiaries and co-signed the brief, D.I. 179 at 1, 19, it would ‘strain credulity to find that the interests of [the subsidiary] and [the parent] were so distinct that they are not aligned’ for purposes of preclusion.” (*Id.*) (quoting *Anchor Glass Container Corp. v. Buschmeier*, 426 F.3d 872, 880 (7th Cir. 2005)) Additionally, PDVH is here as the custodian of PDVSA’s nominal property (the PDVH shares), and preclusion applies where a “bailee seeks to relitigate” the “bailor’s right of recovery.” *Union Ins. Soc’y of Canton, Ltd. v. William Gluckin & Co.*, 353 F.2d 946, 953 (2d Cir. 1965); *see also McLaughlin*

v. Board of Trs. of Nat'l Elevator Indus. Health Benefit Plan, 686 F. App'x 118, 122-123 (3d Cir. 2017) (citing *Taylor*, 553 U.S. at 894) (noting that bailor-bailee relationship falls within “substantive legal relationship” exception to same-party-or-privity requirement for res judicata).¹⁰

Moreover, it would be inequitable for PDVH or CITGO to succeed in quashing the writ on a basis on which PDVSA is estopped. This case has been heavily litigated for years, in multiple courts, and Crystallex has prevailed at every step. It has done so by defeating every material argument raised in opposition to the relief that it has obtained. When the Court permitted PDVH and CITGO to intervene as parties, it did not do so in contemplation of these parties potentially undoing all the work that Crystallex, PDVSA, the Republic, this Court, and other courts have done in this case.

Finally, as Crystallex also contends, “[w]hoever brings this motion, this Court is bound by the Third Circuit’s published, precedential decision,” which held that the writ is valid. (D.I. 199 at 40) Hence, even if PDVH and CITGO were not in privity with PDVSA (which they are) and were not estopped to the same extent as PDVSA (which they are), the Court’s obligation to comply with the appellate mandate would still require the Court to deny the motion to quash.

4. The PDVSA Parties’ Delaware Law Challenges Are Untimely

A related reason for denying the motion to quash, in addition to those already given above, is that all the PDVSA Parties’ Delaware law challenges to the validity of the writ are untimely. Given how this case has proceeded, the proper time to have made these arguments was when the Court was evaluating Crystallex’s motion to issue and serve the writ of attachment.

¹⁰ Because PDVH and CITGO are in privity with PDVSA, and are therefore estopped to the same extent as PDVSA, the Court need not decide whether PDVH and CITGO have standing. Even assuming PDVH and CITGO have standing, they cannot prevail on the motion.

Failing that, at minimum PDVSA needed to have put the Court on notice that, after the Court granted Crystallex's motion, PDVSA would still seek an opportunity to attack the validity of the writ on state law grounds. PDVSA did not do so, notwithstanding this Court's express inquiry.

The last section of the Court's August 9, 2018 opinion (which denied PDVSA's motion to dismiss and granted Crystallex's motion for the writ) identified four aspects of the parties' dispute that, as of that date, "remain[ed] unsettled." *Crystallex Writ Op.* at 425. None of the questions that the Court posed expressly referenced Delaware law or the validity of the writ, reflecting the Court's belief that these issues had been settled (an impression that PDVSA never tried to correct). The last of the Court's questions did reference the possibility of a motion to quash, but only with respect to whether the alter ego finding might be subject to further evidentiary proceedings. The Court asked: "will Venezuela, PDVSA, and/or any other entity appear and seek to supplement the factual record already developed in this litigation and, if so, will such an entity attempt to (and, if so, be permitted to) argue that additional evidence materially alters the Court's findings, and thereby seek to quash the writ?" *Id.*

After asking that question, the Court cited a Delaware case and then referenced three occasions on which Crystallex had stated or suggested that the validity of the writ might be subject to challenge *after* it was issued.¹¹ These statements appear to have been made by

¹¹ The full citation sentence is as follows:

See generally Hibou, Inc. v. Ramsing, 324 A.2d 777, 783 (Del. Super. Ct. 1974) ("[O]n a motion to quash the order the Court as required by 10 Del. C. § 3506 must look at the Prima facie case presented to ascertain whether the plaintiff has 'a good cause of action' against all the defendants whose property has been attached."); D.I. 3-1 at 2 (Crystallex noting, "if any party has a claim to the shares at issue, that party can raise the issue with the Court after the writ is served"); Tr. at 21, 23 (Crystallex recognizing PDVSA, as well as perhaps PDVH and Venezuela, *may* have right to "come back in and challenge the writ"); D.I. 70

Crystallex in contemplation of ordinary proceedings under Delaware law, where the imperative is to get the writ in place, thereby attaching the property (and protecting the creditor) while deferring litigation over the validity of the attachment as much as possible until after the writ is served. Over time, as this case advanced – including as PDVSA intervened, moved to dismiss, and vigorously litigated all issues, including by opposing Crystallex’s motion for a writ – Crystallex appeared to come to the view that, in the circumstances here, all litigation about the validity of the writ had occurred. (*See, e.g.*, D.I. 49 at 23 (Crystallex arguing: “The standard procedure in Delaware as I understand it is that when we are dealing with a foreign sovereign, we would go to the Clerk’s Office, we would get a writ issued, we would serve it, and anyone who had an objection would come in and move to quash the writ. And that is essentially . . . what we’re doing here.”); D.I. 70 at 3 n.5 (Crystallex stating that PDVSA should have moved to quash writ after issuance, “as is the ordinary course,” rather than “preemptively” moving to dismiss, as PDVSA chose to do))

Thus, in August 2018, it seemed that, as this case had evolved, the litigation over the validity of the writ had already occurred in connection with the Court’s decisions on the motion for a writ and the motion to dismiss. For this reason (among others), the Court ordered the parties to submit a joint status report before deciding whether and when to order service of the writ. *See Crystallex Writ Op.* at 425. In the status report that the Court subsequently received, PDVSA did not address the Court’s questions. (*See* D.I. 86 at 6-8) PDVSA provided no

at 2 n.4 (Crystallex noting, “PDVSA may, of course, seek to challenge the writ on non-jurisdictional grounds by a motion to quash brought after the writ has issued and before the Court allows the execution process to commence”).

Crystallex Writ Op. at 425 (emphasis added).

indication that it, or any other entity, would seek to quash the writ based on Delaware law or on any other basis. Nor did PDVSA challenge Crystallex's statement in its portion of the status report (in response to the Court's question about supplementing the record) that "Venezuela has no new legal or factual basis on which to attempt to quash the writ at this stage of the litigation." (*Id.* at 5 n.7) The Court then proceeded to issue the writ and to have it served on PDVSA.¹²

The Court cannot find any indication, either in the record of this Court or that of the Third Circuit, that the PDVSA Parties were purporting to reserve their rights to press Delaware-law objections to the validity of the writ.¹³ For example, neither PDVSA's mandamus petition (in No. 18-2889) nor opening brief for the consolidated appeals (in Nos. 18-2797 & 18-3124) stated or suggested that there were potentially unresolved issues of state law that this Court would have to consider on remand. PDVSA's reply in support of its mandamus petition suggested that this Court might ultimately need to order additional briefing and hear additional argument concerning how the sale of the attached shares should proceed, *but not* as to whether the writ of attachment was even valid in the first place. (*See In re Petróleos de Venezuela, S.A.*, No. 18-2889, Doc. No. 3113093035 (3d Cir. Nov. 23, 2018) PDVSA Mandamus Reply Br. at 5-6)¹⁴

¹² Even the way in which the PDVSA Parties now characterize their position in the August 2018 status report supports the Court's conclusion that these parties acted as if the writ was valid, subject only to their appellate rights. In an October 2020 letter to the Court, the PDVSA Parties state that "PDVSA took the position that 'until the Third Circuit finally resolves PDVSA's appeal from this Court's denial of its sovereign immunity, this Court can take no further action with respect to issuance or enforcement of the Writ.'" (D.I. 230 at 4) (quoting D.I. 86 at 8)

¹³ As previously noted, both the parties and the Court did allude to Delaware law issues during the portion of the litigation leading to the grant of Crystallex's motion for issuance of the writ and denial of PDVSA's motion to dismiss. *See supra* p. 18 n.7.

¹⁴ Crystallex, in its mandamus brief, reiterated to the Third Circuit the view that it had taken in

The PDVSA Parties now insist that “PDVSA made clear” that “the question of the propriety of the attachment was something that should be litigated later, and that the only issue the Court should decide was the FSIA question” (Sept. Tr. at 38), but they fail to cite to where they purportedly made this clear. Likewise, they assert that “from the beginning, everyone . . . knew there was going to be an attack on the attachment” after the writ was granted (July Tr. at 67), yet they identify no basis from which the Court (or Crystallex) should have “known” to expect a post-grant attack. When the Court directly asked counsel whether they could have raised their Delaware law challenges to the writ in the earlier phase of the litigation, counsel simply stated that “it wasn’t raised, and PDVSA had every right not to raise it . . . nor was it required to be part of the litigation before this Court.” (Sept. Tr. at 40)

In the Court’s view, the PDVSA Parties’ challenges to the validity of the writ are untimely. The Court agrees instead with Crystallex, which stated that the PDVSA Parties “were supposed to raise all of these arguments when they were fighting . . . the issuance of the writ.” (Sept. Tr. at 54) As Crystallex accurately put it, if “PDVSA thought that there were questions of Delaware law that were additional questions that should have been adjudicated,” then “the time

this Court, explaining that challenges to the writ typically come after the writ has been served, but PDVSA intervened and “preemptively oppose[d] attachment.” (*See In re Petróleos de Venezuela, S.A.*, No. 18-2889, Doc. No. 3113055847 (3d Cir. Oct. 9, 2018) Crystallex Mandamus Br. at 8) Crystallex added that this Court had never limited the briefing on either Crystallex’s or PDVSA’s motions to jurisdiction issues and that PDVSA never asked for the briefing be so limited. (*Id.* at 9) Likewise, in its brief on the consolidated appeals, Crystallex explained that PDVSA had intervened to oppose the writ both on jurisdictional grounds and on the merits. (*Crystallex Int’l Corp. v. Bolivarian Republic of Venezuela*, No. 18-2797, Doc. No. 3113141891 (3d Cir. Jan. 23, 2019) Crystallex Appeal Br. at 18) In its reply briefs in support of its mandamus petition and appeal, PDVSA did not challenge these contentions or indicate that there were any state law or validity issues remaining to be litigated in this Court. (*See generally* PDVSA Mandamus Reply Br.; *Crystallex Int’l Corp. v. Bolivarian Republic of Venezuela*, No. 18-2797, Doc. No. 3113154696 (3d Cir. Feb. 6, 2019) PDVSA Appeal Reply Br.)

to raise them” was when the Court was adjudicating Crystallex’s motion for a writ and PDVSA’s motion to dismiss. (July Tr. at 80) It is now too late to raise these issues.

Thus, again, the PDVSA Parties’ motion to quash will be denied.

II. Crystallex’s Time To Execute The Writ Has Been And Remains Tolled

An issue that arose in the September 2020 argument was whether the writ of attachment issued by the Court in August 2018 would expire after three years, pursuant to Delaware law, 10 Del. C. § 5081. (*See, e.g.*, Sept. Tr. at 71-72) Having reviewed the parties’ subsequently-filed letter briefs on this topic, the Court agrees with Crystallex that the stay orders issued by this Court and the Third Circuit have tolled the three-year priority period of Section 5081. (*See* D.I. 228 at 1) The Court further agrees with Crystallex that the Court has discretion to issue additional orders tolling the expiration of the three-year priority period should that become necessary – depending on future events and their pace – where any delay is not of Crystallex’s making. (*See id.* at 1-2) Such tolling is consistent with the principles of equitable tolling. *See CTS Corp. v. Waldburger*, 573 U.S. 1, 10 (2014) (explaining that statutes of limitations exist to encourage plaintiff to pursue his rights diligently, and when extraordinary circumstance prevents him from bringing timely action, restriction imposed by statute of limitations does not further its purpose). The Venezuela Parties – the Republic, PDVSA, PDVH, and CITGO – do “not object to a ruling by the Court that the running of the 3-year period specified in 10 Del. C. § 5081 is tolled during the pendency of any stay order.” (D.I. 228 at 3) ConocoPhillips and the United States take no position on the proper interpretation of the Delaware statute. (*See id.*)

The Court deems it the most appropriate exercise of its discretion to expressly order that the three-year priority period has not yet begun, as Crystallex has not been permitted to execute on its writ, and no writ of execution has been issued. Given the pace of these proceedings to

date, and the large amount of litigation that likely lays ahead, it is not in the interests of any parties, any other creditors, or the Court to leave doubt as to whether the priority period is running.

III. Crafting The Contours Of The Sales Process

The Court stated in December 2019: “If the Supreme Court proceedings do not alter the Third Circuit’s instructions to this Court, the Court intends to proceed to selling” PDVSA’s shares of PDVH that are attached. (D.I. 154 at 4 n.4) Consistent with this pronouncement, Crystallex has been pushing the Court – ever since the Supreme Court denied the Republic’s petition for certiorari in May 2020 – to move expeditiously toward a sale.¹⁵ By contrast, the Venezuela Parties (in addition to pressing their Rule 60(b) motion and motion to quash) have asked the Court to refrain from taking any steps toward a sale unless and until OFAC provides a specific license. Additionally, on July 16 – the eve of the Court’s hearing on the pending motions – the United States appeared, urging the Court to follow the Republic’s preferred path and not to proceed toward a sale absent an OFAC license.

The Court directed that the disputes relating to sales procedures be briefed in parallel with the briefing on the motions for relief from the writ of attachment. (D.I. 213, 218) In addition to hearing from the parties and the government, the Court also received briefing from non-party ConocoPhillips, which requests that its judgment against Venezuela be handled according to the same process that the Court implements for Crystallex. (D.I. 180, 202)

The Court has decided that the most reasonable and appropriate course of action, in light of the totality of the circumstances, is to set up the sales procedures and then to follow them to

¹⁵ At the September 17 oral argument, Crystallex asked the Court to set a target sale date during the week of January 11, 2021. (*See* Sept. Tr. at 73) As is evident from the timing of today’s Opinion, the Court has not granted this request.

the maximum extent that can be accomplished without a specific license from OFAC. All parties agree that, under current law and policy, a sale of PDVH shares cannot be completed without a specific OFAC license. (*See, e.g.*, Sept. Tr. at 86) But all the preparatory steps that can be taken without such a license can, and should, be taken. The alternative would be to make Crystallex wait for an indefinite additional period, which cannot be justified given the decade and resources that Crystallex has already spent trying to collect on its judgment and given its uninterrupted string of litigation victories. At this point, the Court agrees with Crystallex that “[t]here is no just reason not to advance this litigation to the furthest point that OFAC’s sanctions regime permits.” (D.I. 223 at 2)

Two principal arguments have been made against moving forward at this time, but neither of them has persuaded the Court. First, the Venezuela Parties point out that OFAC may never issue a specific license allowing the sale and, in that event, all the Court’s efforts toward conducting the sale (and all the litigation accompanying those efforts) will have been wasteful. The Court recognizes this risk. It does not deter the Court from progressing toward the sale because the Court has been provided no indication as to the timing of an OFAC decision and it seems possible that OFAC is waiting to make a decision until after this Court makes further progress.

Second, the government expresses substantial concern that even “prefatory steps” toward a sale will be “potentially damaging” to the Guaidó regime and, thereby, undermine U.S. foreign policy and potentially raise national security issues. (Sept. Tr. at 47; *see also id.* at 31 (counsel for Republic echoing U.S. concerns: “When the United States tell[s] you that the step like establishing a sales process could have national security implications, that really needs to be taken seriously.”)) As the Court has already noted, it does not, of course, take these serious

concerns lightly. As the Court has also already stated, however, the OFAC licensing process provides the better mechanism through which the Executive Branch can bring to bear the foreign policy and national security interests on which Crystallex's collection efforts might have an impact. (*See generally* Sept. Tr. at 47 (government counsel acknowledging that "the OFAC process is certainly the backstop for protecting U.S. interest[s]"); *id.* at 88; *see also* D.I. 212-2 at 2 ("[A]ny auction or sale of PDVH's shares at this time would undermine current U.S. foreign policy on Venezuela. Absent a change in the above considerations, these factors will weigh heavily in OFAC's license determination and could prove to be dispositive in adjudicating this license application.")) The government has not taken the position that the Court is "blocked from moving forward" (Sept. Tr. at 105) and, in the Court's view, the time has arrived for the sales process to proceed. *See also generally* *Petróleos de Venezuela S.A. v. MUFG Union Bank, N.A.*, No. 19-cv-10023, 2020 WL 6135761, at *19 (S.D.N.Y. Oct. 16, 2020) (rejecting government's request for delay despite government's position that "[a]ny . . . loss of PdVSA's U.S.-based assets . . . would be detrimental to U.S. policy and the interim government's priorities").

Having decided that the Court should proceed with the sale to whatever extent is possible in the absence of a specific OFAC license, the Court will now set out some of the contours of the sales procedures that it will follow. The parties will be required to meet and confer and then submit more specific proposals in the very near future.

- *Consistent with all parties' recognition of the Court's broad discretion, the Court will appoint a special master to oversee the day-to-day and detailed implementation of the sales procedures, which will comply with the "twin*

commands” of (i) selling the shares at a public sale to the highest bidder and (ii) meeting the notice requirements. Delaware statutory provisions and Supreme Court decisions set out the Court’s broad discretion. See 8 Del. C. § 324; Deibler v. Atlantic Properties Group, Inc., 652 A.2d 553, 558 (Del. 1995). The parties agree that the Court can appoint a special master, who will have the time and expertise to fulfill the Court’s and the U.S. Marshal’s duties to prepare for and conduct the sale. (See, e.g., D.I. 180 at 1-2, 4-6 (ConocoPhillips); D.I. 196 at 10 (Venezuela Parties); D.I. 198 at 18 (Crystallex); see also Sept. Tr. at 80, 97-98, 108, 112)

- *With the assistance of the special master, the Court will set minimum requirements – for example, for advertising and other notices to reach potential bidders, for the materials that will be deposited in a data room to be accessed by potential bidders – which any interested entity may supplement or exceed. (See generally Sept. Tr. at 75, 79-80, 95; see also Deibler, 652 A.2d at 557-58 (“[J]udgment debtors are free to supplement such notice as the sheriff may disseminate. As the owner of the property, they not only have the economic interest rationally to expend the appropriate level of resources on notices, but also have the fullest (and cheapest) access to relevant information.”))*
- *Crystallex will be permitted to credit bid.*
- *Crystallex’s priority status shall not be affected by the sales procedures that are ultimately implemented.*

- *To ensure that only serious bidders participate, and that only a bidder seriously interested in completing the transaction wins at the auction, bidders will be required to make a substantial good faith deposit, which will be refundable to all but the winning bidder. The winning bidder may be required to make an additional non-refundable deposit to provide adequate incentive to close the deal.*

- *The winning bidder will be given a reasonable amount of time to pursue any necessary and desirable regulatory approvals, with the potential for a Court-ordered extension upon a showing of good cause.*

- *The process will result in the sale of as many, but only as many, shares of PDVH as are necessary to satisfy the judgment of Crystallex (and of any other judgment creditor whose judgment may be added to the sale). The parties (including, if they wish, ConcocoPhillips and the United States) shall work with the special master to consider implementing procedures to permit any other judgment creditor of Venezuela to request to participate in the Court's process.*

- *The Venezuela Parties will have a fair and reasonable opportunity to be involved in the prefatory procedures, the sale, and any negotiations, but the Court will retain control over the sale.¹⁶ The Venezuela Parties will have a seat at the table, but they will not be running the process.*

¹⁶ The Court expects that the Venezuela Parties are likely right that an aspect of finalizing a sale will be the necessity for “rather complex negotiations of minority rights in any stock that is sold.” (Sept. Tr. at 96)

A bit more needs to be said about this last point. The Court rejects the Venezuela Parties' contention that only PDVSA should be permitted to conduct the sales process, purportedly because only PDVSA has the incentive and knowledge to conduct a fair process. (*See* D.I. 188 at 3, 17) While Crystallex's incentives, as creditor, may extend only so far as to ensure that the result of the sales process is sufficient to recover what it is owed, and not necessarily to maximize the value of the PDVH shares to be sold, the whole point of the public, noticed, full and fair competitive sales process required under Delaware law is to maximize the sales price obtained, regardless of the creditor's incentive. The Court is confident that the procedures it follows will result in the appropriate incentives. As for knowledge, the Court's procedures will include a data room, into which PDVSA may (and will be expected to and, if need be, ordered to) deposit information that will be material to potential bidders' understanding of the full and fair value of the shares being sold. In other words, any unique knowledge held by PDVSA can – and will – be obtained and utilized irrespective of whether PDVSA is permitted to conduct the sale itself.

Importantly, it would be inequitable to permit PDVSA to conduct the sale at this point. Venezuela, through PDVSA and otherwise, has had every opportunity to pay its legitimate, Court-recognized debt to Crystallex, including before, during, and after the arbitration, and throughout the extensive litigation in this Court, the Court of Appeals, and the Supreme Court. Even today, the Republic could pay Crystallex what it owes and avoid the sales process altogether. But, having made Crystallex undertake a decade's worth of extensive and expensive efforts to collect on its judgment, the Court is not going to permit a highly-recalcitrant judgment debtor to conduct its own sales process over the objection of its repeatedly-victorious judgment creditor.

Each day that Crystallex does not recover on its judgment is arguably something of an affront to the United States judicial system. Those days must soon come to an end.

CONCLUSION

For the reasons discussed above, Venezuela's motion for relief under Federal Rule of Civil Procedure 60(b) will be denied, as will the motion to quash the writ of attachment filed by PDVSA, PDVH, and CITGO. Crystallex's motion to set the sales procedures will be granted in part and denied in part. The parties will be ordered to meet and confer and then provide further input on the specific manner in which the Court should proceed toward conducting the sale of PDVSA's shares of PDVH in an amount sufficient to satisfy the judgment that Venezuela owes Crystallex. An appropriate Order follows.

THIS IS EXHIBIT "B" REFERRED TO IN THE
AFFIDAVIT OF ROBERT FUNG, SWORN BEFORE
ME THIS 25TH DAY OF OCTOBER, 2021.



A Commissioner for Taking Affidavits
NATALIE RENNER

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

| | | |
|-----------------------------------|---|----------------------|
| CRYSTALLEX INTERNATIONAL CORP., | : | |
| | : | |
| Plaintiff, | : | |
| | : | |
| v. | : | Misc. No. 17-151-LPS |
| | : | |
| BOLIVARIAN REPUBLIC OF VENEZUELA, | : | |
| | : | |
| Defendant. | : | |

ORDER REGARDING SPECIAL MASTER

WHEREAS, on January 14, 2021, the Court issued an opinion and corresponding order (D.I. 234, 235) on several motions brought by Plaintiff Crystallex International Corp. (“Crystallex”), Defendant the Bolivarian Republic of Venezuela (“the Republic”), and Intervenor Petróleos de Venezuela, S.A. (“PDVSA”), PDV Holding, Inc. (“PDVH”), and CITGO Petroleum Corp. (“CITGO”) (collectively with Venezuela, PDVSA, and PDVH, the “Venezuela Parties”), in which the Court “set out some of the contours of the sales procedures that it will follow” in conducting a sale of PDVSA’s shares of PDVH (D.I. 234 at 34);

WHEREAS, by order dated April 13, 2021 (D.I. 258), the Court appointed Robert B. Pincus as a special master (the “Special Master”) in this case “to assist with the sale of PDVSA’s shares of PDVH” (the “Sale”);

WHEREAS, U.S. persons are governed by certain regulations and, unless authorized pursuant to a specific license issued by the Office of Foreign Assets Control (“OFAC”), may not enforce any lien, judgment, arbitral award, decree, or other order through execution,

garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in blocked property, such as PDVSA's shares of PDVH;

WHEREAS, PDVH and CITGO have submitted a request for guidance or a specific license to OFAC regarding the obligations contemplated herein;

WHEREAS, this Court has previously found "the most reasonable and appropriate course of action, in light of the totality of the circumstances, is to set up the sales procedures and then to follow them to the maximum extent that can be accomplished without a specific license from OFAC" (D.I. 234 at 32-33);

WHEREAS, the Court directed the Parties¹ to work with the Special Master to enable him to submit a proposed order setting out "(a) arrangements for how [the Special Master] will be paid for his time and reimbursed for reasonable expenses incurred in fulfilling his responsibilities, including the retention of necessary professional and other services; (b) any other details required to effectuate the appointment; and (c) a deadline for [the Special Master], after meeting and conferring with the parties and obtaining whatever additional assistance he reasonably needs, to submit a Proposed Sales Procedures Order" (D.I. 258 ¶ 2) (internal citation omitted);

WHEREAS, the Special Master has met and conferred with the Parties and ConocoPhillips² and has submitted a Proposed Order Regarding Special Master (D.I. 265-1) ("Proposed Order");

¹ The "Parties" refers to Crystallex and the Venezuela Parties.

² "ConocoPhillips" refers collectively to Phillips Petroleum Company Venezuela Limited and ConocoPhillips Petrozuata B.V.

WHEREAS, pursuant to the Court's oral order of May 11, 2021 (D.I. 264), the Parties and ConocoPhillips submitted letter briefs containing their objections and positions with respect to the Proposed Order (*see* D.I. 266-71, 273; *see also* D.I. 274-1 (position of Intervenor Blackrock Financial Management, Inc. and Contrarian Capital Management, L.L.C.); D.I. 276 (same));

WHEREAS, the Court issued a Memorandum Order on May 24, 2021, ruling on the objections to the Proposed Order (D.I. 275);

NOW THEREFORE, this 27th day of May, 2021, IT IS HEREBY ORDERED that:

1. The appointment of Robert B. Pincus as Special Master is made pursuant to Federal Rule of Civil Procedure 53 ("Rule 53"). The Court finds, based on the extensive consultations with the Special Master to this point (*see, e.g.*, D.I. 260, 265) (describing communications between Special Master and counsel for Parties and ConocoPhillips relating to Proposed Order) and opportunity to file objections, the Parties and ConocoPhillips all agree that the requirements and procedures set out in Rule 53 have been complied with in full.

2. ***Special Master's Duties.*** The Special Master shall devise a plan for the sale of shares of PDVH as necessary to satisfy the outstanding judgment of Crystallex and the judgment of any other judgment creditor added to the Sale by the Court and/or devise such other transaction as would satisfy such outstanding judgment(s) while maximizing the sale price of any assets to be sold (the "Proposed Sales Procedures Order"). Consistent with these duties, the Special Master shall, among other things, oversee the execution of a protective order to ensure that confidential information provided or exchanged during the course of the Special Master's tenure is properly protected from disclosure that could cause competitive or other harm; work to become knowledgeable about the business operations and assets of CITGO and PDVH; and

ascertain the total amounts of the outstanding judgment owed to Crystallex by the Republic of Venezuela and the total amount of the outstanding judgment owed to ConocoPhillips by PDVSA.

3. The Special Master shall provide the Parties and ConocoPhillips with a draft of his Proposed Sales Procedures Order in advance of submission to the Court, with reasonable time for the Parties and ConocoPhillips to provide comments and suggestions to the Special Master.

4. “[A]fter meeting and conferring with the [P]arties [and ConocoPhillips] and obtaining whatever additional assistance he reasonably needs” (D.I. 258 at 3), the Special Master will submit the Proposed Sales Procedures Order to the Court, the Parties, and ConocoPhillips. The Proposed Sales Procedures Order shall be submitted no later than sixty (60) days after entry of this Order, unless such date is otherwise extended following a request by the Special Master (upon notice) granted by the Court, and shall be consistent with this Court’s January 14, 2021 Order (*see* D.I. 234 at 34-36).

5. The Special Master may initially file the Proposed Sales Procedures Order under seal, should he reasonably believe it is necessary to do so in order to protect confidential information, which, if disclosed, could harm any Party or ConocoPhillips. In that case, the Special Master shall further file a redacted version of the Proposed Sales Procedures Order no later than seven (7) days after filing the sealed original version.

6. After the Special Master submits a Proposed Sales Procedures Order, the Parties and ConocoPhillips will have an opportunity to make any objections and other positions known to the Court, as follows (subject to any further order of the Court):

(a) any of the Parties or ConocoPhillips may file objections (in the form of a letter brief not to exceed five pages) no later than *five calendar days* after the Special Master files the Proposed Sales Procedures Order; and

(b) any of the Parties or ConocoPhillips may respond to any letter briefs filed according to paragraph 6(a) by a single letter brief (not to exceed three pages) no later than *two calendar days* after the deadline set out in paragraph 6(a).

7. After considering any objections and letter briefs submitted pursuant to paragraph 6, the Court will adopt a form of the Order (hereinafter, the “Final Sales Procedures Order”), and thereafter the Parties and ConocoPhillips shall meet and confer and submit proposal(s) to the Court regarding steps to be taken by the Special Master with respect to execution of the Final Sales Procedures Order and the timing thereof.

8. ***Communications with the Parties, ConocoPhillips, and the Court.*** The Special Master may communicate *ex parte* with the Court, any Party, any Party’s attorneys, ConocoPhillips, and ConocoPhillips’ attorneys at the Special Master’s discretion as necessary to carry out his duties.

9. ***Provision of Information.*** The Venezuela Parties (including their directors, officers, employees, and agents) shall, to the extent available to them, use reasonable efforts to promptly provide the Special Master with any and all non-privileged information and documents (confidential or otherwise) concerning the Venezuela Parties that the Special Master requests in order to permit him to prepare and file the Proposed Sales Procedures Order and otherwise perform his duties as Special Master, including, without limitation, any and all financial information and documents about the Venezuela Parties’ businesses (historic, existing, or potentially prospective), creditors, stockholders, directors, officers, employees, and agents.

Without limiting the foregoing, and for the avoidance of doubt, these informational rights of the Special Master extend to include, at a minimum, books and records of the Venezuela Parties (defined as broadly as possible), including electronic mail, and include information on the Venezuela Parties' or their subsidiaries' server(s) or located elsewhere (electronic or otherwise). While the Venezuela Parties are entitled to assert applicable privileges, the furnishing of information pursuant to the Order shall not waive any applicable attorney-client privilege or work product doctrine. As used in this Order, the phrases "information related to the Venezuela Parties," "information concerning the Venezuela Parties," "Venezuela Parties' confidential information," and "communications related to the Venezuela Parties" apply equally to the Venezuela Parties and their subsidiaries, provided, however, that the Special Master shall not share any written information provided to him by the Venezuela Parties that is marked highly confidential with Crystallex, ConocoPhillips, or any other third party.

10. ***The Record of the Special Master.*** The Special Master shall provide the Court with a status report under seal on a monthly basis informing the Court of his progress; provided, however, that the Special Master shall not be required to disclose any information that he, in his sole discretion, believes would have a negative impact on the performance of his duties under this Order or adversely affect the Parties or ConocoPhillips. The Special Master shall maintain normal billing records of his time spent on this matter, with reasonably detailed descriptions of his activities and matters worked on. The Special Master shall preserve copies of all materials received from the Parties and ConocoPhillips, and any notes or work product developed by the Special Master, until final resolution of these proceedings (including any and all appeals).

11. **Judicial Review of the Special Master's Recommendations and**

Submissions. The Special Master shall reduce any finding, report, recommendation, or plan (including, but not limited to, the Proposed Sales Procedures Order) to writing and file it with the Court. With the exception of the regular status reports that the Special Master will file monthly, any Party or ConocoPhillips may file an objection to a finding, report, recommendation, or plan by the Special Master within 14 days of the date when it is submitted to the Court, **unless the Court sets a different deadline.** See, e.g., *supra* ¶ 6; see also generally Fed. R. Civ. P. 53(f)(1) & (2). The instant Order, in combination with notice that the Special Master shall take care to provide to the Parties and ConocoPhillips along with the submission of any finding, report, recommendation, or plan (including, but not limited to, the Proposed Sales Procedure Order), shall constitute the required notice to the Parties and ConocoPhillips. The required opportunity to be heard shall be provided for pursuant to the procedures set out in the instant Order (*see, e.g., supra* ¶ 6) and any further Order of the Court. See generally Fed. R. Civ. P. 53(f)(1).

12. The Court reviews factual issues and legal issues *de novo* and procedural issues for abuse of discretion. See Fed. R. Civ. P. 53(f)(3)-(5).

12. Following review, the Court may receive evidence, and it may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit the finding, report, recommendation, or plan to the Special Master with instructions. See Fed. R. Civ. P. 53(f)(1).

13. **Retention of Advisors.** The Special Master is authorized to and has retained the law firms of (i) Potter Anderson & Corroon LLP as Delaware counsel, (ii) Jenner & Block LLP as OFAC counsel, and (iii) Weil, Gotshal & Manges LLP as transaction counsel (the law firms collectively, "Counsel") to represent him in his role as Special Master and to assist him in the performance of his duties as Special Master. The Special Master is also authorized to

retain one or more additional law firms and consultants or advisors, including financial advisors and other professionals (together, “Advisors”), as the Special Master, after consultation with the Parties and ConocoPhillips, deems appropriate for purposes of assisting him in performing his duties as Special Master. The Special Master will consult with the Parties and ConocoPhillips and solicit their input prior to hiring Advisors. The Special Master is authorized to enter into any agreements with such Advisors on terms that he, after consultation with the Parties and ConocoPhillips, believes are appropriate. The Court shall have the authority to rescind retention of Advisors or Counsel, or require modification of their retention, scope of work, and compensation.

14. ***Compensation of the Special Master.*** The Special Master shall be compensated at his usual rate of \$950 per hour and shall also be reimbursed for reasonable travel and other expenses incurred in the performance of his duties. Crystallex, ConocoPhillips, and the Venezuela Parties shall, upon approval by the Court, bear the cost of the Special Master and his Advisors’ compensation equally, with each contributing one-third. One or more of the Venezuela Parties shall bear the cost for the Venezuela Parties’ collective one-third share; however, in no event shall the Venezuela Parties’ efforts to coordinate and cooperate amongst themselves be considered good cause for any delay in payment.

15. The Special Master shall incur only such fees and expenses as may be reasonably necessary to fulfill his duties under this Order, or such other Orders as the Court may issue in this proceeding. Unless authorized by a subsequent order of this Court, and with leave for the Special Master to seek additional funding as may be necessary, the fees and expenses of the Special Master, Counsel, and Advisors in connection with submitting to the Court the Proposed Sales Procedures Order shall not exceed \$2 million in the aggregate.

16. Any payments made by Crystallex, the Venezuela Parties, and ConocoPhillips shall be reimbursed out of the first proceeds of any sale of shares of PDVH, notwithstanding any claim or attachment by any creditor of any of the Venezuela Parties.

17. The Special Master shall submit to the Court an itemized statement of fees and expenses on a monthly basis (each an “Itemized Statement”), which the Court will inspect for regularity and reasonableness. The fees of any Counsel or Advisors retained to assist the Special Master in carrying out his duties shall be calculated based on the rates charged by such Counsel or Advisor to other clients of their firms.

18. If the Court determines, after considering any objections or comments from the Parties or ConocoPhillips, that the Itemized Statement is regular and reasonable, Crystallex, the Venezuela Parties, and ConocoPhillips shall remit to the Special Master their share of any amount the Court determines is regular and reasonable within thirty (30) calendar days of such determination by the Court.

19. ***Cooperation of the Parties and ConocoPhillips.*** All Parties and ConocoPhillips, including their directors, officers, employees, consultants, and agents, shall reasonably cooperate with the Special Master in the performance of his duties under this Order. Subject to the other provisions of this Order, the Parties and ConocoPhillips will, to the extent available to them and to the extent it is required, make available to the Special Master any and all facilities and all files, databases, and documents that are necessary to fulfill the Special Master’s functions under this Order, subject to confidentiality restrictions.


20. ***Arm of the Court.*** The Court finds that the Special Master, in effectuating his Court-appointed duties, is acting pursuant to Federal Rule of Civil Procedure 53 and, thus, as an arm of the Court.

21. **Judicial Immunity.** The Special Master is entitled to judicial immunity in performing his duties as authorized by the orders of this Court. The Special Master's Counsel and Advisors are entitled to judicial immunity in performing services at the direction of the Special Master within the scope of this Order or a Court-approved engagement.

22. **Fiduciary Duties.** The Special Master, as an appointee of the Court to undertake the duties hereunder, owes duties to the Court and does not owe fiduciary or other duties to any of the Parties, or to creditors of any Parties.

23. **Parties and ConocoPhillips' Rights.** None of (1) the entry of this Order, (2) the participation by any Party or ConocoPhillips in its drafting, (3) the payment of the Special Master's fees and expenses, and/or (4) the process of developing the Proposed Sales Procedures Order, shall be a waiver of any rights or arguments with respect to the writ of attachment or the sales process, including any appellate rights or arguments. Specifically, the aforementioned actions shall not waive or otherwise affect the Venezuela Parties' appeal regarding this Court's January 14, 2021 Order, including, but not limited to, the current appeal pending before the United States Court of Appeals for the Third Circuit. Moreover, all Parties and ConocoPhillips retain their rights, if any, to seek appellate review arising from this Order, the Final Sales Procedures Order, any other order associated with the matters contemplated herein, and any ultimate order of sale, notwithstanding the entry of this Order or the aforementioned participation.

May 27, 2021
Wilmington, Delaware


HONORABLE LEONARD P. STARK
UNITED STATES DISTRICT JUDGE

THIS IS EXHIBIT "C" REFERRED TO IN THE
AFFIDAVIT OF ROBERT FUNG, SWORN BEFORE
ME THIS 25TH DAY OF OCTOBER, 2021.



A Commissioner for Taking Affidavits
NATALIE RENNER

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CRYSTALLEX INTERNATIONAL CORP.,)
)
Plaintiff,)
)
v.) Misc. No. 17-151-LPS
)
BOLIVARIAN REPUBLIC OF VENEZUELA,)
)
Defendant.)
)
)
)
_____)

SPECIAL MASTER CONFIDENTIALITY ORDER

WHEREAS, on May 27, 2021, the Court issued the Order Regarding Special Master (D.I. 277) (the “Special Master Order”);

WHEREAS, Paragraph 2 of the Special Master Order requires that the Special Master “oversee the execution of a protective order to ensure that confidential information provided or exchanged during the course of the Special Master’s tenure is properly protected from disclosure that could cause competitive or other harm”;

WHEREAS, pursuant to Paragraph 9 of the Special Master Order, “[t]he Venezuela Parties (including their directors, officers, employees, and agents) shall, to the extent available to them, use reasonable efforts to promptly provide the Special Master with any and all non-privileged information and documents (confidential or otherwise) concerning the Venezuela Parties that the Special Master requests in order to permit him to prepare and file the Proposed Sales Procedures Order and otherwise perform his duties as Special Master”;¹

¹ Capitalized terms not otherwise defined herein shall have the meaning defined in the Special Master Order.

WHEREAS, such information may include “financial information and documents about the Venezuela Parties’ businesses (historic, existing, or potentially prospective), creditors, stockholders, directors, officers, employees, and agents,” and this information, as well as information submitted by Crystallex or ConocoPhillips, may be considered confidential or highly confidential;

WHEREAS, pursuant to Paragraph 19 of the Special Master Order, “the Parties and ConocoPhillips will, to the extent available to them and to the extent it is required, make available to the Special Master any and all facilities and all files, databases, and documents that are necessary to fulfill the Special Master’s functions . . . subject to confidentiality restrictions”; and

WHEREAS, the Parties, ConocoPhillips, the Special Master, and the Court all agree that Confidential Information and Highly Confidential Information should be accorded certain protections, consistent with the governing law:

NOW THEREFORE, this 6th day of July, 2021, it is HEREBY ORDERED that the use and disclosure of “Confidential Information” and “Highly Confidential Information,” as defined below, shall be governed by this Confidentiality Order, as follows:

1. Any Party or ConocoPhillips may designate any documents or information as “Confidential Information” if such party in good faith believes that such documents or information contain non-public, confidential, proprietary, or commercially sensitive information that requires the protections provided in this Order. Any Party or ConocoPhillips must designate such documents or information as “Confidential Information” by affixing the legend “Confidential Information” to each page containing such Confidential Information or in the case of electronically stored information produced in native format, by including “Confidential Information” in the file or directory name, or by affixing the legend “Confidential Information” to the media. The

producing party must designate such documents or information as “Confidential Information” to receive the protections of this Order.

2. Any Party or ConocoPhillips may designate any documents or information as “Highly Confidential Information” if such party in good faith believes that disclosure of such non-public, confidential, proprietary, or commercially sensitive information other than as permitted pursuant to this Order is substantially likely to cause injury to the producing party. Any Party or ConocoPhillips must designate such documents or information as “Highly Confidential Information” by affixing the legend “Highly Confidential Information” to each page containing such Highly Confidential Information or in the case of electronically stored information produced in native format, by including “Highly Confidential Information” in the file or directory name, or by affixing the legend “Highly Confidential Information” to the media. The producing party must designate such documents or information as “Highly Confidential Information” to receive the protections of this Order.

3. Any document filed with the Court by the Special Master pursuant to the Special Master Order (including the Proposed Sales Procedure Order and any invoice or billing record) that contains Confidential Information shall automatically be filed under seal pursuant to Section (G) of the Court’s Administrative Procedures Governing Filing and Service by Electronic Means and Federal Rule of Civil Procedure 5.2(d). Within 72 hours of service of a document filed under seal with the Court by the Special Master, the Parties and ConocoPhillips shall exchange proposed redactions to the under-seal filing. No later than five calendar days after the filing of an under-seal document, the Parties and ConocoPhillips shall jointly submit proposed redactions to the Special Master. The Special Master will file such redactions as soon as practicable thereafter.

4. Confidential Information may not be disclosed, summarized, described, characterized, or otherwise communicated or made available, in whole or in part, to any person or entity other than (i) the Court and its personnel; (ii) the Special Master, (iii) the Special Master's Counsel and the Special Master's Advisors (as defined in the Special Master Order and including, but not limited to, the Special Master's financial advisors); (iv) outside counsel for the Parties and ConocoPhillips, and (v) other persons whom the Special Master agrees may possess Confidential Information. Should the Special Master wish to disclose Confidential Information to any persons specified in item (v), the Parties shall be given prompt notice and an opportunity to object to the disclosure of such information, with any dispute to be resolved by the Court prior to disclosure by the Special Master. Access to Confidential Information by persons specified in items (iii) and (v) of this Paragraph 4 shall be subject to Paragraph 6 herein.

5. Confidential Information and Highly Confidential Information shall be used solely for purposes related to the Special Master and the Special Master's duties as ordered by the Court, and shall not be used by any person or entity for any other purpose whatsoever, including, without limitation, any business, commercial, or public purpose, or in any other litigation or proceeding.

6. Confidential Information may be provided to persons in Paragraph 4(iii) and (v) only after each such person executes and files with the Court an agreement to be bound by this Confidentiality Order in the form attached hereto as **Exhibit 1**. Among other things, such agreement to be bound will confirm that each such person consents to personal jurisdiction in this Court for all matters relating to the above-captioned action, including, but not limited to, all matters relating in any way to the Special Master Order or the Special Master, any Confidential Information or Highly Confidential Information, or this Confidentiality Order.

7. Any person identified in Paragraph 4 to whom Confidential Information is disclosed, summarized, described, characterized, or otherwise communicated or made available, in whole or in part, shall be advised that the Confidential Information is being disclosed pursuant to and subject to the terms of this Confidentiality Order and may not be disclosed, summarized, described, characterized, or otherwise communicated or made available, in whole or in part, to any unauthorized person or entity, and may not be used for purposes other than those permitted hereunder. Each such person shall maintain the Confidential Information and any information derived therefrom in a manner reasonably calculated to prevent unauthorized disclosure or use.

8. Any pleading, brief, memorandum, motion, letter, affidavit, or other document filed with the Court that discloses, summarizes, describes, characterizes, or otherwise communicates Confidential Information (a “Confidential Information Filing”) shall be filed under seal with the Court in accordance with the provisions of Section (G) of the Court’s Administrative Procedures Governing Filing and Service by Electronic Means and Federal Rule of Civil Procedure 5.2(d). A public version of the filing, pursuant to the Court’s procedures and the procedures of Paragraph 3 in this Confidentiality Order, shall be filed within seven calendar days.

9. There is good cause to provide confidential treatment to Confidential Information Filings and any Confidential Information therein, and any public interest in disclosure of such documents or information is outweighed by the harm that such disclosure would cause. These findings are subject to review by the Court, at an appropriate time and pursuant to procedures to be set by the Court, in connection with any particular document. Any person or entity filing a public version of a Confidential Information Filing shall redact any Confidential Information from the public version.

10. Any Party or ConocoPhillips objecting to the designation of any document or information as Confidential Information may, after making a good-faith effort to resolve any such objection with the producing party, move the Special Master for an order vacating the designation. The producing party shall have 48 hours to show cause. While such a motion is pending, the Confidential Information in question shall be treated as Confidential Information pursuant to this Order. The provisions of this Order are not intended to shift any burdens of proof, including the burden of establishing that any document or information validly constitutes Confidential Information, which burden remains on the party that designates such document or information as Confidential Information.

11. Any Party or ConocoPhillips may apply, within 48 hours after the use or handling of Confidential Information or service of a Confidential Information Filing, for an order providing additional safeguards or clarification with respect to the use or handling of Confidential Information or Confidential Information Filings, or for an order remedying any violation of this Confidentiality Order.

12. Highly Confidential Information may be shared with the Special Master's Counsel and Advisors who have executed and filed with the Court an agreement to be bound by this Confidentiality Order in the form attached hereto as Exhibit 1. Highly Confidential Information may not be shared with any of the other Parties, ConocoPhillips, their outside counsel, or any other person or entity, and it shall not be filed with the Court. Notwithstanding the foregoing, the Special Master may (i) share a document validly marked "Highly Confidential Information" *in camera* with the Court; or (ii) file such document if he deems it in furtherance of his duties provided that he redacts such documents and otherwise complies with this paragraph and other provisions of this Order. In the event the Special Master files such document with the Court, the Special Master

shall file the document under seal, provide to the Court and counsel of record for those parties that would otherwise receive a service copy of the sealed filing a version in which all Highly Confidential information and documents are redacted, and provide to the Court an unredacted copy of the sealed filing. For the avoidance of doubt, the Special Master shall not be required to challenge the designation of Highly Confidential prior to sharing with the Court or filing such Highly Confidential Information under seal provided that no other party or person other than the Court shall be entitled to see or access such document.

13. If the Special Master believes (i) that filing a document publicly or making it available to a person or party other than the Court *in camera* is necessary or appropriate in the furtherance of his duties; and (ii) a document or information has been improperly designated as Highly Confidential Information, he shall provide written notice to the producing party to show cause why such document should not be designated as Confidential. The producing party shall have 48 hours to show cause why the document or information should not be treated as Confidential Information. If, after the producing party has had the opportunity to show cause, the Special Master still believes that the document or information should be treated as Confidential Information, the producing party shall have the opportunity to submit the document to the Court (with copy to the Special Master) for *in camera* review and determination regarding its designation. If the producing party fails to timely respond to the Special Master's notice to show cause, or does not submit the document or information for review within 48 hours after being informed by the Special Master of his determination, the document or information that was the subject of the notice shall be deemed Confidential Information and shall no longer receive the protections afforded to Highly Confidential Information pursuant to this order.

14. Nothing herein shall be deemed to waive any applicable common law or statutory privilege or work-product protection.

15. The provisions of this Confidentiality Order shall survive indefinitely, notwithstanding the termination of the above-captioned action or any appeals therefrom. Confidential Information shall be released from confidential treatment only upon further order of this Court.

16. Prior to any court proceeding in which Confidential Information or Confidential Information Filings are to be used, counsel shall confer in good faith on such procedures that may be necessary or advisable to protect the confidentiality of such Confidential Information or Confidential Information Filings.

17. If any person or entity (a "Receiver") in possession of Confidential Information or Confidential Information Filings (other than the Special Master) receives a subpoena or other compulsory process seeking the production or other disclosure of Confidential Information or Confidential Information Filings (a "Demand"), the Receiver shall give written notice (by hand, email, or facsimile transmission) to counsel for the Special Master within three business days of receipt of such Demand (or if a response to the Demand is due in less than three business days, at least 24 hours prior to the deadline for a response to the Demand), identifying the Confidential Information and/or Confidential Information Filings sought and enclosing a copy of the Demand. The Receiver must object to the production of the Confidential Information and/or Confidential Information Filings on the grounds of the existence of this Confidentiality Order until such time as a court of competent jurisdiction directs the Receiver to produce the Confidential Information and/or Confidential Information Filings, except if the party that produced the Confidential Information (a) consents, (b) fails to file a motion to quash, or (c) fails to notify the Receiver in

writing of its intention to contest the production of the Confidential Information and/or Confidential Information Filings prior to the date designated for production of the Confidential Information and/or Confidential Information Filings, in which event the Receiver may produce those materials on the production date, but no earlier.

18. Except as may be required by law, no person or entity shall reveal any Confidential Information, Confidential Information Filings, or any information contained therein to anyone not entitled to receive Confidential Information under the terms of this Confidentiality Order. In the event that any Confidential Information, any Confidential Information Filings, or any information contained therein is disclosed to any person or entity other than in the manner authorized by this Confidentiality Order, or in the event that any information comes to a person's or entity's attention that may indicate there was or is likely to be a loss of confidentiality of any Confidential Information, any Confidential Information Filings, or any information contained therein, the person or entity responsible for the actual or likely disclosure or loss of confidentiality (and any person or entity with knowledge of such actual or likely disclosure or loss of confidentiality) shall immediately inform the Special Master and his Counsel of all pertinent facts relating to the actual or likely disclosure or loss of confidentiality, including, if known, the name, address, and employer of each person or entity to whom the disclosure was made (or to whom the likely disclosure may be made). The person or entity responsible for the actual or likely disclosure or loss of confidentiality shall also exercise best efforts to prevent disclosure of Confidential Information or Confidential Information Filings by each unauthorized person or entity who receives or may receive the information.

19. All of the protections provided by this Confidentiality Order for Confidential Information shall also apply to Highly Confidential Information. In addition, Highly Confidential

Information is not to be shared with any individual or entity besides the Special Master, his Advisors, and the entity that produced the Highly Confidential Information (and, as set out elsewhere in this Confidentiality Order, the Court).

20. By entering this Confidentiality Order and limiting the disclosure of information in this case, the Court does not intend to preclude another court from finding that information may be relevant and subject to disclosure in another case. Any Party, person, or entity subject to this Confidentiality Order who becomes subject to a motion to disclose another Party's or entity's Confidential Information shall promptly notify that Party or entity of the motion so that the Party or entity may have an opportunity to appear and be heard on whether that information should be disclosed.

21. This Confidentiality Order, and any dispute arising out of or relating in any way to this Confidentiality Order, shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflict-of-laws principles. The sole and exclusive forum for any dispute relating in any way to the Special Master Order, any Confidential Information, any Confidential Information Filings, or this Confidentiality Order shall be the United States District Court for the District of Delaware.

IT IS SO ORDERED this 6th day of July, 2021.



The Honorable Leonard P. Stark
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CRYSTALLEX INTERNATIONAL CORP.,)
)
Plaintiff,)
)
v.) Misc. No. 17-151-LPS
)
BOLIVARIAN REPUBLIC OF VENEZUELA,)
)
Defendant.)
)
)
)
_____)

**UNDERTAKING ACKNOWLEDGING AND AGREEING
TO BE BOUND BY SPECIAL MASTER CONFIDENTIALITY ORDER**

1. I have read the Special Master Confidentiality Order issued in the above-captioned action.

2. I am a person whom the Special Master has determined may possess Confidential Information and/or Highly Confidential Information.

3. I understand and acknowledge the terms of the Special Master Confidentiality Order and agree to be bound by them.

4. I agree not to disclose, summarize, describe, characterize, or otherwise communicate or make available, in whole or in part, any Confidential Information, Highly Confidential Information, or Confidential Information Filings (each as defined in the Special Master Confidentiality Order), except (if permitted) to such persons expressly referenced in Paragraph 4 of the Special Master Confidentiality Order, and who also have executed the required undertaking, if required.

5. I agree not to use Confidential Information, Highly Confidential Information, or Confidential Information Filings for any purpose other than those expressly referenced in

Paragraph 5 of the Special Master Confidentiality Order. I further agree not to disclose, summarize, describe, characterize, or otherwise communicate or make available, in whole or in part, Confidential Information, Highly Confidential Information, or Confidential Information Filings, except (if permitted) in documents filed confidentially with the Court pursuant to the Special Master Confidentiality Order.

6. I further agree to abide by the restrictions placed on information designated “Highly Confidential Pursuant to Order of the United States District Court for the District of Delaware, *Crystallex Int’l Corp. v. Bolivarian Republic of Venezuela*,” as set forth in the Special Master Confidentiality Order.

7. I agree that, in the event of a violation of the Special Master Confidentiality Order, I shall be subject to such sanctions and penalties as the Court deems just and proper.

8. I agree that the Special Master Confidentiality Order is valid and enforceable against me, and I waive any argument to the contrary.

9. I agree to personal jurisdiction in the United States District Court for the District of Delaware for all matters relating to the above-captioned action, including, but not limited to, all matters relating in any way to the Special Master Confidentiality Order, any Confidential Information, Highly Confidential Information, and/or any Confidential Information Filings.

10. I hereby submit to the exclusive and continuing jurisdiction of the United States District Court for the District of Delaware for all matters relating in any way to the Special Master Confidentiality Order, any Confidential Information, Highly Confidential Information, and/or any Confidential Information Filings.

11. I agree to file this Undertaking Acknowledging and Agreeing to Be Bound by Special Master Confidentiality Order with the Court in the above-captioned action.

Date: _____

Signature: _____

Name: _____

Affiliation: _____

Title: _____

THIS IS EXHIBIT "D" REFERRED TO IN THE
AFFIDAVIT OF ROBERT FUNG, SWORN BEFORE
ME THIS 25TH DAY OF OCTOBER, 2021.



A Commissioner for Taking Affidavits
NATALIE RENNER

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CRYSTALLEX INTERNATIONAL
CORPORATION,

Plaintiff,

v.

BOLIVARIAN REPUBLIC OF VENEZUELA,

Defendant.

Misc. No. 17-151-LPS
UNSEALED ON
9/10/21

MEMORANDUM ORDER

Crystallex International Corporation (“Crystallex”); Bolivarian Republic of Venezuela (the “Republic”), Petróleos de Venezuela, SA (“PDVSA”), PDV Holding, Inc. (“PDVH”), and CITGO Petroleum Corporation (“CITGO” and, together with the Republic, PDVSA, and PDVH, the “Venezuela Parties”); and nonparties Phillips Petroleum Company Venezuela Limited and ConocoPhillips Petrozuata B.V. (together “ConocoPhillips” and, together with Crystallex and the Venezuela Parties, the “Sale Process Parties”), have presented the Court with several issues to resolve in connection with the work of the Court’s Special Master, Robert B. Pincus. The Court addresses the latest disputes below.

Special Master’s July Fees

Having further considered the Special Master’s monthly report for the period ending July 31, 2021 (D.I. 304), including the attached Itemized Statement (D.I. 304-1), and having considered the subsequent letters from the Venezuela Parties (D.I. 308, 315, 329), ConocoPhillips (D.I. 309, 318, 330), Crystallex (D.I. 310, 320), and the Special Master (D.I.

325), **IT IS HEREBY ORDERED** that: (i) the Sale Process Parties' objections are **OVERRULED**, and (ii) the fee cap of \$2 million referenced in the Court's May 27 Order (D.I. 277 ¶ 15) is increased by \$111,786.85 to a total of \$2,111,786.85.

As the Special Master rightly points out, the "plain language" of the May 27 Order made it clear that "the reasonable fees of the Special Master and his Advisors could exceed \$2 million," and the Court provided a mechanism for adjusting the cap. (D.I. 325 at 1) Moreover, the Court understands that the Sale Process Parties requested extending the deadline for the Special Master to file the Proposed Sale Procedures Order and his accompanying report, which contributed to the Special Master incurring fees and costs above the \$2 million cap. (*Id.* at 2) Additionally, the Special Master's Advisors have now reduced their July fees by \$75,000. (*Id.* at 2-3) The Court finds that the fees and expenses in the Itemized Statement are regular and reasonable, and the Itemized Statement is approved, with the \$75,000 reduction explained in the Special Master's letter.

The Court finds no basis in the record for the Venezuela Parties' assertions that "the Special Master and his Advisors have not taken care to adhere to the Court's limitations," that they "ran up bills as if no cap existed and with no apparent concern for the fees generated," and that they "carelessly exceeded their limits." (D.I. 315 at 1-3) To the contrary, the Court agrees with the Special Master that the Court has given him "an extraordinarily complex and difficult endeavor on many levels." (D.I. 325 at 1; *see also id.* at 1 n.2 (listing some examples of diligent, understandably-expensive work Special Master has done)) The Special Master well describes the context in which he is operating:

This decade long dispute has been characterized by steadfast disagreement, and the formulation of the Proposed Sale Procedures

Order proved to be no different. The complex corporate and capital structure of CITGO, combined with the number of highly litigious interested parties and the other dynamic and internationally sensitive circumstances, pose a number of unique challenges to this process, each of which my Advisors and I have worked to address in an efficient manner.

(*Id.* at 2 n.2) In this environment, the amounts expended to date should not be surprising to any of the Sale Process Parties, all of which are highly sophisticated litigants.

IT IS FURTHER ORDERED that each of Crystallex, ConocoPhillips, and the Venezuela Parties shall make a payment of \$211,701.65 (for a total of \$635,104.95, which is the amount set forth in the Itemized Statement, less \$75,000) within 30 days, pursuant to the terms of the May 27 Order.

Nonparty ConocoPhillips indicates that it is unwilling to pay any more. (D.I. 318 at 2 (“ConocoPhillips never agreed to provide open-ended funding of the sale process, particularly prior to explicit approval from OFAC to proceed, without which a truly robust and value-maximizing auction is unlikely to occur.”); D.I. 330 at 1 (“ConocoPhillips is not obligated to and will not advance any further funds.”)) If, after reviewing the instant Order, that continues to be its position, ConocoPhillips is free to withdraw from further engagement in the Special Master’s process, while retaining the opportunity to litigate its objections to the Proposed Sale Procedures Order before the Court. **IT IS HEREBY ORDERED** that ConocoPhillips shall advise the Court by no later than **September 15, 2021**, if it is withdrawing from the Special Master’s process.¹

¹ Should ConocoPhillips choose to withdraw from the Special Master’s process, it may still be obligated to pay its portion of fees and expenses incurred through the date on which its withdrawal is effective, pending a further order of the Court.

The Court anticipates, as the Sale Process Parties no doubt do as well, that the Special Master and his Advisors have incurred and will incur substantial, additional expenses in continuing to carry out their complex assigned duties. The Special Master and his Advisors must continue to limit their expenditures to what is reasonable and necessary, given the enormous scope and complexity of their task, and with full appreciation that every step that they propose will likely be opposed by one or more of the Sale Process Parties. While the Special Master must continue to act prudently, he is not required to identify an “extraordinary, unforeseen reason” in order to continue his highly valuable work and to be fairly compensated for it. (*See* D.I. 315 at 1)

The Court further **ADOPTS** Crystallex’s proposal that the Special Master “share a reasonable budget for future fees and expenses.” (D.I. 320 at 1) The Special Master suggested a budget mechanism in the Proposed Sale Procedures Order (*see* D.I. 302 ¶ 48) and agrees that it is now “fair and appropriate to have a budget and report to that budget, as well as provide updates to a budget based on what is really happening in implementing any process.” (D.I. 325 at 3) Accordingly, **IT IS HEREBY ORDERED** that: (i) the Sale Process Parties shall meet and confer with the Special Master,² and (ii) no later than **September 22, 2021**, the Special Master shall submit a proposed order to implement this paragraph of the instant order (including the establishment of a budget through a process including meeting and conferring, a process for modifying that budget to reflect ongoing actual conditions, and a process for any objections to be quickly and succinctly briefed for the Court).

² ConocoPhillips’ participation in the meet and confer is contingent on it choosing to remain part of the Special Master’s process and to continue paying a one-third share of the associated fees and costs.

Redactions to Proposed Sale Procedures Order and Accompanying Report

On August 9, 2021, the Special Master submitted two sealed documents: (1) a Proposed Order (A) Establishing Sale and Bidding Procedures, (B) Approving Special Master’s Report and Recommendation Regarding Proposed Sale Procedures Order, (C) Affirming Retention of Evercore as Investment Banker by Special Master and (D) Regarding Related Matters (D.I. 302) (“Proposed Order”), and (2) a Report and Recommendation Regarding Proposed Sale Procedures Order (D.I. 303) (“Report”).

On August 20, 2021, the Venezuela Parties moved for an order to maintain extensive portions of the Proposed Order and Report under seal. (D.I. 313; *see also* D.I. 313-1) The Venezuela Parties assert that if the Court fails to redact their purportedly Highly Confidential Information, “two types of serious harm are likely to flow from immediate public disclosure”: (i) national security and policy interests of the United States and Venezuela will be undermined, and (ii) CITGO’s business will be damaged and the company’s value could be destroyed, ultimately deterring bidders or reducing their potential bids. (D.I. 313 at 1)

Also on August 20, Crystallex filed a letter, indicating that it has no objection to the Venezuela Parties’ request to maintain portions of the Proposed Order and Report under seal. (D.I. 312)³ Crystallex also seeks to redact portions of two paragraphs of the Report (paragraphs 49 and 50), which disclose details of recoveries Crystallex has obtained to date. (*See id.* at 1) On August 26, Crystallex filed a second letter, reiterating it does not object to the sealing proposed by the Venezuela Parties, but urging the Court not to “predicate that relief on the

³ Indeed, Crystallex does not object (for now) to the Court keeping the entirety of those documents under seal, which the Venezuela Parties apparently proposed before seeking the narrower redactions outlined in their motion. (*See* D.I. 312 at 1)

unsupported findings that the Venezuela Parties ask this Court to make as to the supposed national security and foreign policy interests of the United States.” (D.I. 321 at 1)

On August 30, 2021, the Venezuela Parties submitted a letter taking no position on Crystallex’s request to redact portions of paragraphs 49 and 50 from any public version of the Report. (D.I. 326 at 1) In the same letter, however, the Venezuela Parties “strenuously object to the extraordinary additional limitation Crystallex seeks: to keep secret from the ‘parties other than Crystallex’ the information Crystallex has submitted to the Special Master to support its contention concerning the amount outstanding on Crystallex’s judgment.” (*Id.*) (emphasis omitted)

The Court finds all the arguments made by the Venezuela Parties and Crystallex in support of their requested redactions to be unpersuasive.⁴ Crystallex well explains the lack of merit in the Venezuela Parties’ effort to deprive the public of access to information about the Special Master’s recommendations:

Ensuring compliance with federal judgments is one of the most fundamental duties of the judiciary, and the public has a strong civic interest in seeing that judgments of our courts are enforced. . . . If Venezuela is concerned about the domestic consequences of this enforcement proceeding of its own making, Venezuela has the means to help itself: It can pay Crystallex’s judgment. . . .

Both this Court and the Third Circuit have already recognized . . . that the OFAC licensing process adequately protects any national security or foreign policy interest the United States may have in

⁴ The Court understands that the Venezuela Parties and Crystallex submitted their purported Highly Confidential Information to the Special Master pursuant to the governing Protective Order. (*See* D.I. 291) The Court warned the Sale Process Parties, however, not to rely on that order to presume that their information would necessarily remain under seal. (*See, e.g.*, D.I. 290 at 6 (“Should the Intervenor Bondholders later believe that they have a legitimate interest in the unsealing of a particular filing, they – like any other individual or entity – remain free to raise the issue at the appropriate time.”); *see also* D.I. 291 ¶ 9)

this litigation. . . .

In any event, there is no support for Venezuela's . . . assertion that merely disclosing the terms of a *proposed* order regarding sale procedures would weaken the Guaidó regime or undercut the interests of the United States. . . . [T]he United States has never endorsed the Venezuela Parties' extreme proposition that merely *discussing* future sale procedures in a judgment enforcement proceeding would undermine Guaidó.

(D.I. 321 at 1-2)

Nor does the Court find merit in the Venezuela Parties' contention that making public how the Special Master proposes to comply with Delaware law and this Court's mandate to sell shares of PDVH to satisfy Crystallex's judgment against the Republic will undermine CITGO's value. Everything the Special Master has done and will do is intended to maximize the value of CITGO when the shares of PDVH are sold. Further, as the Venezuela Parties correctly state: "The proposed order and report are not orders of the Court, they do not bind any party, they do not constitute the argument or position of any party, and they are subject to revision – perhaps extensive revisions – before any sale process will be confirmed by Court order, allowed under OFAC licensing, and actually be ready to take place." (D.I. 313 at 4) The Republic has provided no convincing reason to undermine confidence that the market will understand these realities and will recognize CITGO's value, upon disclosure of the Special Master's work and throughout the ensuing process. Once that process begins, the Court, the Special Master, and his Advisors will deliver a clear and consistent message to possible bidders – just as the Venezuela Parties, appropriately, invite. (*See id.* at 5)

Turning to Crystallex's request, the Court agrees with the Venezuela Parties that information about recoveries Crystallex has already obtained, including from whom and how, is

pertinent to the Special Master’s compliance with the Court’s directive to determine the amount of Crystallex’s outstanding judgment. As the Venezuela Parties write, “[t]he information Crystallex seeks to withhold goes directly to a merits issue that the Court has instructed the Special Master to address: determining the amount that remains owing on Crystallex’s judgment.” (D.I. 326 at 2) They add, and the Court agrees, that “Crystallex’s concern about such a challenge [to its judgment] heightens the urgency of providing the information to the Venezuela Parties so that they can determine whether any of the information justifies an adjustment to the outstanding amount or otherwise requires scrutiny.” (*Id.* at 3) The other Sale Process Parties should have this information as they evaluate the Proposed Order and participate in further proceedings.

The Court further believes that the public should have access to all information in the Proposed Order and Report. Crystallex brought its dispute with the Republic in a court of law, which is funded by the public and operates for the public’s benefit. Maintaining the Court’s integrity in the eyes of the public is of paramount importance. *See, e.g., Littlejohn v. BIC Corp.*, 851 F.2d 673, 678 (3d Cir. 1988) (“The public’s exercise of its common law access right in civil cases promotes public confidence in the judicial system by enhancing testimonial trustworthiness and the quality of justice dispensed by the court.”); *see also Leucadia, Inc. v. Applied Extrusion Techs., Inc.*, 998 F.2d 157, 161 (3d Cir. 1993) (“[T]he very openness of the process should provide the public with a more complete understanding of the judicial system and a better perception of its fairness.”) (internal quotation marks omitted). Accordingly, the strong presumption is that court filings – especially those necessary to and affecting the Court’s exercise of judicial power – will be available to the public. *See, e.g., LEAP Sys., Inc. v.*

MoneyTrax, Inc., 638 F.3d 216, 220 (3d Cir. 2011) (“[A] strong presumption in favor of accessibility attaches to almost all documents created in the course of civil proceedings.”) (internal quotation marks omitted).

Crystallex seeks to use the Court’s mechanisms to collect a judgment of the U.S. courts. Yet Crystallex attempts to hide relevant information, on the purported bases that disclosure will cause Crystallex competitive harm (vis-à-vis other creditors of the Venezuela Parties), that disclosure may harm certain third parties, and that disclosure will offend “principles of comity and respect for parallel foreign judicial proceedings” (because Canadian bankruptcy courts have sealed the information at issue). (*See* D.I. 312 at 4 & n.4) The Court does not find those countervailing interests to be “compelling” or sufficient to justify the sealing Crystallex seeks. *See In re Avandia Mktg., Sales Pracs. & Prods. Liab. Litig.*, 924 F.3d 662, 672 (3d Cir. 2019). Ultimately, Crystallex has not met its burden to “overcome the presumption of access to show that the interest in secrecy outweighs the presumption.” *Bank of Am. Nat’l Tr. & Sav. Ass’n v. Hotel Rittenhouse Assocs.*, 800 F.2d 339, 344 (3d Cir. 1986). The public’s interest in disclosure of information that directly relates to a component of the Special Master’s role far outweighs Crystallex’s private interests.

Accordingly, **IT IS HEREBY ORDERED** that: (i) the Venezuela Parties’ motion to maintain portions of the Proposed Order and Report under seal (D.I. 313) is **DENIED**, and (ii) Crystallex’s request to maintain redactions to paragraphs 49 and 50 of the Report (D.I. 312) is **REJECTED**.

As the Court has denied the Venezuela Parties’ motion, the Court must confront their alternative request that the Court enter “an administrative stay maintaining [the Proposed Order

and Report] under seal in their entirety for three business days to give the Venezuela Parties an opportunity to consider whether to seek emergency relief from the Third Circuit.” (D.I. 313 at

5) Crystallex does not make the same request, but the Court presumes that none of the Sale Process Parties opposes such limited, temporary relief. Although the Court is not persuaded on the merits by either the Venezuela Parties or Crystallex, the Court will proceed with caution.

Accordingly, **IT IS HEREBY ORDERED** that, subject to any subsequent order from this Court or any other court, the Special Master’s duty to file unsealed versions of the Proposed Order and Report (without any redactions), as well as the Special Master’s duty to unseal paragraphs 49 and 50 of the version of the Report provided to the Sale Process Parties, is **STAYED** until **September 15, 2021**. If no further order is issued, the Special Master shall file on the public docket in this action completely unredacted versions of the Proposed Order and his Report.

Objections to the Proposed Order

The Sale Process Parties are currently briefing their objections to the Proposed Order. (See D.I. 299) The instant order does not address those objections.


IT IS HEREBY ORDERED that the Court will hear argument on any and all objections to the Proposed Order on **Monday, November 8, 2021**, beginning at **9:30 a.m.** in **courtroom 6B**.

Unsealing the Instant Memorandum Order

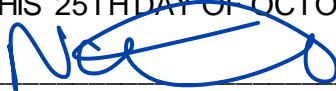
The Court does not believe that anything in the instant Memorandum Order should be withheld from the public. In an abundance of caution, however, the Court is issuing this order under seal. Should any of the Sale Process Parties believe that any portion of this order should remain sealed, such party shall, no later than **tomorrow, September 9**, submit a proposed

redacted version and accompanying memorandum setting out specific authority to support any requested redactions. Thereafter, the Court will issue a public version.

September 8, 2021
Wilmington, Delaware


HONORABLE LEONARD P. STARK
UNITED STATES DISTRICT JUDGE

THIS IS EXHIBIT "E" REFERRED TO IN THE
AFFIDAVIT OF ROBERT FUNG, SWORN BEFORE
ME THIS 25TH DAY OF OCTOBER, 2021.



A Commissioner for Taking Affidavits
NATALIE RENNER

**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF DELAWARE**

CRYSTALLEX INTERNATIONAL CORPORATION,

Plaintiff,

v.

BOLIVARIAN REPUBLIC OF VENEZUELA,

Defendant.

:
:
:
:
:
:
:
:
:
:
:
:
:
:

Misc. No. 17-151-LPS

PROPOSED ORDER (A) ESTABLISHING SALE AND BIDDING PROCEDURES, (B) APPROVING SPECIAL MASTER’S REPORT AND RECOMMENDATION REGARDING PROPOSED SALE PROCEDURES ORDER, (C) AFFIRMING RETENTION OF EVERCORE AS INVESTMENT BANKER BY SPECIAL MASTER AND (D) REGARDING RELATED MATTERS

On January 14, 2021, the Court issued an opinion and corresponding order (D.I. 234, 235) (the “**January Ruling**”) following pleadings filed by Plaintiff Crystallex International Corporation (“**Crystallex**”), Defendant Bolivarian Republic of Venezuela (the “**Republic**”), Intervenor Petróleos de Venezuela, S.A. (“**PDVSA**”), Garnishee PDV Holding, Inc. (“**PDVH**”), Intervenor CITGO Petroleum Corp. (“**CITGO Petroleum**,” and together with the Republic, PDVSA, and PDVH, the “**Venezuela Parties**”), non-parties Phillips Petroleum Company Venezuela Limited and ConocoPhillips Petrozuata B.V. (together, “**ConocoPhillips**,” and collectively with Crystallex and the Venezuela Parties, the “**Sale Process Parties**”) and the United States, which set out “some contours of the sale procedures that [the Court] will follow in conducting a sale of PDVSA’s shares in PDVH,” including appointment of a special master to “oversee the day-to-day and detailed implementation of the sales procedures.” (D.I. 234 at 34).

Consistent with the January Ruling, on April 13, 2021, the Court appointed Robert B. Pincus as a special master (the “**Special Master**”) to assist the Court with the sale of PDVSA’s shares in PDVH (D.I. No. 258). On May 27, 2021, the Court entered the *Order Regarding Special Master* (D.I. No. 277) (the “**May Order**”) directing the Special Master to, among other things, devise a plan (the “**Proposed Sale Procedures Order**”) for the sale of shares of PDVH (the “**PDVH Shares**”) as necessary to satisfy the outstanding judgment of Crystallex and the judgment of any other judgment creditor added to the sale by the Court and/or devise such other transaction as would satisfy such outstanding judgment(s) while maximizing the sale price of any assets to be sold (collectively, the “**Sale Transaction**”).

On August 9, 2021, the Special Master filed the Proposed Sale Procedures Order and the *Special Master’s Report and Recommendation Regarding Proposed Sale Procedures Order* (D.I. [●]) (the “**Report**”). See *Proposed Order (A) Establishing Sale and Bidding Procedures, (B) Approving Special Master’s Report and Recommendation Regarding Proposed Sale Procedures Order, (C) Affirming Retention of Evercore as Investment Banker by Special Master and (D) Regarding Related Matters* (D.I. [●]).

The Court, having reviewed and considered the Proposed Sale Procedures Order, the Report, and the proposed sale procedures contemplated thereby, and having reviewed all objections filed with the Court, if any, (the “**Objections**”); and [the Court having held a hearing to consider the relief contemplated by the Proposed Sale Procedures Order (the “**Hearing**”)]; [and upon the record of the Hearing]; and the Court having determined that the legal and factual bases set forth in this Order and the Report establish just cause for the relief contemplated herein; and upon all of the proceedings had before the Court in the above captioned case; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:¹

A. **Jurisdiction and Venue.** The Court has jurisdiction to grant the relief requested herein pursuant to 28 U.S.C. § 1605(a)(6). Venue is proper before the Court pursuant to 28 U.S.C. § 1963.

B. **Statutory and Legal Predicates.** The statutory and legal predicates for the relief granted herein include (a) Rule 69(a) of the Federal Rules of Civil Procedure (the “**Federal Rules**”), (b) Section 324 of Title 8 of the Delaware Code (the “**Delaware General Corporation Law**”), (c) Rule 53 of the Federal Rules (“**Rule 53**”), (d) the Court’s general equitable powers to enforce its orders and judgments (*See Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) (quoting *Link v. Wabash R. Co.*, 370 U.S. 626, 630–631 (1962)) and (e) the All Writs Act (*See United States v. New York Tel. Co.*, 434 U.S. 159, 172 (1977) (“This Court has repeatedly recognized the power of a federal court to issue such commands under the All Writs Act as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained.”)).

C. **Sale Procedures.** As set out in his Report delivered in accordance with Rule 53 contemporaneously with this Order, the Special Master has articulated good and sufficient reasons for the Court to approve the procedures set forth herein (the “**Sale Procedures**”), including the bidding procedures and accompanying notices, substantially in the form attached hereto as **Exhibit 1** (the “**Bidding Procedures**”).² For the reasons outlined in the Report, the Sale Procedures, including the Bidding Procedures, are (a) fair, (b) reasonable, (c) appropriate,

¹ The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Bidding Procedures (as defined herein).

(d) designed to promote a competitive and robust bidding process to generate the greatest level of interest in the PDVH Shares and result in the highest offer in connection with any Sale Transaction at least sufficient to satisfy the Attached Judgments (as defined below), and (e) reasonably calculated to balance the many competing interests in a dynamic and internationally sensitive set of circumstances. The Bidding Procedures are substantively and procedurally fair to all parties and potential bidders and they afford notice and a full, fair and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the PDVH Shares. The procedures and requirements set forth in the Bidding Procedures, including those associated with submitting deposits and Qualified Bids, are fair, reasonable, and appropriate.

D. **Timeline and Marketing Process.** Beginning on the Launch Date (as defined below), the Special Master, directly or through the assistance of his Advisors (as defined below), shall market the PDVH Shares pursuant to the procedures set forth in the Bidding Procedures (the “**Marketing Process**”). The Special Master has articulated good and sufficient reasons for the Marketing Process and the timeline contemplated by the Bidding Procedures, including the procedures for modifying deadlines or postponing implementation thereof. The Marketing Process and the timeline for implementation of the Sale Procedures is (a) fair, open, comprehensive, and a public process, (b) adequate, (c) reasonable, (d) appropriate, (e) consistent with applicable law, (f) sufficient to promote a competitive and robust bidding and auction process to generate competitive interest in the PDVH Shares, (g) reasonably calculated to maximize value and result in the highest offer in connection with any Sale Transaction at least sufficient to satisfy the Attached Judgments, and (h) reasonably calculated to balance the many competing interests in a dynamic and internationally sensitive set of circumstances.

E. **Notice Procedures.** After the Launch Date, in addition to conducting the Marketing Process, the Special Master shall cause a notice, substantially in the form attached hereto as **Exhibit 2** (the “**Sale Notice**”), to be published (i) following the launch of the sale process, and (ii) prior to any Auction or designation of any Stalking Horse Bidder as the Successful Bidder, in *The News Journal*, the *Delaware State News*, the *Wall Street Journal* (national edition), the *USA Today* (national edition), and, if practicable, a regional or local newspaper published or circulated in Venezuela selected by the Special Master in consultation with the Sale Process Parties, in each case for two successive weeks. A copy of this Order shall be served by e-mail on counsel to the Venezuela Parties. If any Sale Process Party believes that further service of this order, the Sale Notice or any additional publication or notice is necessary or appropriate, such Sale Process Party shall, within 10 calendar days of entry of this Order, provide the Special Master with a specific list of specific actions or service that the Sale Process Party believes should be undertaken, subject to order of the Court or with the consent of the Special Master. The foregoing notice procedures (the “**Notice Procedures**”) are appropriate and reasonably calculated to provide interested parties and Potential Bidders with timely and proper notice of the Sale Procedures and any Sale Transaction.

F. **Sufficient Notice.** The Marketing Process and Notice Procedures are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Sale Procedures, the opportunity to bid pursuant to the Bidding Procedures, the Auction, the Sale Hearing, and any proposed Sale Transaction, and any and all objection deadlines related thereto, and no other or further notice shall be required for this Order and any Sale Transaction, except as expressly required herein. The Sale Process Parties have had an adequate opportunity to review and provide input on the Sale Notice and Notice Procedures.

G. **Public Sale.** The process contemplated by the Sale Procedures, including the Marketing Process, Bidding Procedures, and Notice Procedures, shall constitute a “public sale to the highest bidder” within the meaning of Section 324 of the Delaware General Corporation Law.

H. **Designation of Stalking Horse Bid.** The Special Master has articulated good and sufficient reasons for the Court to authorize the Special Master to designate a Stalking Horse Bidder and enter into a Stalking Horse Agreement with (or without) the Stalking Horse Bid Protections (as defined below), at the Special Master’s sole discretion and in accordance with the Bidding Procedures, if he determines that it would be in furtherance of a value maximizing Sale Transaction. The Stalking Horse Bid Protections are (a) fair, (b) appropriate, (c) reasonably calculated to incentivize potential bidders to participate in a competitive bidding process, (d) designed to encourage robust bidding by compensating a bidder whose definitive agreement in connection with a Sale Transaction is terminated for the risks and costs incurred in signing and announcing an agreement for a transaction that may not ultimately be completed, and (e) reasonably calculated so as to not unreasonably deter Qualified Bidders from submitting a Qualified Bid.

I. **Crystallex’s Judgment.** Subject to paragraph 29 of this Order, Crystallex’s outstanding judgment is \$969,999,752.93 as of August 9, 2021 (“**Crystallex’s Judgment**”).³ The amount of Crystallex’s Judgment for the purpose of any satisfaction of payment shall be finalized pursuant to the procedures set forth in this Order and any further order of the Court.

³ In paragraph 50 of the Report, the Special Master identified what appears to be a clerical error in judgment entered by the Clerk for the United States District Court for the District of Columbia. The figure set forth here is the amount of Crystallex’s Judgment if the clerical error is rectified or if the Court otherwise determines that such rectification is unnecessary.

J. **ConocoPhillips' Judgment.** As a preliminary matter, and subject to paragraph 29 of this Order, ConocoPhillips' outstanding judgment against PDVSA is \$1,289,365,299.91 as of August 9, 2021 ("**ConocoPhillips' Judgment**"). To the extent that ConocoPhillips' Judgment becomes an Attached Judgment (as defined below), the amount of ConocoPhillips' Judgment for the purpose of any satisfaction of payment shall be finalized pursuant to the procedures set forth in this Order and any further order of the Court.

K. **Retention of Advisors.** The Special Master has articulated good and sufficient reasons and has retained, as approved by the May Order and as affirmed by this Order, Weil, Gotshal & Manges LLP, Potter Anderson & Corroon LLP, Jenner & Block LLP, Evercore Group L.L.C. ("**Evercore**"), and any additional advisors engaged by the Special Master pursuant to the May Order (collectively, the "**Advisors**"). The terms of the proposed Engagement Letter between the Special Master and Evercore, the form of which is annexed to this Order as **Exhibit 3** (the "**Proposed Evercore Engagement Letter**"), are (a) fair, (b) reasonable, and (c) appropriate and are hereby approved in all respects. All obligations owed to Evercore set forth in the Proposed Evercore Engagement Letter, including the fees and reimbursement of reasonable expenses, are approved, and Evercore shall be compensated and reimbursed in accordance with the terms of the Proposed Evercore Engagement Letter, in each case subject to the procedures set forth herein and any other applicable orders of the Court. For avoidance of doubt, all obligations owed to Evercore pursuant to the Proposed Evercore Engagement Letter shall constitute and be included within the definition of "Transaction Expenses" (as defined below); *provided* that, as set forth below, any Sale Fee other than the Upfront Amount (each as defined in the Proposed Evercore Engagement Letter) shall be paid by the purchaser directly or from any proceeds from a Sale Transaction.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. All Objections to the relief granted herein that have not been withdrawn with prejudice, waived, or settled, and all reservations of rights included in such objections, are hereby overruled and denied on the merits with prejudice.

2. Following the Launch Date, a hearing to consider approval of any Sale Transaction resulting from implementation of the Sale Procedures shall be scheduled for approximately 270 calendar days after the Launch Date and noticed on the docket of the Crystallex Case (the “**Sale Hearing**”), and may be adjourned or rescheduled by the Court upon notice by the Special Master. At the Sale Hearing, the Court will consider approval of the Successful Bid(s) (as defined below) and Back-up Bid(s), if applicable. Unless the Court orders otherwise, the Sale Hearing shall be an evidentiary hearing on matters relating to the applicable Sale Transaction(s) and there will be no further bidding at such hearing.

3. The Special Master shall launch and conduct the Marketing Process at the earlier of: (i) when (x) the Special Master determines, in his sole discretion but in consultation with the Sale Process Parties, (y) the Special Master and his Advisors have performed sufficient due diligence necessary or desirable to launch a value-maximizing sale process, and (z) the Special Master is satisfied with the authorization, FAQs, or other applicable guidance issued by the United States Department of the Treasury’s Office of Foreign Assets Control (“**OFAC**”) regarding the launch and viability of the Marketing Process; and (ii) such other time as ordered by the Court (the date on which the Marketing Process is launched, the “**Launch Date**”).

4. Prior to the Launch Date, the Special Master shall not prepare in a material way for the Marketing Process or take material steps toward implementation of the Sale Procedures until the Special Master is satisfied with the authorization, FAQs, or other applicable guidance

issued by OFAC regarding preparation for launch of the Marketing Process or the launch and viability of the Marketing Process, including any lack of Executive Branch objection to a potential future order to show cause as to why the launch and participation of prospective bidders in the Marketing Process is not authorized (the date on which the Special Master is satisfied, the “**Preparation Launch Date**”); *provided* that, notwithstanding the foregoing, the Special Master shall be authorized to (i) proactively engage with representatives from the Executive Branch (as defined below) and to take all steps or actions reasonably in furtherance of the issuance of OFAC guidance and/or authorization, (ii) proactively engage with the Sale Process Parties and their advisors, (iii) prepare for and participate in any discussions with the Court and/or any hearing held by the Court, including the Initial Status Conference (as defined below), (iv) participate in any settlement discussions with parties regarding a global claims waterfall or related issues if so directed by the Court, and (v) direct his Advisors to assist him in all actions contemplated in (i) to (iv) of this paragraph 4 and in furtherance of all actions authorized or contemplated by this Order. On and after the Preparation Launch Date, the Special Master and the Special Master’s Advisors are hereby directed to prepare for the Marketing Process and take all such preliminary actions in connection therewith, including conducting or performing appropriate due diligence and related analysis. Without limiting the foregoing, in preparation for the Marketing Process following the Preparation Launch Date, the Special Master shall prepare a customary “teaser” and a “confidential information memorandum” (“**CIM**”) to be shared with Potential Bidders and such other materials that the Special Master reasonably determines to be necessary or appropriate. Subject to the Protective Order, the Special Master shall share a draft of the “teaser” and CIM with counsel to the Sale Process Parties no later than seven (7) calendar days prior to launch of the Marketing Process and shall consult in good faith with the Sale Process Parties regarding the same.

5. **Status Conferences**. Unless otherwise ordered by the Court, the Court shall hold a status conference approximately every thirty days commencing from the date of this Order for the Special Master to provide an update to the Court and other interested parties regarding implementation of the Sale Procedures Order; *provided* that subject to the Court's availability, the Special Master or the Sale Process Parties may request that such status conferences occur more or less frequently or on an as-needed basis; *provided further* that nothing shall impede the Special Master's right to meet in camera or share information with the Court to provide updates on the sale process. The initial status conference shall be held on _____, **2021** at _____ **.m. (prevailing Eastern Time)** (the "**Initial Status Conference**"). At the Initial Status Conference, the Special Master shall provide the Court and interested parties with an update on his progress and the Special Master's current estimate, if any, regarding launch of the Marketing Process. For the avoidance of doubt, the Special Master shall not launch the Marketing Process until, at the earliest, after the Initial Status Conference.

6. The Special Master shall deliver a copy of this Order to the United States Attorney for the District of Delaware ("**USAO**"). The Court hereby requests that, upon receipt, the USAO take reasonable efforts to ensure that copies of the Order are received by the pertinent offices within the Executive Branch of the United States Government, including the United States Department of Justice, Department of State, and Department of the Treasury (including OFAC) (collectively, the "**Executive Branch**"). Consistent with the Court's prior orders, the Court invites input from the Executive Branch regarding implementation of this Order and the Bidding Procedures at any time and further requests that the representatives from the USAO voluntarily attend the Initial Status Conference and provide a status update at such conference regarding the Executive Branch's decision-making process related to the Marketing Process and consummation

of a Sale Transaction, including, but not limited to, whether, in a sale process overseen and directed by this Court in connection with the enforcement of the judgment(s) of this Court, (i) the Special Master, acting as an arm of this Court, requires an OFAC specific license to launch and conduct the Marketing Process; (ii) potential bidders participating in any or all aspect of the Marketing Process require an OFAC specific license; or (iii) an order of this Court approving the sale, cancellation and reissue, or transfer of property subject of its prior order, requires a specific OFAC license. If the Special Master determines that it is necessary as a precondition to launching the Marketing Process he may request that the Court issue an order for the Executive Branch to show (i) cause as to why the launch and participation of prospective bidders in the Marketing Process is not authorized and (ii) the facts and circumstances that would be necessary for OFAC to provide approval for any transfer of the PDVH Shares pursuant to the process contemplated by these Sale Procedures.

The Bidding Procedures

7. The Sale Procedures, including the Bidding Procedures, substantially in the form attached hereto as **Exhibit 1**, are hereby approved. The Bidding Procedures are incorporated herein by reference, and shall govern the bids and proceedings related to any sale of PDVH Shares in connection with a Sale Transaction. The failure to specifically include or reference any particular provision of the Bidding Procedures in this Order shall not diminish or otherwise impair the effectiveness of such procedures, it being the Court's intent that the Bidding Procedures are approved in their entirety, as if fully set forth in this Order.

8. The Special Master is authorized and directed to take all reasonable actions necessary or desirable to implement this Order, including the Sale Procedures and the Bidding Procedures.

9. Subject to the Bidding Procedures and this Order, the Special Master shall be authorized, as he may reasonably determine is necessary or desirable, to carry out the Bidding Procedures, including, without limitation, to: (a) designate a Stalking Horse Bid pursuant to the Bidding Procedures; (b) determine which bidders are Qualified Bidders; (c) determine which bids are Qualified Bids; (d) determine which Qualified Bid is the highest purchase price received prior to the Auction; (e) determine which Qualified Bid is the Successful Bid; (f) reject any bid that is (i) inadequate or insufficient, (ii) not a Qualified Bid or otherwise not in conformity with the requirements of the Bidding Procedures, or (iii) not a bid that provides for a value maximizing Sale Transaction; (g) adjourn the Auction and/or the Sale Hearing by filing a notice on the Court's docket without need for further notice; and (h) modify the Bidding Procedures upon notice to and consultation with the Sale Process Parties in a manner consistent with his duties and applicable law.

10. The Special Master shall be authorized to, in his reasonable judgment, upon notice to and consultation with the Sale Process Parties, modify the Bidding Procedures, including (a) waive terms and conditions with respect to any Potential Bidder, (b) extend the deadlines set forth in the Bidding Procedures, (c) announce at the Auction modified or additional procedures for conducting the Auction, and (d) provide reasonable accommodations to a Stalking Horse Bidder with respect to such terms, conditions, and deadlines set forth in the Bidding Procedures to promote further bids by bidders, in each case, to the extent not materially inconsistent with the Bidding Procedures and this Order; *provided* that a Sale Process Party may, within five (5) calendar days, file an objection to any modification, upon which time the Court shall set a briefing schedule for any reply and a hearing, if applicable, to adjudicate such objection.

11. All Potential Bidders submitting bids determined by the Special Master to be “Qualified Bids” in accordance with the Bidding Procedures are deemed to have submitted to the exclusive jurisdiction of this Court with respect to all matters related to the Bidding Procedures, the Auction, and any Sale Transaction. Except as provided in an executed definitive Stalking Horse Agreement, and then subject to the terms thereof, nothing in this Order or the Bidding Procedures shall obligate the Special Master to pursue any transaction with a Qualified Bidder.

12. The Special Master may, in the exercise of his judgment, identify the highest Qualified Bid(s) that the Special Master reasonably believes to be capable of being timely consummated after taking into account the factors set forth in the Bidding Procedures as the successful bid(s) (a “**Successful Bid**” and, the bidder(s) submitting such bid(s), a “**Successful Bidder**”). As soon as reasonably practicable following selection of a Successful Bid, the Special Master shall file with the Court a notice containing information about the Successful Bidder with the proposed definitive agreement attached thereto (without exhibits or schedules that the Special Master elects to omit) (the “**Notice of Successful Bidder**”).

13. For the avoidance of doubt, subject to approval of any Sale Transaction by the Court, the Special Master shall have authority to select a Qualified Bid as the Successful Bid that provides for a transfer of PDVH Shares free and clear of any claims, encumbrances, and liabilities, which, for the avoidance of doubt, upon entry of an order by this Court approving any Sale Transaction and upon the consummation of any such Sale Transaction, may constitute a full and complete general assignment, conveyance, and transfer of all of PDVSA’s or any other person’s right, title, and interest in the PDVH Shares and may provide for the valid transfer under applicable law of good and marketable title to the PDVH Shares to the Successful Bidder free and clear of all claims, encumbrances, and liabilities; *provided* that such transfer shall be without

prejudice to any such claims, encumbrances, and liabilities attaching to the proceeds of any Sale Transaction with the same nature, validity, priority, extent, perfection, and force and effect that such claims, encumbrances, and liabilities encumbered the PDVH Shares immediately prior to the consummation of any Sale Transaction.

14. The Sale Notice, substantially in the form attached hereto as **Exhibit 2**, is approved, and no other or further notice of the Sale Transaction, the Auction, the Sale Hearing or the Sale Objection Deadline shall be required if the Special Master publishes such notice in accordance with the Notice Procedures. The Sale Notice and publication thereof complies in all respects with and satisfies the requirements of Section 324 of the Delaware General Corporation Law. The Special Master may file on the Court's docket, publish, or otherwise distribute any supplemental notice that he, in his sole discretion, deems appropriate or desirable; *provided* that no such supplemental notice shall be required. All expenses and fees related to implementation of the Marketing Process and Notice Procedures shall constitute "Transaction Expenses" and shall be payable by the Sale Process Parties. The Special Master may request that the Sale Process Parties reimburse the Special Master in advance in an amount equal to the amount of any quote received in connection with publication required by the Notice Procedures and, upon any such request, the Sale Process Parties shall each promptly pay their respective one-third share.

Objections to Sale Transaction

15. The deadline to object to any Sale Transaction to be approved at the Sale Hearing will be **4:00 p.m. (prevailing eastern time) on the fourteenth day after the Special Master files the Notice of Successful Bid** (the "**Sale Objection Deadline**," and any such objection, a "**Sale Objection**"); *provided* that, the Special Master may extend such deadline, as the Special Master deems appropriate in the exercise of his reasonable judgment. If a timely Sale Objection cannot otherwise be resolved by the parties, such objection shall be heard by the Court

at the Sale Hearing. The Notice of Successful Bid shall state the specific date and time of the Sale Objection Deadline.

16. The Successful Bidder(s) shall appear at the Sale Hearing and be prepared, if necessary, to have a representative(s) testify in support of the Successful Bid and the Successful Bidder's ability to close the Sale Transaction contemplated therein in a timely manner.

17. Any party who fails to timely file with the Court and serve a Sale Objection (including any Sale Process Party) on the Special Master may be forever barred from asserting any Sale Objection to the applicable sale, or to the consummation of any Sale Transaction.

Designation of Stalking Horse Bidder

18. **Selection of Stalking Horse Bidder.** The Special Master is authorized to, in the exercise of his judgment and at his sole discretion, designate a Stalking Horse Bidder for the PDVH Shares and following such designation, subject to approval by the Court, enter into a Stalking Horse Agreement for the sale of any such PDVH Shares, in accordance with the terms of this Order and the Bidding Procedures.

19. **Stalking Horse Bid Protections.** Subject to the Bidding Procedures and approval by this Court, the Special Master may: (a) establish an initial overbid minimum and subsequent bidding increment requirements not to exceed 5.00% of the Stalking Horse Bid Implied Value, subject to adjustment for any Bids for a lesser percentage of the PDVH Shares than the Stalking Horse Bid (the "**Initial Minimum Overbid Amount**"); (b) offer any Stalking Horse Bidder a break-up fee in an amount agreed to by the Special Master in consultation with the Sale Process Parties, but not to exceed 3.00% of the Stalking Horse Bid Implied Value (a "**Termination Payment**") payable either (i) in the event that an overbid is consummated, out of the proceeds from the consummation of such overbid or (ii) by PDVH, CITGO Holding, Inc. ("**CITGO Holding**," and collectively with CITGO Petroleum, "**CITGO**") and CITGO Petroleum in

circumstances where any of PDVH, CITGO Holding, and/or CITGO Petroleum is materially responsible for the events that give rise to termination of the Stalking Horse Agreement; (c) provide that, if the Stalking Horse Bidder bids on PDVH Shares at the Auction, the Stalking Horse Bidder will be entitled to a credit up to the amount of its Termination Payment against the increased purchase price for the PDVH Shares; (d) provide for the reimbursement of reasonable and documented fees and expenses actually incurred by the Stalking Horse Bidder by PDVH, CITGO Holding and CITGO Petroleum solely under certain circumstances in which the transactions contemplated by the Stalking Horse Agreement are not consummated; (e) provide that any sale order shall seek to transfer the PDVH Shares free and clear of any claims upon them; and (f) in consultation with the Sale Process Parties, provide other appropriate and customary protections to a Stalking Horse Bidder (the Termination Payment and the other bid protections described in this paragraph collectively are referred to as the “**Stalking Horse Bid Protections**”). The Special Master is authorized to offer the Stalking Horse Bid Protections at his sole discretion if he determines that such Stalking Horse Bid Protections would be in furtherance of a value maximizing transaction; *provided* that, (a) absent further order of the Court, the Special Master shall not enter into a Stalking Horse Agreement and (b) any Stalking Horse Bid Protections offered shall not be effective until entry by the Court of an order approving such Stalking Horse Bid Protections and subsequent execution by the Special Master of the Stalking Horse Agreement.

20. To the extent the Special Master designates a Stalking Horse Bidder with respect to any Sale Transaction, the Special Master shall, as soon as reasonably practicable following the execution of a Stalking Horse Agreement, file with the Court a notice containing information about the Stalking Horse Bidder with the proposed Stalking Horse Agreement attached thereto (without exhibits or schedules that the Special Master elects to omit) (the “**Notice**”).

of Stalking Horse Bidder”). Any Stalking Horse Bid Protections shall be described in reasonable detail, including the amount and calculation of such Stalking Horse Bid Protections and the amount of the Stalking Horse Bid Implied Value, in the Notice of Stalking Horse Bidder. Contemporaneously with the filing of the Notice of Stalking Horse Bidder, the Special Master shall file a proposed order approving the Special Master’s entry into the Stalking Horse Agreement.

21. Objections to the Special Master’s entry into a Stalking Horse Agreement, including any provision of Stalking Horse Bid Protections in connection therewith (each a **“Stalking Horse Objection”**), must be in writing, state with particularity the basis and nature of any objection, and be filed with the Court no later than (10) calendar days after the filing of the Notice of Stalking Horse Bidder (the **“Stalking Horse Objection Deadline”**), upon which time the Court shall set a briefing schedule for any reply and a hearing, if applicable, to adjudicate such objection.

22. If a timely Stalking Horse Objection is filed and served with respect to a Stalking Horse Agreement, the proposed Stalking Horse Bid Protections provided for under that agreement shall not be approved until the objection is resolved by agreement of the objecting party or by entry of an order by the Court resolving such objection. If no timely Stalking Horse Objection is filed and served with respect to a particular Stalking Horse Agreement, then the Court may enter an Order approving the Stalking Horse Bid Protections provided for under such agreement upon the expiration of the Stalking Horse Objection Deadline.

23. For all purposes under the Bidding Procedures, any Stalking Horse Bidder approved as such pursuant to this Order shall be considered a Qualified Bidder, and the Stalking Horse Bid shall be considered a Qualified Bid. In the event that the Stalking Horse Bid is the only

Qualified Bid received by the Special Master by the Bid Deadline, the Stalking Horse Bidder shall be deemed the Successful Bidder with respect to the assets set forth in the Stalking Horse Agreement.

Credit Bids

24. Crystallex, and any other holder of an Attached Judgment, may submit a “credit bid” pursuant to the Bidding Procedures (each, a “**Credit Bid**”); *provided* that such Credit Bid shall comply with the Bidding Procedures, including the requirement that any credit bid include a cash component or other funding mechanism sufficient to pay (or otherwise contemplate payment in full in cash in a manner acceptable to the Special Master) (a) any applicable Termination Payment, (b) all Transaction Expenses, and (c) all obligations secured by senior liens on the PDVH Shares (if any). For the avoidance of doubt, a Credit Bid must be submitted by the deadlines set forth in the Bidding Procedures applicable to all other Bids.

25. Except as otherwise agreed by the Special Master, in connection with the submission of any Credit Bid (including a Credit Bid by Crystallex), any party seeking to submit a Credit Bid shall cause two of its representatives to each submit a sworn statement and affidavit that unequivocally and unconditionally states (a) the then outstanding and unpaid amount of such party’s judgment as of the date the Credit Bid is submitted and (b) that such representative submits to the personal jurisdiction of this Court in connection with making such statement and affidavit. Except as otherwise agreed by the Special Master, in connection with the consummation of any Credit Bid that becomes the Successful Bid, the same two representatives shall each submit a supplemental statement and affidavit stating that all payments or consideration received by the person or entity in connection with or in respect of the applicable judgment that served as the basis for the Credit Bid have been disclosed to the Court and the Special Master.

26. Any person or entity that submits a Credit Bid shall promptly (but in no event later than within 2 business days) notify the Special Master if such person or entity receives (or otherwise becomes entitled to receive) any payment or consideration in connection with or in respect of the judgment that served as the basis for the Credit Bid.

Attached Judgments

27. **Satisfaction of All Attached Judgments.** Nothing in this Order prohibits or in any way impairs the rights of the Venezuela Parties to satisfy Crystallex’s Judgment (or any other Attached Judgment) in full prior to consummation of a Sale Transaction. If at any time all Attached Judgments become satisfied in full (or otherwise are consensually resolved), then the Special Master shall cease implementation of the Sale Procedures and seek further direction from the Court. The Sale Process Parties shall remain liable for any Transaction Expenses incurred through the date that is two business days after the Special Master receives notice of satisfaction of all Attached Judgments. In the event that the Special Master selects a Successful Bid, the value of which implies satisfaction of less than all Attached Judgments, then any holder of an Attached Judgment that receives no proceeds in satisfaction of any part of their Attached Judgment shall be excused from contributing to the payment of any Transaction Expenses incurred after the date thereof. The Sale Process Parties shall be reimbursed for any paid Transaction Expenses as set forth in the May 2021 Order; *provided* that if the process is terminated due to satisfaction or resolution of all Attached Judgments by the Venezuela Parties, then, solely in such circumstance (and unless otherwise agreed to by Crystallex and ConocoPhillips), the Venezuela Parties shall pay and reimburse Crystallex and ConocoPhillips for the full amount of all Transaction Expenses paid by Crystallex and ConocoPhillips.

28. **Additional Judgment Deadline.** By no later than _____, 20__ or such later date ordered by the Court in a subsequent order (the “**Additional Judgment Deadline**”), the

Court will decide which, if any, additional judgments (the “**Additional Judgments**,” and with the Crystallex Judgment, the “**Attached Judgments**”) are to be considered by the Special Master for purposes of the Sale Transaction. Except as otherwise ordered by the Court, following the Additional Judgment Deadline, the Special Master shall implement the Sale Procedures, based on the Attached Judgments as of the Additional Judgment Deadline. For the avoidance of doubt, the Additional Judgment Deadline does not impair or in any way limit any person’s or entity’s right to seek attachment to any proceeds following consummation of the Sale Transaction.

29. **Final Calculation of Attached Judgments.** Thirty days prior to the designation of a Stalking Horse Bidder, the Special Master will file under seal a notice or recommendation with the Court seeking final determination of any Attached Judgment, including the rate at which interest continues to accrue and serve such notice or recommendation on the holder of the Attached Judgment and the Sale Process Parties. No later than seven calendar days after service, the holder of the Attached Judgment and the Sale Process Parties shall file any objection to the Special Master’s notice or recommendation. If no objection is filed, the amount set forth in the Special Master’s notice or recommendation shall become the amount of the Attached Judgment for purposes of the Sale Procedures. If an objection is filed, a hearing will be scheduled and the Court shall determine the amount of the Attached Judgment.

30. By no later than 21 calendar days following entry of this Order, any holder of an Attached Judgment or holder of a judgment seeking to be an Attached Judgment shall deliver to the Special Master and to counsel for the Venezuela Parties a statement indicating the amount such creditor contends remains outstanding with respect to their Attached Judgment or judgment. Such creditor shall provide reasonably sufficient supporting documentation regarding any alleged outstanding balance and all amounts and assets received by reason of the Attached Judgment or

judgment and any other information pertinent to understanding the outstanding balance of the applicable Attached Judgment or judgment.

Amendments & Additional Powers of the Special Master

31. **Additional Guidance from the Court.** If the Special Master, in his sole discretion, but after consultation with the Sale Process Parties, determines that (a) a material modification or amendment of this Order or the Sale Procedures (including the Bidding Procedures) that is not otherwise permitted (each a “**Proposed Amendment**”) or (b) additional powers or guidance from the Court, is reasonably necessary or desirable for any reason, including to (i) ensure a value maximizing sale process or (ii) effectuate a value maximizing sale process through a Sale Transaction, the Special Master may seek such Proposed Amendment or additional powers or guidance, as applicable, by filing a request or recommendation with the Court with notice to the Sale Process Parties.

32. **Requests of the Special Master.** In addition to the cooperation provisions in the May Order, the Sale Process Parties, including CITGO and PDVH, and each of their subsidiaries, including their directors, officers, managers, employees, agents, and advisors, shall promptly cooperate and comply with the requests of the Special Master. If the Special Master specifically invokes this paragraph 32 in connection with any such request, then the person or entity that is the subject or recipient of such request shall comply no later than five (5) business days after the date upon which the request was made, unless the Special Master sets a different deadline for which a response is due. If any person objects to a request by the Special Master that specifically invokes this paragraph 32, including objections based on a belief that such request is unreasonable, such person shall file a motion with the Court seeking relief from the Special Master’s request. Absent a motion seeking relief from the Court, the Special Master may (but shall have no obligation to) explain the basis of his request to the subject or recipient; *provided*

that, if requested by the subject or recipient, the Special Master shall meet and confer with such person at least one business day before such person's deadline to file a motion seeking relief from the Special Master's request. The Special Master may, in his sole discretion, recommend to the Court appropriate sanctions with respect to any person or entity that fails to promptly comply with a request absent a timely request for relief from the Court. For the avoidance of doubt, the terms of this paragraph are in addition to the terms of the May Order; *provided* that the scope of the May Order shall in no way be read to limit the effect of this paragraph.

33. **CITGO Management Team.** Without limiting paragraph 32, if requested by the Special Master, CITGO shall use reasonable efforts to make members of the CITGO management team available for meetings with bidders or potential bidders, which may include, in the Special Master's sole discretion, the most senior members of the CITGO management team. CITGO shall further use reasonable efforts to timely respond to the Special Master's diligence requests or bidder-specific questions, including, if applicable, by providing accurate and complete due diligence materials, documentation, and backup support requested by the Special Master.

34. **Additional Powers of the Special Master.** In addition to the duties and powers set forth in this Order, the Special Master shall have all of the powers and duties set forth in prior orders of the Court, including the May Order. Without limiting the foregoing, the Special Master may issue, without limitation, orders, subpoenas and interrogatories to any person in the course of performing his duties. Further, the Special Master may, in his sole discretion and consistent with Rule 53 of the Federal Rules, issue orders to compel delivery of information from any person or entity in connection with implementing the Sale Procedures, including to ensure a comprehensive and value-maximizing sale process, to ensure that property that is directly or indirectly the subject of this Order is not transferred or otherwise encumbered by the Venezuela

Parties or to determine the amount of claims against the Venezuela Parties. Following consultation with the Sale Process Parties, the Special Master may by order impose on a party any non-contempt sanction provided by Rule 37 or Rule 45 of the Federal Rules, and may recommend a contempt sanction against a party and sanctions against a nonparty, consistent with Rule 53(c) of the Federal Rules.

Additional Provisions

35. **Rosneft Trading S.A.** On August 31, 2018, Rosneft Trading S.A. (together with any successor in interest, “**RTSA**”) submitted to this Court’s jurisdiction by filing *Rosneft Trading S.A.’s Motion to Intervene* (D.I. 100), which the Court granted on December 12, 2019 (D.I. 154). By no later than twenty-one calendar days following entry of this Order and service of this Order by the Special Master on counsel of record for both RTSA and PDVSA, each of RTSA and PDVSA shall each deliver to the Special Master a separate statement (each statement, a “**Disclosure Statement**”) on a non-confidential basis indicating the amount of any outstanding balance of obligations, if any, purported to still be secured by a pledge of the equity of CITGO Holding (each, a “**CITGO Holding Pledge**”) as well as copies of any documents evidencing any obligations whether now or previously owed. In addition to the foregoing, each Disclosure Statement shall state, at a minimum:

- whether the disclosing party or any of its affiliates has entered into any (a) export agreement that has not expired or otherwise been terminated (or may not be expired or may not yet have been terminated) and is secured by a CITGO Holding Pledge, including any amendments, modifications, or other changes (each, an “**Export Agreement**”), (b) any loan, prepayment agreement, guarantee agreement, other agreements related to obligations owed under an Export Agreement or any other type of agreement that has outstanding obligations (or may have obligations in the future) purported to be secured by a CITGO Holding Pledge or (c) any other document or agreement that has

outstanding obligations (or may have obligations in the future) purported to be secured by a pledge of shares or other equity interests in CITGO Holding in favor of RTSA, its successor in interest, or any assignee (collectively, the documents in (a), (b), and (c), the “**RTSA Documents**”);

- if the RTSA Documents purport to have outstanding obligations (or may have obligations in the future) that remain secured by a pledge on the shares or other equity interests of CITGO Holding, the date under which such obligations will be complete or are anticipated to be complete and any facts relevant to determining the date that such obligations will be complete;
- any information in RTSA’s, PDVSA’s or any of their affiliates’ possession, as applicable, regarding the specific and precise physical location of any shares or interests of CITGO Holding pledged in favor of RTSA, its successor, or any assignee or any other facts relevant for determining the physical location of such shares or interests and the custodian of such shares or interests;
- if RTSA has sold or otherwise assigned its obligations secured by any pledge on the equity of CITGO Holding, RTSA and PDVSA shall submit any documentation evidencing such transfer (and any OFAC license obtained in connection with such transfer) and use all reasonable efforts to detail what amounts were outstanding at the time of such transfer or assignment; and
- any other information reasonably pertinent to the Court’s inquiry regarding the RTSA Documents as to which RTSA, PDVSA, or their affiliates have or should have knowledge.

36. In connection with each Disclosure Statement, the disclosing party shall deliver copies by email to the Special Master of any agreements, amendments, and available support for any outstanding balance or facts regarding such outstanding balance, if any. RTSA and PDVSA shall cooperate with and otherwise comply with any reasonable follow-up questions by the Special Master or his Advisors.

37. If RTSA or PDVSA fail to respond or otherwise provide sufficient documentation of any alleged obligations, the Special Master shall file a report and recommendation with the Court that includes a proposed order to be issued by the Court in response to the failure of either RTSA or PDVSA to comply with this Order, which may include, with respect to RTSA, a permanent injunction enjoining RTSA and any entity or person directly or indirectly controlled by RTSA from enforcing any pledge or claim against the equity of CITGO Holding. If either RTSA or PDVSA demonstrate to the Special Master that it is acting in good faith and working to provide the requested information within a reasonable period of time, the Special Master may, in his sole discretion, extend the twenty-one calendar day deadline to submit the Disclosure Statement and copies of related documents; *provided* that the Special Master is not obligated to grant such an extension.

38. **Dispute Resolution.** All bidders that participate in the sale and bidding process shall be deemed to have (a) consented to the jurisdiction of the Court to enter any order or orders, which shall be binding in all respects, in any way related to the Sale Procedures or Bidding Procedures, the bid process, the Auction, the Sale Hearing, or the construction, interpretation, and enforcement of any agreement or any other document relating to a Sale Transaction; (b) waived any right to a jury trial in connection with any disputes relating to the Sale Procedures or Bidding Procedures, the bid process, the Auction, the Sale Hearing, or the construction, interpretation, and enforcement of any agreement or any other document relating to a Sale Transaction; and (c) consented to the entry of a final order or judgment in any way related to the Sale Procedures or Bidding Procedures, the bid process, the Auction, the Sale Hearing, or the construction, interpretation, and enforcement of any agreement or any other document relating to a Sale

Transaction if it is determined that the Court would lack jurisdiction to enter such a final order or judgment absent the consent of the parties.

39. **Communications & Negotiations with Third Parties.** The Special Master is authorized and empowered, in his sole discretion and at any time, to communicate and, as applicable, negotiate with any bidder, potential bidder, or governmental or regulatory body. Further, in consultation with the Sale Process Parties, the Special Master is authorized and empowered, in his sole discretion and at any time, to communicate and, as applicable, negotiate with any other person or entity, including any contract counterparty, any indenture trustee, administrative agent, or collateral agent, any holders of that certain series of bonds issued by PDVSA due in 2020 (the “**PDVSA 2020 Bondholders**”) or other person related to PDVH, CITGO, and their affiliates to the extent reasonably necessary or desirable in connection with implementation of the Sale Procedures and any Sale Transaction. If the Special Master determines it is reasonably necessary or desirable to negotiate a change, modification, or amendment to, or seek a consent or waiver under, any contract of PDVH, CITGO, or any of their subsidiaries in connection with any Bid or Potential Bid or implementation of the Sale Procedures or any Sale Transaction, including with respect to any “change-of-control” provisions in any contract, the Special Master shall work with PDVH and CITGO, as applicable, to negotiate such change, modification, amendment, consent, or waiver. If either PDVH or CITGO, as applicable, does not cooperate with or otherwise consent to any particular negotiation, change, modification, amendment, consent, or waiver, the Special Master shall seek additional guidance from the Court.

40. **Communications with Potential Bidders.** The Sale Process Parties shall not, directly or indirectly, contact or otherwise communicate with any potential bidders regarding this Order, the Sale Procedures, any bid or potential bid, or any Sale Transaction, other than as

expressly permitted in writing by the Special Master. For the avoidance of doubt, this provision does not prevent or prohibit contact or communications in the ordinary course of business consistent with past practice on matters unrelated to this Order, the Sale Procedures, any bid or potential bid, or any Sale Transaction.

41. The Sale Process Parties may propose a list of Potential Bidders for the Special Master to solicit Bids from in connection with the Marketing Process and the Special Master shall consider in good faith inclusion of such Potential Bidders. If the Special Master elects to exclude or declines to solicit a Bid from a Potential Bidder identified by a Sale Process Party, the Special Master shall notify the applicable Sale Process Party of such decision as soon as reasonably practicable thereafter and, if appropriate, explain his rationale for the decision. If the applicable Sale Process Party reasonably believes that the Special Master inappropriately or unfairly excluded or declined to solicit a Bid from a Potential Bidder identified by such Sale Process Party, then such Sale Process Party shall file a letter that shall not exceed three pages with the Court and serve such letter on the Special Master and the other Sale Process Parties. The Special Master shall have two business days following service to respond by letter not to exceed three pages. After considering the parties' submissions, the Court will issue an appropriate order.

42. **Communications among Sale Process Parties.** Subject in all cases to the *Special Master Confidentiality Order* (D.I. 291) (the “**Protective Order**”), nothing in this Order prohibits the Sale Process Parties from communicating with each other; *provided* that such communications (i) do not involve or relate to colluding in connection with a Bid that has been submitted or may be submitted by the applicable Sale Process Party or a Bid by any Potential Bidder; and (ii) are not intended to frustrate the Marketing Process or the Sale Procedures. For the avoidance of doubt, this provision is not intended to limit in any way the ability of some or all of

the Sale Process Parties to discuss settlement or satisfaction of any Attached Judgment or to discuss the terms, content, or grounds of any potential objection to be filed with the Court. The Special Master shall consult with the Sale Process Parties periodically and as appropriate in implementing the Sale Procedures.

43. **Sharing of Information with Potential Bidders.** Upon giving notice to the applicable Sale Process Party, the Special Master shall be permitted, in his sole discretion, to share any and all information obtained related to the Sale Process Parties, regardless of whether marked or designated “confidential” or “highly confidential” pursuant to the Protective Order, with any bidder or potential bidder that has entered into a confidentiality arrangement in the form attached hereto as **Exhibit 4**; *provided* that the Special Master shall be authorized to make reasonable changes to the extent requested by a Potential Bidder. The Special Master shall exercise reasonable care in providing confidential information to bidders and Potential Bidders and, if applicable, shall use reasonable efforts to consult any Sale Process Party that marks or designates any information as “confidential” or “highly confidential” prior to its disclosure to any Potential Bidder. The Special Master shall use reasonable efforts to consult PDVH and CITGO in connection with sharing competitively sensitive information and, if determined to be appropriate by the Special Master, to establish firewall protections or “clean team” protocols with respect to any Potential Bidder that is a competitor, customer or supplier or under such other circumstances as the Special Master determines to be appropriate.

44. **Sharing of Information with the United States.** The Special Master shall be authorized to share with the United States information obtained related to the Sale Process Parties and any bidder or potential bidder that the Special Master determines, in his sole discretion, is reasonably necessary or desirable in connection with the issuance of any regulatory approval or

is reasonably necessary or desirable in connection with implementation of the Sale Procedures and any Sale Transaction, including any guidance or license from OFAC, *provided* that the Special Master shall request confidential treatment of information shared with the United States that has been designated as confidential or highly confidential by a Sale Process Party.

45. **Engagement of Advisors.** The Special Master has retained, as approved by the May Order and as affirmed by this Order, the Advisors. The Special Master's engagement of Evercore, pursuant to the Proposed Evercore Engagement Letter, is hereby approved and the terms of the Engagement Letter in all respects shall be binding on the Special Master, including with respect to payment of the Upfront Amount of the Sale Fee by the Sale Process Parties. Any amounts owed to Evercore under the Proposed Evercore Engagement Letter shall be payable to Evercore pursuant to the terms of the May Order, including the Sale Fee and the Upfront Amount of the Sale Fee; *provided* that in no circumstance absent further order of the Court, shall any Sale Fee (other than the Upfront Amount) be payable directly by the Sale Process Parties and any such amount shall, in each circumstance, be payable out of any proceeds or other cash consideration provided in connection with a Sale Transaction; *provided further* that, notwithstanding anything to the contrary in the May Order, any Sale Fee under the Proposed Evercore Engagement Letter shall be paid in full in cash before any Sale Process Party is reimbursed for Transaction Expenses paid pursuant to this Order or the May Order.

46. **Judicial Immunity & Exculpation.** The Special Master is entitled to judicial immunity in performing his duties pursuant to this Order, including all actions taken to implement the Sale Procedures, and all other orders of the Court. The Special Master's Advisors are entitled to judicial immunity in connection with all actions taken at the direction of, on behalf of, or otherwise in connection with representation of or advising the Special Master. No person or

entity shall be permitted to pursue any cause of action or commence or prosecute any suit or proceeding against the Special Master or the Advisors, or their respective employees, officers, directors, attorneys, auditors, representatives, agents, successors or assigns, for any reason whatsoever relating to the Crystallex Case, implementation of the Sale Procedures, or in connection with any Sale Transaction, or the performance of the Special Master's and his Advisors' duties pursuant to this Order or any other orders of the Court, or any act or omission by the Special Master or any Advisor in connection with the foregoing. All interested persons and entities, including but not limited to the Sale Process Parties, any purchaser or prospective purchaser of the PDVH Shares, and all persons acting in concert with them, are hereby enjoined and restrained from pursuing any such cause of action or commencing any such action or proceeding. If any person or entity attempts to pursue any such cause of action or commence any suit or proceeding against the Special Master or any of the Advisors with knowledge of this Order (or continues to pursue or prosecute any cause of action, suit or proceeding after having received notice of this Order), the Court shall issue an order to show cause to such person or entity and a hearing will be scheduled to consider appropriate relief, which may include payment of fees and expenses incurred by the Special Master or any of the Advisors in connection therewith. To the maximum extent permitted by applicable law, neither the Special Master nor his Advisors nor their respective employees, officers, directors, attorneys, auditors, representatives, agents, successors and assigns will have or incur, and are hereby released and exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, cause of action, remedy, loss, and liability for any claim in connection with or arising out of all actions taken to implement the Marketing Process, Sale Procedures, Bidding Procedures, or Sale Transaction, or the performance of the Special Master's and his Advisors' duties pursuant to this Order and all other orders of the Court.

47. **Payment of Transaction Expenses.** The Special Master shall be compensated and reimbursed for all expenses (including fees and expenses of his Advisors) on a monthly basis by the Sale Process Parties pursuant to the procedures set forth in the May Order (collectively, such compensation and expenses, the “**Transaction Expenses**”); *provided* that the Special Master shall have the discretion to seek from the Court to reallocate payment of any Transaction Expenses if the circumstances require (*e.g.*, if any single Sale Process Party generates an inordinate number of disputes or if a Sale Process Party’s position in a dispute is found to be unreasonable).

48. No less frequently than once a month, the Special Master shall provide the Sale Process Parties (and the Court, if requested) with a budget setting out a 13-week estimate of his and his Advisors’ anticipated fees and expenses (the “**Budget**”). The Budget shall be subject to review by the Sale Process Parties and may be updated by the Special Master from time to time in his discretion and as a change in circumstances requires it; *provided* that approval of the Special Master’s and his Advisors’ fees and expenses shall remain subject to the Court’s approval after considering any timely objections from the Sale Process Parties. The Special Master shall submit the initial Budget to the Sale Process Parties two weeks following entry of this Order.

49. **Location of PDVH Shares.** By no later than 30 calendar days after entry of this Order, the Venezuela Parties, including PDVSA, shall inform the Special Master as to the specific and precise physical location of the PDVH Shares held by PDVSA or any other facts relevant for determining the physical location of the PDVH Shares held by PDVSA and the custodian of the shares. If the applicable Venezuela Party is unaware of the location of the PDVH Shares, such party shall inform the Special Master as such in writing. If at any point thereafter the

applicable Venezuela Party becomes aware of any change in circumstance regarding the location of the PDVH Shares, then such party shall update the Special Master in writing.

50. If the location of the PDVH Shares cannot be located with reasonable precision or if the Special Master reasonably determines that the custodian of the PDVH Shares is unlikely to cooperate in connection with an order compelling the person or entity to transfer the PDVH Shares in connection with any Sale Transaction, the Special Master shall file a recommendation with the Court in advance of the Sale Hearing regarding the appropriate steps to be taken to ensure that the Successful Bidder is able to actually purchase the applicable PDVH Shares in connection with the applicable Sale Transaction. The Special Master's recommendation may include, if appropriate, an order compelling PDVH to issue new certificates or uncertificated shares to the applicable Successful Bidder and cancel the registration of the shares attached to the books of PDVH.

51. **Other Provisions.** All provisions of the May Order shall remain in full force and effect, except for any that directly and irreconcilably conflict with an express provision of this Order; *provided* that nothing in the May Order shall in any way be used to limit the scope of the terms and provisions of this Order.

52. The Special Master is authorized to make non-substantive changes to the Bidding Procedures, the Sale Notice, and any related documents without further order of the Court, including, without limitation, changes to correct typographical and grammatical errors.

53. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

54. In addition to and without limiting any of the provisions set forth herein, the Special Master is authorized to take all reasonable steps necessary or appropriate to carry out this Order.

55. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____, 2021
Wilmington, Delaware

HONORABLE LEONARD P. STARK
UNITED STATES DISTRICT JUDGE

Exhibit 1

Bidding Procedures

The Special Master may, subject to the exercise of his reasonable judgment, in a manner consistent with his duties to the Court, and in good faith consultation with the Sale Process Parties (as defined below), modify, delay implementation of, or terminate these Bidding Procedures, waive terms and conditions set forth herein, extend any of the deadlines or other dates set forth herein or adjourn any Auction and/or Sale Hearing, in each case, at any time and without specifying the reasons therefor, to the extent not materially inconsistent with these Bidding Procedures and/or the Sale Procedures Order. The Special Master may also, in his sole discretion, terminate discussions with any or all prospective bidders at any time and without specifying the reasons therefor.

Summary of Important Dates

| Key Event | Deadline |
|--|--|
| Special Master to Launch Marketing Process and Establish Data Room in accordance with terms of the Sale Procedures Order. ² | Launch (“L”) |
| Deadline to Submit Non-Binding Indications of Interest | L+ 45 days |
| Deadline to Submit Stalking Horse Bids | L+ 90 days |
| Deadline for Special Master to Designate Stalking Horse Bidder and Enter into Stalking Horse Agreement | L + 150 days |
| Deadline for Special Master to File Notice of Stalking Horse Bidder | As soon as reasonably practicable following designation by the Special Master |
| Deadline to Submit Bids | L + 210 days |
| Deadline for Special Master to Notify Bidders of Status as Qualified Bidders | L + 217 days |
| Auction to be conducted at the offices of Potter Anderson & Corroon LLP (1313 N. Market Street, 6th Floor, Wilmington, DE 19801-6108) or such other location as is mutually agreeable to the Special Master and each of the Sale Process Parties | L + 230 days |
| Deadline to File Notice of Successful Bid | As soon as reasonably practicable following conclusion of the Auction or, if no Auction, selection of the Successful Bid |

² Prior to launch of the marketing process, a notice will be filed on the docket of the Crystallex Case setting forth the specific date of each deadline.

| | |
|---|--------------|
| Deadline to File Objections to Sale Transaction | L + 250 days |
| Deadline for Parties to Reply to Objections to Sale Transaction | L + 263 days |
| Sale Hearing | L + 270 days |

Assets To Be Sold: Shares of PDVH

Interested parties may submit bids for the purchase and sale of some or all of the shares of PDVH in accordance with the terms and conditions set forth herein. To avoid any ambiguity, parties may submit bids for less than 100% of the shares of PDVH so long as such bid satisfies the Attached Judgments.

PDVH is the sole shareholder and direct parent of CITGO Holding, Inc. (“**CITGO Holding**”), which in turn is the sole shareholder and direct parent of CITGO Petroleum Corporation (“**CITGO Petroleum**,” and together with CITGO Holding, “**CITGO**”).

Due Diligence

The Special Master will post copies of certain documents available to the Special Master related to the shares of PDVH and CITGO to the confidential electronic data room (the “**Data Room**”) managed by the Special Master. To access the Data Room, an interested party must submit to the Special Master’s Advisors:

- i. an executed confidentiality agreement substantially in the form attached to the Sale Procedures Order; and
- ii. sufficient information, as reasonably determined by the Special Master, to allow the Special Master to determine that the interested party intends to access the Data Room for a purpose consistent with these Bidding Procedures.

An interested party that meets the aforementioned requirements to the reasonable satisfaction of the Special Master shall be a “**Potential Bidder**.” As soon as reasonably practicable, the Special Master will provide such Potential Bidder access to the Data Room; provided that, such Data Room access and access to any other due diligence materials and information may be terminated by the Special Master in his sole discretion at any time for any reason whatsoever, including that a Potential Bidder does not become a Qualified Bidder, these Bidding Procedures are terminated, the Potential Bidder breaches any obligations under its confidentiality agreement, the Special Master becomes aware that information submitted by the Potential Bidder is inaccurate or misleading or the Potential Bidder is unable to provide sufficient information to demonstrate that it has the financial wherewithal to consummate a Sale Transaction. The Special Master may restrict or limit access of any Potential Bidder to the Data Room if the Special Master determines, based on his reasonable judgment, that certain information in the Data Room is sensitive, proprietary or otherwise not appropriate for disclosure to such Potential Bidder.

Each Potential Bidder shall comply with all reasonable requests for information and due diligence access by the Special Master and his Advisors regarding the ability of such Potential Bidder to consummate a Sale Transaction.

The Special Master may provide any Potential Bidder with any additional information requested by Potential Bidders (subject to any restrictions pursuant to applicable law, rule or regulation) that the Special Master believes to be reasonable and appropriate under the circumstances. All additional due diligence requests shall be directed to the Special Master's financial advisor, Evercore Group L.L.C. ("**Evercore**") (Attn: Ray Strong (ray.strong@evercore.com); William Hiltz (hiltz@evercore.com); Patrick O'Shea (patrick.oshea@evercore.com); David Ying (ying@evercore.com); and Stephen Goldstein (stephen.goldstein@evercore.com)).

Neither the Special Master nor any of his representatives shall be obligated to furnish any information of any kind whatsoever relating to PDVH or any of its subsidiaries to any person or entity who (i) is not a Potential Bidder, (ii) does not comply with the participation requirements set forth herein, or (iii) in the case of competitively sensitive information, is a competitor of PDVH or any of its direct or indirect subsidiaries.

Each of the Sale Process Parties may recommend to the Special Master documents or additional information to be included in the Data Room.

Non-Binding Indications of Interest

Parties who are interested in purchasing shares of PDVH are strongly encouraged to submit to the Special Master by [**Launch + 45 days**] at **4:00 p.m. (ET)** a written non-binding indication of interest that identifies the percentage of PDVH shares they are seeking to purchase (each a "**Non-Binding Indication of Interest**"). Non-Binding Indications of Interest should be sent to the Special Master's investment banker, Evercore (Attn: Ray Strong (ray.strong@evercore.com); William Hiltz (hiltz@evercore.com); Patrick O'Shea (patrick.oshea@evercore.com); David Ying (ying@evercore.com); and Stephen Goldstein (stephen.goldstein@evercore.com)).

Submitting a Non-Binding Indication of Interest by the deadline listed herein does not obligate the interested party or the Special Master to consummate a transaction and does not obligate the interested party to submit a formal bid or otherwise further participate in the bidding process. It also does not exempt an interested party from having to submit a Qualified Bid by the applicable Bid Deadline or to comply with these Bidding Procedures to participate in any subsequent Auction for the shares in which such party is indicating an interest, all as described below. For the avoidance of doubt, a party that does not submit a Non-Binding Indication of Interest is not precluded from submitting a Qualified Bid by the Bid Deadline.

The Special Master requests (and strongly encourages) Potential Bidders to, at a minimum, include the following items in their Non-Binding Indication of Interest:

- i. the percentage of shares of PDVH to be included in the interested party's bid;

- ii. the cash purchase price in U.S. dollars that the interested party would be prepared to pay, the amount and a detailed description of any non-cash components of the purchase price and a brief description of the methodology used by the interested party to select its proposed value;
- iii. any minority shareholder rights, protections, or other desired terms in connection with any bid for less than 100% of the PDVH Shares;
- iv. expected sources and uses for payment of the purchase price, including either confirmation that no financing would be required to consummate a Sale Transaction, or alternatively, the type and amount of any financing that would be so required and confirmation that such financing would not be a condition to consummation of a Sale Transaction;
- v. identification of the acquiring entity that would be party to a Sale Transaction and details regarding the ownership of such entity;
- vi. a description of any and all shareholder, regulatory or other third-party approvals, consents and notifications and other conditions that the interested party views as being necessary to consummate the Sale Transaction and the interested party's expected timeline for satisfying such conditions or approvals;
- vii. the interested party's consent for the Special Master, in his discretion, to share information with U.S. Government regulators, including the Department of the Treasury's Office of Foreign Assets Control ("**OFAC**"), pertaining to such interested party or the Non-Binding Indication of Interest;
- viii. any material assumptions underlying the Non-Binding Indication of Interest regarding the interested party's determination of a purchase price or the assets to be purchased, including the interested party's proposed treatment of the outstanding indebtedness of PDVH and its subsidiaries and the purported pledge of shares of CITGO Holding (the "**CITGO Holding Pledge**") for the benefit of holders of that certain series of bonds issued by PDVSA due in 2020 (the "**PDVSA 2020 Bondholders**");
- ix. sufficient information to demonstrate that the interested party has the financial wherewithal to timely consummate a Sale Transaction;
- x. a specific and comprehensive list of all due diligence information and meetings with management (including site visits) and others which the interested party would require in order to be able to submit a definitive, binding offer without due diligence conditions and the interested party's specific plans and timeline for completion of such due diligence;
- xi. any internal or other approvals that would be required by the interested party in order to execute definitive documentation in respect of a Sale Transaction and the interested party's expected timeline for obtaining such approvals,

and an indication as to any board, committee or other internal approvals or support the interested party has obtained in connection with submission of the Non-Binding Indication of Interest; and

- xii. any other factors that are relevant to the Non-Binding Indication of Interest.

Bid Deadline

A Potential Bidder that desires to submit a bid for shares of PDVH shall deliver electronic copies of its bid so as to be received by the Special Master no later than **[Launch Date + 210 days] at 4:00 p.m. (ET)** (the “**Bid Deadline**”); provided that, the Special Master may, in consultation with the Sale Process Parties, upon consideration of relevant factors, including any Non-Binding Indications of Interest received by the Special Master, accelerate or extend the Bid Deadline without further order of the Court subject to providing notice to all Potential Bidders and any Stalking Horse Bidder. **The submission of a bid by the Bid Deadline shall constitute a binding and irrevocable offer to acquire the assets specified in such bid.** The Special Master will have the right in his sole discretion to prohibit any party that does not submit a bid by the Bid Deadline from (i) submitting any offer after the Bid Deadline or (ii) participating in any Auction.

Bids should be submitted by email to the following representatives of the Special Master:

Weil, Gotshal & Manges LLP
Ray C. Schrock, P.C.
(Ray.Schrock@weil.com)
Michael J. Aiello
(Michael.Aiello@weil.com)
Alexander W. Welch
(Alexander.Welch@weil.com)
Renee M. Pristas
(Renee.Pristas@weil.com)
Jason Hufendick
(Jason.Hufendick@weil.com)

Evercore
Ray Strong
(ray.strong@evercore.com)
William Hiltz
(hiltz@evercore.com)
David Ying
(ying@evercore.com)
Stephen Goldstein
(stephen.goldstein@evercore.com)
Patrick O’Shea
(patrick.oshea@evercore.com)

Designation of Stalking Horse Bidder

Designation of Stalking Horse Bidder. A Potential Bidder that desires to make a stalking horse bid (each a “**Stalking Horse Bidder**,” and its bid, a “**Stalking Horse Bid**”) shall deliver electronic copies of its Stalking Horse Bid so as to be received by the Special Master no later than **[Launch + 90 days] at 4:00 p.m. (ET)** (the “**Stalking Horse Bid Deadline**”); provided that, the Special Master may, in consultation with the Sale Process Parties, extend the Stalking Horse Bid Deadline without further order of the Court subject to providing notice to all Potential Bidders. A Stalking Horse Bid shall include and be consistent with the form and content of a Bid explained in the following section and may provide for the provision of Stalking Horse Bid Protections (as defined below).

Following the Stalking Horse Bid Deadline, the Special Master may, in consultation with the Sale Process Parties, designate a Stalking Horse Bidder and, following approval from the Court, enter into an agreement (a “**Stalking Horse Agreement**”) with such Stalking Horse Bidder. To the extent the Special Master designates any Stalking Horse Bidder, the Special Master shall promptly and as soon as reasonably practicable file with the Court a notice (the “**Notice of Stalking Horse Bidder**”) that identifies the Stalking Horse Bidder, discloses any Stalking Horse Bid Protections, specifies the equity value implied by the total enterprise value of the Stalking Horse Bid as reasonably determined by the Special Master (the “**Implied Value**” and the Implied Value of the Stalking Horse Bid, the “**Stalking Horse Bid Implied Value**”), and attaches the Stalking Horse Agreement.

Good Faith Deposit. Upon entry into the Stalking Horse Agreement by the Special Master, the Stalking Horse Bidder shall make a cash deposit that is refundable under the circumstances described in these Bidding Procedures in the amount of ten percent (10%) of the Stalking Horse Bid Implied Value, unless otherwise agreed to by the Special Master, in consultation with the Sale Process Parties and the Stalking Horse Bidder.

Stalking Horse Bid Protections. In connection with any Stalking Horse Agreement, the Special Master may, subject to Court approval, agree to: (i) establish initial overbid minimum and subsequent bidding increment requirements not to exceed 5.0% of the Stalking Horse Bid Implied Value, subject to adjustment for any Bids for a lesser percentage of the PDVH Shares than the Stalking Horse Bid; (ii) a break-up fee in an amount agreed to by the Special Master in consultation with the Sale Process Parties (as defined herein) but not to exceed 3.0% of the Stalking Horse Bid Implied Value (a “**Termination Payment**”) payable either (a) in the event that an overbid is consummated, out of the proceeds from the consummation of such overbid or (b) by PDVH, CITGO Holding, and CITGO Petroleum in circumstances where any of PDVH, CITGO Holding, and/or CITGO Petroleum is materially responsible for the events that give rise to termination of the Stalking Horse Agreement; (iii) provide that if the Stalking Horse Bidder bids on shares of PDVH at the Auction, the Stalking Horse Bidder will be entitled to a credit up to the amount of any Termination Payment against the increased purchase price for its subsequent Bid; (iv) provide for the reimbursement of reasonable and documented fees and expenses actually incurred by the Stalking Horse Bidder by PDVH, CITGO Holding and CITGO Petroleum solely under certain circumstances in which the transactions contemplated by the Stalking Horse Agreement are not consummated (“**Expense Reimbursement**”); (v) provide that any sale order shall seek to transfer the PDVH Shares free and clear of any claims upon them; and (vi) provide other reasonable, appropriate or customary protections to a Stalking Horse Bidder (the bid protections described in this paragraph collectively are referred to as the “**Stalking Horse Bid Protections**”). The amount and a description of any Stalking Horse Bid Protections shall be included in the Notice of Stalking Horse Bidder.

Following approval from the Court, the Stalking Horse Bid Protections shall be binding upon the Special Master’s entry into the Stalking Horse Agreement.

Designation of Back-Up Bid. In the event that the Special Master does not receive any Qualified Bids by the Bid Deadline (other than the Stalking Horse Bid), the Stalking Horse Bidder shall be deemed the Successful Bidder with respect to the assets specified in such bidder’s Stalking Horse Bid or the Stalking Horse Agreement, as applicable. If, however, the Special Master identifies a

Bid other than the Stalking Horse Bid as the Successful Bid, then the Stalking Horse Bid may be designated by the Special Master as a back-up bid (the “**Back-Up Bid**” and such bidder, the “**Back-Up Bidder**”). Except as otherwise agreed in a Stalking Horse Agreement, the Back-Up Bid shall remain open and irrevocable until the earliest to occur of: (i) consummation of a Sale Transaction with the Successful Bidder; (ii) the release of such Back-Up Bid by the Special Master in writing; and (iii) 180 days from the announcement of the Back-Up Bid (unless otherwise agreed to by the Special Master, in consultation with the Sale Process Parties) (such date, the “**Back-Up Bid Expiration Date**”).

If a Sale Transaction with a Successful Bidder is terminated prior to the Back-Up Bid Expiration Date, the Back-Up Bidder shall be deemed a Successful Bidder and shall be obligated to consummate the transactions contemplated by the Back-Up Bid as if it were a Successful Bid; *provided* that the Special Master is not required to accept any bid or designate a Successful Bid or Back-Up Bid.

Form and Content of Bid

A bid is a signed document from a Potential Bidder received by the Special Master by the applicable Bid Deadline that identifies the proposed purchaser by its legal name and any other party that will be participating in connection with the bid (a “**Bid**”). To be considered for selection as a Stalking Horse Bid and/or to constitute a “**Qualified Bid**,” a Bid must include, at a minimum, the following:³

- i. Proposed Agreement. Each Bid must include an agreement executed by the Potential Bidder (the “**Proposed Agreement**”) that provides for the acquisition of all or some of the shares of PDVH, together with a redline comparing the Proposed Agreement to the form of agreement distributed by the Special Master to Potential Bidders.
- ii. Purchase Price; Percentage of Shares of PDVH Purchased; Cash Requirements; Assumed Liabilities; Credit Bid; Assumptions or Related Transactions. Each Bid must clearly set forth:
 - (a) Purchase Price. Each Bid must clearly identify the total purchase price to be paid by the Potential Bidder (the “**Purchase Price**”), including the amount to be paid in cash in U.S. dollars and any non-cash components, including, without limitation, a Credit Bid, stock and/or the assumption of liabilities.
 - (b) Percentage of Shares of PDVH Purchased. Each Bid must, in the Proposed Agreement, clearly identify the percentage

³ The Special Master, in consultation with the Sale Process Parties, may waive any of the following requirements with respect to any Bid.

of shares of PDVH and any other assets that the Potential Bidder seeks to acquire or exclude.

- (c) Shareholder or Minority Shareholder Rights. If the Bid is for less than 100% of the PDVH Shares, the Bid should clearly specify any required shareholder or minority shareholder rights or protections contemplated by the Bid.
- (d) Cash Requirements. Each Bid must provide sufficient cash consideration to pay in full (i) any applicable Termination Payment and (ii) all Transaction Expenses (as defined in the Sale Procedures Order).
- (e) Assumed Liabilities. Each Bid must clearly identify any additional liabilities the Potential Bidder seeks to assume.
- (f) Credit Bid. Persons or entities holding a perfected security interest in the shares of PDVH specified in the Bid may seek to submit a credit bid (a “**Credit Bid**”) on such shares, to the extent permitted by applicable law. For the avoidance of doubt, a Credit Bid must (i) comply with the “Cash Requirements” set forth in section (ii)(d) of these Bidding Procedures and (ii) provide sufficient cash to satisfy any obligations secured by a senior lien on the PDVH Shares. Notwithstanding the foregoing, the Special Master may waive the “Cash Requirements” with respect to a Credit Bid if the applicable Credit Bid provides for payment of the applicable obligation in full in cash in a manner acceptable to the Special Master or, to the extent applicable, if such senior creditor consents. Any Potential Bidder submitting a Credit Bid must certify under oath the amount of its claim as of the date of the Credit Bid and again prior to consummation of any Sale Transaction if the Credit Bid is deemed the Successful Bid, in each case, in accordance with the terms of the Sale Procedures Order.
- (g) Assumptions or Related Transactions. Each Bid must clearly (i) identify any underlying material assumptions regarding the business of PDVH and CITGO or the Potential Bidder’s determination of a Purchase Price or the assets to be purchased, including the Potential Bidder’s proposed treatment of the outstanding indebtedness of PDVH and its subsidiaries and the CITGO Holding Pledge and (ii) disclose any related transactions to be pursued or effectuated by the Potential Bidder in connection with the transactions contemplated by the Bid and the Proposed Agreement.

- iii. Unconditional Offer. A statement that the Bid is formal, binding, and unconditional, is not subject to any further due diligence or financing contingency, and is irrevocable until the Special Master notifies the Potential Bidder that such Bid is not a Successful Bid or a Back-Up Bid and files the Notice of Successful Bid in the Crystallex Case.
- iv. Proof of Financial Ability to Perform. Each Bid must contain a description of sources and uses for payment of the Purchase Price and such financial and other information that allows the Special Master, in consultation with the Sale Process Parties, to make a reasonable determination as to the Potential Bidder's financial and other capabilities to timely consummate a Sale Transaction. Without limiting the foregoing, such information must include current financial statements or similar financial information certified to be true and correct as of the date thereof, proof of financing commitments if needed to consummate the Sale Transaction (not subject to, in the Special Master's sole discretion, any unreasonable conditions), contact information for verification of such information, including for any financing sources, and any other information reasonably requested by the Special Master to demonstrate that such Potential Bidder has the ability to consummate a Sale Transaction in a timely manner.
- v. Required Approvals. A statement or evidence (i) that the Potential Bidder has made or will make in a timely manner (a) all filings and disclosures necessary to comply with the regulations of OFAC (or that the Potential Bidder has already received any necessary authorization), (b) all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and any other antitrust laws, as applicable, and pay the fees associated with such filings and (c) all necessary filings in connection with any applicable review by the Committee on Foreign Investment in the United States (CFIUS); (ii) of the Potential Bidder's plan and ability to obtain or make all requisite shareholder, governmental, regulatory, or other third-party approvals, consents and notifications (including a list of all contemplated third-party approvals, consents and notifications) and the proposed timing for the Potential Bidder to undertake the actions required to obtain or make such approvals, consents and notifications; (iii) that the Bid is reasonably likely, after taking into consideration antitrust and any other regulatory matters, the Potential Bidder's prior experience, and any other relevant considerations, to be consummated, if selected as the Successful Bid, within a time frame acceptable to the Special Master; and (iv) of the Potential Bidder's consent for the Special Master, in his discretion, to share with U.S. Government regulators, including OFAC, information pertaining to the Potential Bidder or the Bid. A Potential Bidder further agrees that its legal counsel will coordinate in good faith with the Special Master's legal counsel to discuss and explain such Potential Bidder's regulatory and other consent analysis, strategy, and timeline for securing all such approvals and consents as soon as reasonably practicable.

- vi. Disclosure of Identity and Authorization. Each Bid must (i) fully disclose the identity of the Potential Bidder and each entity that will be bidding or otherwise participating in such bid, including the acquiring entity that would be party to the Sale Transaction and details regarding the ownership of such entity, and the complete terms of any such participation, and (ii) include evidence of corporate or other organizational authorization and approval from the Potential Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of a Bid (including execution of the Potential Bidder's Proposed Agreement), participation in any Auction, and closing of the transactions contemplated by the Potential Bidder's Proposed Agreement in accordance with the terms of such agreement and these Bidding Procedures.
- vii. No Entitlement to Expense Reimbursement or Other Amounts. With the exception of any Stalking Horse Bid, each Bid must expressly state that the Bid does not entitle the Potential Bidder to any break-up fee, termination fee, expense reimbursement, or similar type of payment or reimbursement.
- viii. Special Master's Judicial Immunity. Each Bid must expressly state that (i) the Potential Bidder agrees that in no circumstance shall the Special Master or his Advisors be personally or otherwise liable for any amounts or obligations owed to the Potential Bidder and (ii) the Special Master and his Advisors are acting as an arm of the Court and are entitled to judicial immunity in the performance of their duties.
- ix. Joint Bids. The Special Master may approve joint Bids in his sole discretion on a case-by-case basis.
- x. Representations and Warranties. Each Bid must include the following representations and warranties:
 - a. a statement that the Potential Bidder has had an opportunity to conduct and has completed any and all due diligence regarding the assets to be purchased prior to submitting its Bid;
 - b. a statement that the Potential Bidder recognizes and acknowledges that the Special Master, his Advisors, PDVH, and CITGO make no representations, covenants, or warranties (or any other promise) as to the accuracy or completeness of any information provided in the Data Room or otherwise made available by the Special Master and his Advisors in connection with the bid process;
 - c. a statement that the Potential Bidder has relied solely upon its own independent review, investigation, and/or inspection of any relevant documents regarding the assets to be purchased and did not rely on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied,

by operation of law or otherwise, regarding the assets to be purchased or the completeness of any information made available in connection therewith;

- d. a statement that the Potential Bidder has not engaged in any collusion with respect to the submission of its Bid;
- e. a statement that all proof of financial ability to consummate a Sale Transaction in a timely manner is true and correct; and
- f. a statement that the Potential Bidder agrees to be bound by the terms and conditions of the Bidding Procedures.

A Potential Bidder must also accompany its Bid with:

- xi. the contact information of the specific person(s) whom the Special Master or his Advisors should contact in the event that the Special Master has any questions or wishes to discuss the Bid submitted by the Potential Bidder.
- xii. a covenant to cooperate with the Special Master and the Sale Process Parties to provide pertinent factual information regarding the Potential Bidder's ownership and operations reasonably required to respond to, or otherwise analyze issues arising with respect to, U.S. sanctions laws and regulations, the Committee on Foreign Investment in the United States, any applicable antitrust laws, and other relevant regulatory requirements or requests.
- xiii. if the Purchase Price of a Bid includes non-cash components, a detailed analysis of the value of any such non-cash components, including any assumptions related thereto, and reasonable back-up documentation to support such value.
- xiv. a cash deposit that is refundable under the circumstances described in these Bidding Procedures in the amount of ten percent (10%) of the Implied Value of the Bid (such cash deposit, a "**Good Faith Deposit**"), unless otherwise agreed to by the Special Master, in consultation with the Sale Process Parties, and a Potential Bidder; provided that, a Potential Bidder submitting a Credit Bid shall only be required to provide a Good Faith Deposit in the amount of 10% of the cash component of such Bid.

Good Faith Deposit

Except as otherwise provided herein with respect to a Stalking Horse Bidder, a Good Faith Deposit must be deposited by a Potential Bidder on or prior to the Bid Deadline, with an escrow agent selected by the Special Master (the "**Escrow Agent**") pursuant to an escrow agreement to be provided by the Special Master. To the extent a Bid is modified before, during, or after any Auction, the Special Master reserves the right to require that such Potential Bidder adjust its Good Faith Deposit so that it equals ten percent (10%) of the Implied Value (or such other amount as is agreed to by the Special Master in consultation with the Sale Process Parties in accordance with

subsection xiv of *Form and Content of Bid*). If a Qualified Bidder is required to adjust its Good Faith Deposit, its status as a Qualified Bidder shall be suspended pending satisfaction of such adjustment.

Sale Process Parties

At all times during the bidding process, the Special Master will consult with the Court and the Sale Process Parties and may do so on an *ex parte* basis *in camera*. In addition, throughout the bidding process, the Special Master and his Advisors will regularly and timely consult with the following parties (through their applicable advisors) (collectively, the “**Sale Process Parties**”):

- i. The Venezuela Parties, including PDVH and CITGO;
- ii. Crystallex; and
- iii. ConocoPhillips.

The Special Master shall use reasonable efforts to timely provide copies of any Non-Binding Indications of Interest, Bids, Stalking Horse Bids, and other relevant documents to the Sale Process Parties, *provided* that the Special Master shall not consult with or provide copies of any Non-Binding Indications of Interest, Bids, or Stalking Horse Bids to any Sale Process Party pursuant to the terms of these Bidding Procedures if such Sale Process Party has a Bid pending, or has expressed any written interest in bidding for the PDVH Shares. If a Sale Process Party chooses not to submit any Bid, then such party may receive copies of all Bids following expiration of the latest possible Bid Deadline (as such Bid Deadline may be extended by the Special Master pursuant to the terms of these Bidding Procedures); *provided* that (i) such Sale Process Party shall be required to hold any Bids or other documents received in strict confidence in accordance with the terms of the *Special Master Confidentiality Order* [D.I. 291] and (ii) upon a Sale Process Party’s receipt of a copy of any Bid, such Sale Process Party shall thereafter be precluded from submitting any bid or other offer for the PDVH Shares. For the avoidance of doubt, if the only Bid that a Sale Process Party receives a copy of is the Stalking Horse Bid designated by the Special Master, such Sale Process Party may submit a Bid like any other Potential Bidder pursuant to the terms of these Bidding Procedures.

Without the express written consent of the Special Master, no Sale Process Party shall contact or in any way communicate with a Potential Bidder except as permitted by paragraph 40 of the Sale Procedures Order.

For the avoidance of doubt, any consultation rights afforded to the Sale Process Parties by these Bidding Procedures shall not limit the Special Master’s discretion in any way and shall not include the right to veto any decision made by the Special Master in the exercise of his judgment in good faith.

In addition, the Special Master may in his sole discretion (but is not obligated to) consult with the United States, the Intervenor PDVSA 2020 Bondholders, other creditors of the Republic and PDVSA and any of its direct and indirect subsidiaries, and any additional person or entity that the Special Master determines it would be appropriate to consult in connection with

implementation of the Sale Procedures Order and these Bidding Procedures. For the avoidance of doubt, such parties shall not be “Sale Process Parties” as defined herein.

Review of Bids; Designation of Qualified Bids

The Special Master, in consultation with the Sale Process Parties following expiration of the latest possible Bid Deadline (as such Bid Deadline may be modified by the Special Master pursuant to the terms of these Bidding Procedures), will evaluate Bids that are timely submitted and may engage in negotiations with Potential Bidders who submitted Bids as the Special Master deems appropriate in the exercise of his judgment, based upon the Special Master’s evaluation of the content of each Bid.

A Bid received that is determined by the Special Master, in consultation with the Sale Process Parties, to meet the requirements set forth herein will be considered a “**Qualified Bid**” and any bidder that submits a Qualified Bid (including any Stalking Horse Bid) will be considered a “**Qualified Bidder**.”

By no later than [**Launch + 217 days**] (the “**Qualified Bid Deadline**”), the Special Master shall determine, in his reasonable judgment, and in consultation with the Sale Process Parties, which of the Bids received by the Bid Deadline qualifies as a Qualified Bid. The Special Master shall notify each Potential Bidder who submits a Qualified Bid of its status as a Qualified Bidder by the Qualified Bid Deadline.

Solely if the Court has approved of the Special Master entering into a Stalking Horse Agreement and such Stalking Horse Agreement has been executed, no other Bid shall be considered a Qualified Bid unless such Bid meets the following mandatory requirements (the “**Mandatory Requirements**”):

- i. The Bid must have a greater Implied Value than the Stalking Horse Bid Implied Value or be within a range of such Implied Value which, in the Special Master’s judgment, is sufficient to meet the requirements of obtaining a value maximizing transaction;
- ii. In addition to the minimum amount of consideration necessary to satisfy the foregoing requirement, the Bid must provide for additional consideration sufficient to pay in full in cash all Stalking Horse Bid Protections, including any Termination Payment and Expense Reimbursement amounts payable; and
- iii. The Bid must provide for either (i) sufficient proceeds to pay no less of the Attached Judgments than the Stalking Horse Bid or (ii) proceeds in excess of the proceeds provided for in the Stalking Horse Bid after payment of all Stalking Horse Bid Protections.

In evaluating the Bids (and only Bids that meet the Mandatory Requirements, if applicable), the Special Master may take into consideration the following non-binding factors:

- i. the amount of the Purchase Price and Credit Bid, including other non-cash consideration, as applicable, set forth in the Bid and the Implied Value of the Bid (provided that for purposes of evaluating competing bids, every U.S. dollar of a Credit Bid shall be treated the same as a U.S. dollar from a cash or other non-cash Bid, and a Credit Bid shall not be considered inferior to a comparable cash or other non-cash Bid because it is a Credit Bid);
- ii. the percentage of shares of PDVH to be purchased and any other assets included in or excluded from the Bid;
- iii. the value to be provided under the Bid, including the net economic effect taking into account any Stalking Horse Bidder's rights to any Termination Payment and any other Stalking Horse Bid Protections;
- iv. any benefit to PDVH and its subsidiaries from any assumption of liabilities or waiver of liabilities;
- v. the transaction structure and execution risk, including conditions to, and speed, complexity, timing and certainty of, closing of the Sale Transaction, termination provisions, availability of financing and financial wherewithal of the Qualified Bidder to pay the Purchase Price and satisfy all other requirements and commitments, and any required shareholder, governmental, regulatory or other third-party approvals or consents; and
- vi. any other factors the Special Master may deem relevant consistent with his duties to the Court and applicable law.

The Special Master reserves the right to work with any Potential Bidder in advance of the Auction to cure any deficiencies in a Bid that is not initially deemed a Qualified Bid. The Special Master may amend or waive the conditions precedent to being a Qualified Bidder (including any Mandatory Requirements) at any time in his reasonable judgment, in consultation with the Sale Process Parties and in a manner consistent with his duties to the Court and under applicable law (as reasonably determined in good faith by the Special Master in consultation with his legal counsel).

The Special Master may, in his discretion, seek the cooperation of third parties to evaluate a Bid pursuant to the Sale Procedures Order. The Special Master, in consultation with the Sale Process Parties, may accept a single Bid or multiple partial Bids, if taken together, such multiple partial Bids would otherwise meet the standards for a single Qualified Bid (in which event those multiple bidders shall be treated as a single Qualified Bidder for purposes of the Auction).

Without the written consent of the Special Master, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the Purchase Price or otherwise improve the terms of the Qualified Bid during the period that such Qualified Bid remains binding as specified herein; provided that, any Qualified Bid may be improved at any Auction as set forth in these Bidding Procedures.

Failure to Receive Qualified Bids Other Than Stalking Horse Bid

If no Qualified Bid other than the Stalking Horse Bid is received by the Qualified Bid Deadline, the Special Master will not conduct an Auction, and shall file a notice with the Court indicating that no Auction will be held. In such circumstance, the Special Master shall also file with the Court a notice designating the Stalking Horse Bid as the Successful Bid and the Stalking Horse Bidder as the Successful Bidder as soon as reasonably practicable after the Qualified Bid Deadline.

Auction Procedures

If the Special Master receives more than one Qualified Bid (inclusive of any Stalking Horse Bid), the Special Master shall conduct the Auction **beginning at 10:00 a.m. (ET) at the offices of Potter Anderson & Corroon LLP, 1313 N. Market Street, 6th Floor, Wilmington, DE 19801-6108** or such other location mutually agreeable to the Special Master and each of the Sale Process Parties, on **[Launch + 230 days]**, or **such other later date as may be determined by the Special Master in consultation with the Sale Process Parties**. Only a Qualified Bidder will be eligible to participate in the Auction, subject to such other limitations as the Special Master may impose in good faith. In addition, professionals and/or other representatives of the Special Master and the Sale Process Parties shall be permitted to attend and observe the Auction. Each Qualified Bidder shall be required to confirm, both before and after the Auction, that it has not engaged in any collusion with respect to the submission of any bid, the bidding, or the Auction.

The Special Master may, in consultation with the Sale Process Parties, adopt rules for the Auction at any time that the Special Master reasonably determines it to be appropriate to promote a spirited and robust auction. Any rules developed by the Special Master will provide that all bids in the Auction will be made and received on an open basis, and all other bidders participating in the Auction will be entitled to be present for all bidding with the understanding that the true identity of each bidder placing a bid at the Auction will be fully disclosed to all other bidders participating in the Auction, and that all material terms of a bid submitted in response to any successive bids made at the Auction will be disclosed to all other bidders. Each Qualified Bidder will be permitted to receive what the Special Master, in consultation with the Sale Process Parties, reasonably determines to be an appropriate amount of time to respond to the previous bid at the Auction. The Auction will be conducted openly and shall be transcribed or recorded.

The Special Master may, in consultation with the Sale Process Parties, identify the highest Qualified Bid that the Special Master reasonably believes to be capable of being timely consummated after taking into account the factors set forth above as the successful bid (a **“Successful Bid”** and the bidder submitting such bid, a **“Successful Bidder”**). As set forth above, the Special Master may also identify the Stalking Horse Bidder and its Stalking Horse Bid as a Back-Up Bid. If a Sale Transaction with a Successful Bidder is terminated prior to the Back-Up Bid Expiration Date, the Back-Up Bidder shall be deemed a Successful Bidder and shall be obligated to consummate the transactions contemplated by the Back-Up Bid as if it were a Successful Bid. For the avoidance of doubt, the Special Master is not required to accept any bid or designate a Successful Bidder or Back-Up Bidder.

Within one (1) business day after the Auction, a Successful Bidder shall submit to the Special Master, for the Special Master's review, approval and coordination of execution, definitive documentation in respect of the Sale Transaction executed by the Successful Bidder and memorializing the terms of a Successful Bid. A Successful Bid may not be assigned to any party without the written consent of the Special Master.

At any time before entry of an order approving an applicable Sale Transaction envisioned by a Qualified Bid, the Special Master reserves the right to and may reject such Qualified Bid if such Qualified Bid, in the Special Master's sole discretion, is: (i) inadequate or insufficient; (ii) not in conformity with the requirements of the Federal Rules of Civil Procedure, Delaware or other applicable law, an order of the Court, these Bidding Procedures, or the terms and conditions of the applicable Sale Transaction; or (iii) contrary to the best interests of the Parties and ConocoPhillips in the Crystallex Case.

Post-Auction Process

If an Auction is held, as soon as reasonably practicable thereafter, the Special Master shall file with the Court a notice of a Successful Bid and Successful Bidder. Unless otherwise required by applicable law, the Special Master shall not consider any bids submitted after the conclusion of the Auction.

Within seven (7) days after the Auction, the Special Master shall direct the Escrow Agent to return the deposit of any bidder who is not declared a Successful Bidder or a Back-Up Bidder. Upon the authorized return of any such deposit, the bid of such Potential Bidder or Qualified Bidder, as applicable, shall be deemed revoked and no longer enforceable.

A Successful Bidder's deposit shall be applied against the cash portion of the Purchase Price of such bidder's Successful Bid upon the consummation of a Sale Transaction.

In addition to the foregoing, the deposit of a Qualified Bidder will be forfeited to the Special Master if (i) the Qualified Bidder attempts to modify, amend, or withdraw its Qualified Bid, except as permitted herein, during the time the Qualified Bid remains binding and irrevocable or (ii) the Qualified Bidder is selected as a Successful Bidder and refuses or fails to enter into the required definitive documentation or to consummate a Sale Transaction in accordance with these Bidding Procedures. A forfeited deposit shall first be used to pay any unpaid Transaction Expenses and, if any excess remains thereafter, the Special Master shall seek guidance from the Court regarding the distribution thereof.

Sale Hearing

If the Special Master elects to proceed with a Sale Transaction in accordance with these Bidding Procedures, the Special Master will seek the entry of an order authorizing and approving, among other things, the Sale Transaction with the Successful Bidder, including the definitive documentation in respect of such Sale Transaction, at a hearing before the Court to be held on **[Launch + 270 days]** (the "**Sale Hearing**"). The objection deadline for any Sale Transaction to be approved at the Sale Hearing will be **[Launch + 250 days] at 4:00 p.m. (ET)** (the "**Sale Objection Deadline**"); provided that, the Special Master may extend the Sale Objection Deadline,

as the Special Master deems appropriate in the exercise of his reasonable judgment and in consultation with the Sale Process Parties.

Objections to any Sale Transaction, including any objection to the sale of shares of PDVH free and clear of liens, claims, encumbrances, and other interests (each, a “**Sale Objection**”), must: (i) be in writing; (ii) state the name and address of the objecting party and such party’s interest(s) in the Crystallex Case, any related proceeding, or PDVH and its affiliates; (iii) state with particularity the basis and nature of any objection, and provide proposed language that, if accepted and incorporated by the Special Master, would obviate such objection (if such objection can be resolved through inclusion of acceptable language); (iv) conform to the applicable rules of the Court; and (v) be filed with the Court in accordance with the customary practices of the Court. If a timely Sale Objection cannot otherwise be resolved by the parties, such objection shall be heard by the Court at the Sale Hearing.

A Successful Bidder shall appear at the Sale Hearing and be prepared to have a representative(s) testify in support of the Successful Bid and such Successful Bidder’s ability to close the Sale Transaction in a timely manner.

Any party who fails to file with the Court a Sale Objection by the Sale Objection Deadline may be forever barred from asserting, at the Sale Hearing or thereafter, any Sale Objection with regard to a Successful Bidder, or to the consummation of a Sale Transaction, including with respect to the transfer of shares of PDVH to a Successful Bidder, free and clear of all liens, claims, encumbrances, and other interests. Failure to object to a Sale Transaction shall be deemed consent to such Sale Transaction.

Satisfaction of All Attached Judgments

Nothing in these Bidding Procedures (or the Sale Procedures Order) prohibits or in any way impairs the rights of the Venezuela Parties to pay Crystallex’s Judgment (or any other Attached Judgment) in full prior to consummation of a Sale Transaction. If at any time all Attached Judgments become satisfied in full (or otherwise are consensually resolved), then the Special Master shall cease implementation of the Sale Procedures in accordance with the Sale Procedures Order.

Consent to Jurisdiction and Authority as Condition to Bidding

All bidders that participate in the bidding process shall be deemed to have (i) consented to the core jurisdiction of the Court to enter any order or orders, which shall be binding in all respects, in any way related to these Bidding Procedures, the bid process, the Auction, the Sale Hearing, or the construction, interpretation and enforcement of any agreement or any other document relating to a Sale Transaction; (ii) waived any right to a jury trial in connection with any disputes relating to these Bidding Procedures, the bid process, the Auction, the Sale Hearing, or the construction, interpretation and enforcement of any agreement or any other document relating to a Sale Transaction; and (iii) consented to the entry of a final order or judgment in any way related to these Bidding Procedures, the bid process, the Auction, the Sale Hearing, or the construction, interpretation and enforcement of any agreement or any other document relating to

a Sale Transaction if it is determined that the Court would lack jurisdiction to enter such a final order or judgment absent the consent of the parties.

Reservation of Rights

The Special Master may, in his reasonable judgment, in a manner consistent with his duties to the Court and the Sale Procedures Order, and in good faith consultation with the Sale Process Parties, modify, delay implementation of or terminate these Bidding Procedures, waive terms and conditions set forth herein, extend any of the deadlines or other dates set forth herein, adjourn any Auction and/or Sale Hearing, announce at the Auction modified or additional procedures for conducting the Auction, or provide reasonable accommodations to any Potential Bidder with respect to such terms, conditions, and deadlines of the bidding and Auction process to promote further bids on any assets, in each case, at any time and without specifying the reasons therefor, to the extent not materially inconsistent with these Bidding Procedures and/or the Sale Procedures Order. The rights of each Sale Process Party are fully reserved as to any Sale Transaction. **The Special Master shall not be obligated to recommend to the Court approval of or consummation of any transaction with respect to any asset.**

Judicial Immunity

The Special Master is entitled to judicial immunity in performing his duties pursuant to the Sale Procedures Order and these Bidding Procedures, including all actions taken to implement these Bidding Procedures. The Special Master's Advisors are further entitled to judicial immunity in connection with all actions taken at the direction of, on behalf of, or otherwise in connection with representation of or advising the Special Master. In no circumstance shall the Special Master or any of his Advisors be liable to any party in connection with implementing the Sale Procedures Order or these Bidding Procedures. To the maximum extent permitted by applicable law, neither the Special Master nor his Advisors will have or incur, and the Special Master and his Advisors are released and exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, cause of action, remedy, loss, and liability in connection with or arising out of all actions taken to implement the Marketing Process, Sale Procedures, Bidding Procedures, or Sale Transaction, or the performance of the Special Master's and his Advisors' duties pursuant to the Sale Procedures Order and all other orders of the Court.

Exhibit 2

Form of Sale Notice

IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF DELAWARE

| | | |
|---|---|------------------------------------|
| <p>CRYSTALLEX INTERNATIONAL CORPORATION,</p> <p style="padding-left: 100px;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>BOLIVARIAN REPUBLIC OF VENEZUELA,</p> <p style="padding-left: 100px;">Defendant.</p> | <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> | <p>Misc. No. 17-151-LPS</p> |
|---|---|------------------------------------|

**NOTICE OF SALE, BIDDING
PROCEDURES, AUCTION, AND SALE HEARING**

PLEASE TAKE NOTICE OF THE FOLLOWING:

On January 14, 2021, the United States District Court for the District of Delaware (the “**Court**”)¹ issued an opinion and corresponding order setting forth certain contours for the sale of the shares of PDV Holding, Inc. (“**PDVH**”) owned by Petróleos de Venezuela, S.A. (“**PDVSA**”) in connection with the above-captioned proceeding (the “**Crystallex Case**”). In furtherance thereof, the Court appointed Robert B. Pincus as special master (the “**Special Master**”) on April 13, 2021 to assist the Court with the sale of PDVSA’s shares of PDVH. The Special Master is advised by Weil, Gotshal & Manges LLP, as transaction counsel, and Evercore Group L.L.C. as investment banker.

On [], 2021, the Court entered an order (Docket No. []) (the “**Sale Procedures Order**”) (i) approving the bidding procedures, substantially in the form attached to the Sale Procedures Order as **Exhibit 1** (the “**Bidding Procedures**”); (ii) authorizing the Special Master to designate a stalking horse bidder (“**Stalking Horse Bidder,**” and such bidder’s bid, a “**Stalking Horse Bid**”) and offer such bidder the Stalking Horse Bid Protections identified therein; (iii) setting the timeframe for potential bidders to submit a proposal to purchase shares of PDVH, scheduling an auction (the “**Auction**”), and scheduling the hearing with respect to the approval of the sale (the “**Sale Hearing**”); (iv) authorizing and approving the Notice Procedures for the foregoing; and (v) granting related relief.

¹ Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Sale Procedures Order and the Bidding Procedures (each, as defined herein), as applicable. Any summary of the Sale Procedures Order or the Bidding Procedures contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any conflict between any such summary and such actual terms and conditions, the actual terms and conditions shall control.

Assets to be sold: Shares of PDVH

Interested parties may submit bids for the purchase and sale of some or all of the shares of PDVH in accordance with the terms and conditions set forth in the Bidding Procedures. To avoid any ambiguity, parties may submit bids for less than 100% of the shares of PDVH so long as such bid satisfies the Attached Judgments.

PDVH is the sole shareholder and direct parent of CITGO Holding, Inc., which in turn is the sole shareholder and direct parent of CITGO Petroleum Corporation.

Important Dates and Deadlines

- **Non-Binding Indication of Interest Deadline.** Any person or entity interested in participating in the sale of shares of PDVH is encouraged to submit a Non-Binding Indication of Interest on or before **[Launch Date + 45 days] at 4:00 p.m. (prevailing Eastern Time)**.
- **Stalking Horse Bid Deadline.** Any person or entity interested in being designated as a Stalking Horse Bidder must submit a Stalking Horse Bid on or before **[Launch Date + 90 days] at 4:00 p.m. (prevailing Eastern Time)**.
- **Bid Deadline.** Any person or entity interested in participating in the Auction must submit a Qualified Bid on or before **[Launch Date + 210 days] at 4:00 p.m. (prevailing Eastern Time)**.
- **Auction.** An Auction has been scheduled for **[Launch Date + 230 days] at 10:00 a.m. (prevailing Eastern Time)**.
- **Sale Objection Deadlines.** Objections to the Sale Transaction, including any objection to the sale of shares of PDVH free and clear of liens, claims, encumbrances, and other interests must (i) be in writing; (ii) state the name and address of the objecting party and such party's interests in the PDVH Shares and/or the assets of PDVH and its subsidiaries; (iii) state with particularity the basis and nature of any objection, and provide proposed language that, if accepted and incorporated by the Special Master, would obviate such objection (if such objection can be resolved through inclusion of acceptable language); (iv) conform to the applicable rules; and (v) be filed with the Court in accordance with the customary practices of the Court by no later than **[Launch Date + 250 days] at 4:00 p.m. (prevailing Eastern Time)** (the "Sale Objection Deadline").
- **Sale Hearing.** A hearing to approve the Sale Transaction shall be held before the Court before the Honorable Leonard P. Stark on **[Launch Date + 270 days] at 10:00 a.m. (prevailing Eastern Time) in Courtroom 6B at the United States District Court, 844 North King Street, Wilmington DE 19801.**

Additional Information

Any party interested in submitting a bid should contact the Special Master's investment banker, Evercore (Attn: Ray Strong (ray.strong@evercore.com); William Hiltz (hiltz@evercore.com); Patrick O'Shea (patrick.oshea@evercore.com); David Ying (ying@evercore.com); and Stephen Goldstein (stephen.goldstein@evercore.com)), as soon as possible.

The Bidding Procedures set forth the requirements for becoming a Qualified Bidder and submitting a Qualified Bid, and any party interested in making an offer to purchase the shares of PDVH must comply with the Bidding Procedures. Only Qualified Bids will be considered by the Special Master, in accordance with the Bidding Procedures.

Copies of the Sale Procedures Order and the Bidding Procedures may be requested free of charge by email to the Special Master's counsel, Weil, Gotshal & Manges LLP (attn.: Jason Hufendick at Jason.Hufendick@weil.com).

FAILURE TO ABIDE BY THE BIDDING PROCEDURES, THE SALE PROCEDURES ORDER, OR ANY OTHER ORDER OF THE COURT MAY RESULT IN THE REJECTION OF YOUR BID.

THE FAILURE OF ANY PERSON OR ENTITY TO FILE AND SERVE A SALE OBJECTION IN ACCORDANCE WITH THE SALE PROCEDURES ORDER BY THE SALE OBJECTION DEADLINE MAY FOREVER BAR SUCH PERSON OR ENTITY FROM ASSERTING, AT THE SALE HEARING OR THEREAFTER, ANY SALE OBJECTION WITH REGARD TO A SUCCESSFUL BIDDER, OR TO THE CONSUMMATION OF A SALE TRANSACTION, INCLUDING WITH RESPECT TO THE TRANSFER OF SHARES OF PDVH TO A SUCCESSFUL BIDDER, FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS.

Dated _____, 2021

Exhibit 3

Proposed Evercore Engagement Letter

PROPOSED EVERCORE ENGAGEMENT LETTER

As of [●], 2021

Robert B. Pincus
In his capacity as Special Master
of the United States District Court for the District of Delaware
108 Rockford Grove Lane
Wilmington, DE 19806

Dear Special Master Robert Pincus:

1. Assignment:

This engagement letter (this “**Agreement**”) is to formalize the arrangement between Evercore Group L.L.C. (“**Evercore**”) and Robert B. Pincus, solely in his capacity as special master (“**Special Master**”) for the United States District Court for the District of Delaware (the “**Court**”) in *Crystallex International Corp. v. Bolivarian Republic of Venezuela* (D. Del. Case. No. 17-151-LPS) (the “**Specified Litigation**”) pursuant to that certain order entered by the Court on April 13, 2021 [Docket No. 258], that certain *Order Regarding Special Master* entered by the Court on May 27, 2021 [Docket No. 277] (the “**May Order**”) and the *Order (A) Establishing Sale and Bidding Procedures, (B) Approving Special Master’s Report and Recommendation Regarding Proposed Sale Procedures Order, (C) Affirming Retention of Evercore as Investment Banker by Special Master and (D) Regarding Related Matters* entered by the Court on [●] [Docket No. [●]] (the “**Sale Procedures Order**”). The Special Master, solely in his capacity as special master, hereby retains Evercore as exclusive financial advisor in connection with implementation of the Sale Procedures Order and consummation of the sale of the equity interests of PDV Holding, Inc. (“**PDVH**”) and together with its direct and indirect subsidiaries, the “**Company**”) held by Petróleos de Venezuela, S.A. (“**PDVSA**”) or other transactions and proceedings (collectively, the “**Sale Transaction**”).

The parties hereto entered into that certain engagement dated as of June 2, 2021 (the “**Prior Engagement Letter**”). Upon execution of this Agreement, the Prior Engagement Letter shall automatically terminate as of the date this Agreement becomes effective (other than any provision that by its terms expressly survives termination thereof).

It is the parties’ intent that services (as described herein) performed hereunder are, in part, for the purpose of assisting Weil, Gotshal & Manges LLP (“**Weil**”) in its capacity as counsel to the Special Master so that Weil can render attorney-client advice to the Special Master. Accordingly, certain actions taken by Evercore are intended to be and shall be privileged and protected by the attorney work product privilege, attorney-client privilege, and other applicable privilege doctrines available under applicable law. The Special Master and Evercore each acknowledge and agree that Weil shall not be responsible for any fees, expenses, indemnification rights or other amounts or payments that may be owed to Evercore directly or indirectly under this Agreement.

As of [●], 2021
Page 2

2. Fees and Expenses:

Evercore will seek payment of its fees and documented expenses from Crystallex International Corporation (“**Crystallex**”), the Bolivarian Republic of Venezuela (the “**Republic**”), PDVH, PDVSA, CITGO Petroleum Corp. (“**CITGO**,” and collectively with the Republic, PDVH, PDVSA, the “**Venezuela Parties**”), Phillips Petroleum Company Venezuela Limited and ConocoPhillips Petrozuata B.V. (together, “**ConocoPhillips**,” and collectively, with Crystallex and the Venezuela Parties, the “**Sale Process Parties**”) in accordance with the May Order and the Sale Procedures Order. The Special Master hereby agrees to take all actions required of the Special Master and to otherwise assist Evercore in seeking (and, as applicable, obtaining approval of) payment of the fees and documented expenses incurred pursuant to this Agreement from the Sale Process Parties, including by making any necessary or desirable filings in the Specified Litigation.

Notwithstanding anything to the contrary in this Agreement, Evercore and the Special Master each acknowledge and agree that the Special Master shall not be personally responsible for any fees or expenses, or other amounts or payments that may be due and payable directly or indirectly under this letter. For the avoidance of doubt, notwithstanding anything herein to the contrary, under no circumstances shall the Special Master be liable to any party for any fees, expenses, or amounts due or claimed in connection to or arising from this Agreement.

As compensation for the services rendered by Evercore hereunder, Evercore shall be paid the following fees in cash by the Sale Process Parties as and when set forth below:

- a. A monthly fee of \$200,000 (a “**Monthly Fee**”), which shall be earned in full and payable on the date that the Special Master provides Evercore with (i) written notice of his determination to begin preparations for the Marketing Process or (ii) written notice that he would like Evercore to engage in settlement discussions regarding a claims resolution process with creditors in accordance with the terms of the Sale Procedures Order, and subsequently on the same day of each month thereafter until the earlier of the consummation of a Sale Transaction or the termination of Evercore’s engagement. The first nine (9) Monthly Fees actually paid shall be credited 50% (without duplication) against any Sale Fee that becomes payable hereunder. Notwithstanding the foregoing, if implementation or consummation of the Sale Transaction is stayed or otherwise delayed for any reason (other than a delay caused by a necessary regulatory approval unrelated to a license required from the Office of Foreign Assets Control in the United States Department of the Treasury (“**OFAC**”)), the Special Master may send a written notice (including by email) to Evercore that, three business days after it is actually received by Evercore, will have the effect of ending the accrual of Monthly Fees until such time as the Special Master rescinds the notice in writing (including by email). Evercore shall not be required to repay any amount of any Monthly Fee paid prior to the receipt of such a notice. The Special Master may only send such a notice if no material amount of work or services have been requested of Evercore for the applicable period, and Evercore shall have no obligation to perform any work or services during the period in which such Monthly Fees do not accrue until such time as Evercore actually receives the next Monthly Fee, which shall be payable not later than 3 business days following rescission

As of [●], 2021
Page 3

of the Special Master's stay notice and subsequently on the same day of each month thereafter until the earlier of the consummation of a Sale Transaction or the termination of Evercore's engagement; *provided* that the first Monthly Fee payable after such rescission shall be prorated to account for any period for which a Monthly Fee already was paid hereunder.

- b. A sale fee (a "**Sale Fee**") equal to (a) the amount of the Aggregate Consideration (as defined below) multiplied by (b) 0.35% (the "**Sale Fee Percentage**"); *provided* that if no other Qualified Bid (as defined in the Bidding Procedures attached to the Sale Procedures Order) is generated by the Marketing Process and a credit bid by Crystallex is the prevailing bid, the Sale Fee Percentage shall be reduced to 0.25% of the Aggregate Consideration, but, for the avoidance of doubt, Aggregate Consideration in such scenario shall be calculated to include 100% of the implied equity value of the credit bid.

\$7,000,000 of the Sale Fee shall be earned and payable upon the earlier of (i) announcement by the Special Master of any Sale Transaction and (ii) execution of a binding definitive agreement with respect to any Sale Transaction (the "**Upfront Amount**"), and the remainder of the Sale Fee shall be earned and payable upon consummation of any Sale Transaction. The Upfront Amount shall be split equally amongst and paid by the Sale Process Parties that are obligated to pay the Upfront Payment as follows: Crystallex and ConocoPhillips shall be obligated to pay (and only obligated to pay) a portion of the Upfront Amount if the implied value of the contemplated Sale Transaction is sufficient to provide for a recovery for their particular Attached Judgments. The Venezuela Parties shall be obligated to pay (and only obligated to pay) their equal share of the Upfront Amount, whether one-third or one-half, depending on whether Crystallex and ConocoPhillips are obligated to pay. The remaining amount of the Sale Fee (*i.e.*, any amount other than the Upfront Payment) shall be payable in connection with consummation of the applicable Sale Transaction and shall be payable by the applicable purchaser directly or from any proceeds from the applicable Sale Transaction.

- i. As used in this Agreement, the term "Aggregate Consideration" shall mean the total fair market value (determined at the time of the closing of a Sale) of all consideration paid or payable, or otherwise to be distributed to, or received by, directly or indirectly, the Court (or the Special Master) in connection with the Sale Transaction or the Company, its bankruptcy estate (if any), its creditors and/or the security holders of the Company in connection with a Sale, including all (i) cash, securities and other property, (ii) Company debt assumed, satisfied, or paid by a purchaser or which remains outstanding at closing (including, without limitation, the amount of any indebtedness, securities or other property "credit bid" in any Sale) and any other indebtedness and obligations, including litigation claims and tax claims that will actually be paid, satisfied, or assumed by a purchaser from the Company or the security holders of the Company and (iii) amounts placed in escrow and deferred, contingent and installment payments.

As of [●], 2021
Page 4

- c. Only if related services are expressly requested by the Special Master in the performance of his duties, a financing fee (a “**Financing Fee**”), to be mutually agreed upon in advance of consummation of any Financing (as defined below), payable upon consummation of such Financing. The parties agree to negotiate in good faith a mutually acceptable Financing Fee, which, subject to the anticipated scope of work, shall be consistent with the compensation customarily paid to investment bankers of similar standing acting in similar situations. Evercore will, prior to performing any services that would give rise to a Financing Fee, inform the Special Master that the requested services, if performed, would give rise to a Financing Fee.
- d. Only if related services are expressly requested by the Special Master in the performance of his duties, a restructuring fee (a “**Restructuring Fee**”), to be mutually agreed upon in advance of consummation of any Restructuring (as defined below), payable upon consummation of such Restructuring (it being understood that, unless otherwise agreed pursuant to this Section 2(d), Evercore shall not be entitled to a Restructuring Fee on account of any Sale that also constitutes a Restructuring). The parties agree to negotiate in good faith a mutually acceptable Restructuring Fee, which, subject to the anticipated scope of work, shall be consistent with the compensation customarily paid to investment bankers of similar standing acting in similar situations. Evercore will, prior to performing any services that would give rise to a Restructuring Fee, inform the Special Master that the requested services, if performed, would give rise to a Restructuring Fee.
- e. In addition to any fees that may be payable to Evercore and, regardless of whether any transaction occurs, Evercore shall promptly be reimbursed on a monthly basis for (a) all reasonable expenses (including travel and lodging, data processing and communications charges, courier services and other appropriate expenditures) and (b) other documented reasonable fees and expenses, including expenses of counsel, if any.
- f. If Evercore provides services for which a fee is not provided herein, such services shall, except insofar as they are the subject of a separate agreement, be treated as falling within the scope of this Agreement, and the Special Master and Evercore will agree upon a fee for such services based upon good faith negotiations and the scope of work performed.
- g. All amounts referenced hereunder reflect United States currency and shall be paid promptly in cash after such amounts accrue hereunder.

In addition, the Special Master and Evercore acknowledge and agree that more than one fee may be payable to Evercore under subparagraphs 2(a), 2(b), 2(c), 2(d), and/or 2(f) hereof in connection with any single transaction or a series of transactions, it being understood and agreed that if more than one fee becomes so payable to Evercore in connection with a series of transactions, each such fee shall be paid to Evercore.

The Special Master acknowledges that the fee structure herein, including the Monthly Fees, reflects the substantial commitment of professional time and effort that will be required of Evercore and its professionals and in light of the fact that (i) such commitment may foreclose other opportunities for Evercore and (ii) the actual time and commitment required of Evercore

As of [●], 2021
Page 5

and its professionals to perform its services may vary substantially from week to week and month to month, creating “peak load” issues for Evercore.

3. Interpretation of Terms:

As used in this agreement, the term “**Sale**” shall mean whether or not in one transaction, or a series of related transactions, (a) the disposition to one or more third parties of all or a portion of the issued and outstanding equity securities or any other issued and outstanding securities of the Company by the existing security holders of the Company; or (b) an acquisition, merger, consolidation, or other business combination, of which all or a portion of the business, assets or existing equity or securities of the Company are, directly or indirectly, sold or transferred to, or combined with, another company (other than an ordinary course intra-company transaction); or (c) an acquisition, merger, consolidation, sale, or other business combination pursuant to a successful “credit bid” of any securities by existing securities holders; or (d) the formation of a joint venture, partnership or similar entity; or (e) any transaction similar to any of the transactions described in clauses (a)-(d).

As used in this Agreement, the term “**Financing**” shall mean the issuance, sale or placement of newly issued or treasury equity, equity-linked or debt securities, instruments or obligations of the Company with one or more lenders and/or investors or security holders (each such lender or investor, an “**Investor**”), including any “debtor-in-possession financing” or “exit financing” in connection with any case under the Bankruptcy Code (as defined below) or a refinancing, repricing, rights offering or any loan or other financing or obligation.

As used in this Agreement, the term “**Restructuring**” shall mean, collectively, any restructuring, reorganization and/or recapitalization, however such result is achieved, including, without limitation, through one or more of the following: (a) a plan of reorganization or liquidation (a “**Plan**”) confirmed pursuant to 11 U.S.C. §101 *et. seq.*, as from time to time amended, or any other current or future federal statute or regulation that may be applicable to such plan (11 U.S.C. §101 *et. seq.* and those other statutes and regulations are referred to herein generally as the “Bankruptcy Code”), (b) any similar proceeding or mechanism under the laws of any non-U.S. jurisdiction or authority, or (c) a refinancing, cancellation, forgiveness, satisfaction, retirement, purchase, assumption and/or a material modification or amendment to the terms of the Company’s outstanding indebtedness (including bank debt, bond debt, preferred stock, and other on and off balance sheet indebtedness), trade claims, leases (both on and off balance sheet), litigation-related claims and obligations, unfunded pension and retiree medical liabilities, lease obligations, partnership interests and other liabilities, including pursuant to a sale, repurchase or an exchange transaction, a Plan or a solicitation of consents, waivers, acceptances or authorizations. For avoidance of doubt, the term Restructuring shall also mean any claims negotiation process and related negotiations with various creditors and claimants including with respect to the 8.5% Senior Secured Notes issued by PDVSA due 2020.

Other:

4. Evercore’s engagement hereunder is premised on the assumption that the Special Master will make available to, or use reasonable efforts to cause the Sale Process Parties to make

As of [●], 2021
Page 6

available to, Evercore all information and data that Evercore reasonably deems appropriate in connection with its activities. The parties recognize and consent to the fact that (a) Evercore will use and rely on the accuracy and completeness of public reports and other information provided by others, including information provided by the Special Master, the Sale Process Parties, other parties and their respective officers, employees, auditors, attorneys or other agents in performing the services contemplated by this Agreement, and (b) Evercore does not assume responsibility for, and may rely without independent verification upon, the accuracy and completeness of any such information. Evercore will, and will cause its controlled affiliates, directors, officers, members, agents, employees and other representatives to, keep confidential all information furnished to it to the extent provided in any protective order entered by the Court and furnished to Evercore by the Special Master or a Sale Process Party. Further, Evercore agrees and acknowledges that it will execute any confidentiality or joinder agreement required by the Court or reasonably requested by the Special Master pursuant to any such protective order, including, without limitation, the *Special Master Confidentiality Order* [D.I. 291].

5. Evercore's engagement hereunder may be terminated by the Special Master or Evercore at any time upon written notice without liability or continuing obligation to the Special Master or Evercore, except that following such termination, Evercore shall remain entitled to payment of any fees accrued pursuant to Section 2 but not yet paid prior to such termination, and to reimbursement of expenses incurred prior to such termination. Solely in the case of termination by the Special Master (and not in the case of termination by Evercore), payment of (i) any Sale Fee in respect of any Sale Transaction announced or consummated on or within 15 months of the date of entry of the Sale Procedures Order, and (ii) any other fees that may become payable to Evercore pursuant to the terms of the Sale Procedures Order or any other Court order entered on or before the date of such termination on or within 15 months of the date of entry of the Sale Procedures Order or such other order, as applicable; *provided, however*, that in the case of both (i) and (ii), any such fees shall only be payable out of the proceeds of any Sale Transaction or Financing (if applicable) that is overseen and/or directed by the Special Master.
6. Evercore acknowledges that it will provide testimony, as reasonably necessary, with respect to matters related to the implementation and consummation of the Sale Transaction.
7. To the extent the provision of services or other transactions contemplated in this Agreement may, in Evercore's sole judgment, require a specific license from OFAC, such services or transactions will not commence unless and until authorized by a license from OFAC. Any applicable laws, executive orders, regulations, directives or licenses administered or issued by OFAC will take precedence over the terms of this letter in the event of a conflict. Evercore may terminate this Agreement at any time if it appears, in Evercore's sole judgment, that OFAC will not grant a license necessary to complete the services or other transactions contemplated in this Agreement within a reasonable amount of time. Should Evercore refuse to provide services under this agreement pursuant to this paragraph, the Special Master shall have the right to terminate this agreement and no

As of [●], 2021
Page 7

further fees shall be due under this agreement (other than any outstanding incurred but unpaid fees, and reimbursable expenses incurred prior to such termination).

8. The Special Master and Evercore each acknowledge that to the extent there is any conflict between this Agreement and the Sale Procedures Order, the Sale Procedures Order shall control.
9. Nothing in this Agreement, expressed or implied, is intended to confer or does confer on any person or entity other than the parties hereto or their respective successors and assigns any rights or remedies under or by reason of this Agreement or as a result of the services to be rendered by Evercore hereunder. The Special Master acknowledges that Evercore is not acting as an agent of the Special Master or in a fiduciary capacity with respect to the Special Master and that Evercore is not assuming any duties or obligations other than those expressly set forth in this Agreement. Nothing contained herein shall be construed as creating, or be deemed to create, the relationship of employer and employee between the parties, nor any agency, joint venture or partnership. Evercore shall at all times be and be deemed to be an independent contractor. Nothing herein is intended to create or shall be construed as creating a fiduciary relationship between Evercore and the Special Master. No party to this Agreement nor its employees or agents shall have any authority to act for or to bind the other party in any way or to sign the name of the other party or to represent that that the other party is in any way responsible for the acts or omissions of such party.
10. Pursuant to the Sale Procedures Order, Evercore shall be entitled to judicial immunity to the extent provided therein. The provisions of this Section 10 shall survive any termination or completion of Evercore's engagement hereunder.
11. Subject to the Sale Procedures Order, the Special Master agrees that he is solely responsible for any decision regarding the Sale Transaction, regardless of the advice provided by Evercore with respect to the Sale Procedures Order. The Special Master acknowledges that the appointment of Evercore pursuant to this Agreement is not intended to achieve or guarantee, and that Evercore is not in a position to guarantee the achievement of or consummation of, the Sale Transaction.
12. The Special Master recognizes that Evercore has been engaged only by the Special Master and that the Special Master's engagement of Evercore is not deemed to be on behalf of and is not intended to confer rights on any of the Sale Process Parties, any creditor, lender or any other person not a party hereto or any of its affiliates or their respective directors, officers, members, agents, employees or representatives. Unless otherwise expressly agreed, no one other than the Special Master is authorized to rely upon the Special Master's engagement of Evercore or any statements, advice, opinions or conduct by Evercore. Without limiting the foregoing, any advice, written or oral, rendered to the Special Master in the course of the Special Master's engagement of Evercore is solely for the purpose of assisting the Special Master (and assisting Weil in representing the Special Master) in implementing the Sale Transaction and does not constitute a recommendation to any of the Sale Process Parties that such party might or

As of [●], 2021
Page 8

should take in connection with the Sale Procedures Order. Any advice, written or oral, rendered by Evercore may not be disclosed publicly or made available to third parties without the prior written consent of Evercore.

13. In order to coordinate Evercore's efforts on behalf of the Special Master during the period of Evercore's engagement hereunder, the Special Master will promptly inform Evercore of any discussions, negotiations, or inquiries regarding the Sale Transaction, including any such discussions or inquiries that have occurred since the date of the Special Master's appointment (April 13, 2021).
14. This Agreement between Evercore and the Special Master, embodies the entire agreement and understanding between the parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof, including the Prior Engagement Letter. If any provision of this Agreement is determined to be invalid or unenforceable in any respect, such determination will not affect this Agreement in any other respect, which will remain in full force and effect. This Agreement may not be amended or modified except in writing signed by each of the parties.
15. In the event that, as a result of or in connection with Evercore's engagement for the Special Master, Evercore becomes involved in any legal proceeding or investigation or is required by government regulation, subpoena or other legal process to produce documents, or to make its current or former personnel available as witnesses at deposition or trial, the Special Master will use reasonable efforts to cause the Sale Process Parties to reimburse Evercore for the reasonable fees and expenses of its counsel incurred (i) in responding to such a request and (ii) in asserting Evercore's rights with respect to judicial immunity. The provisions of this Section 15 shall survive any termination or completion of Evercore's engagement hereunder.
16. So long as consistent with its duties pursuant to the Sale Procedures Order, and any subsequent order of the Court, Evercore shall have the right to place advertisements in financial and other newspapers and journals at its own expense describing its services hereunder.
17. The Special Master acknowledges that Evercore, in the ordinary course, may have received information and may receive information from third parties which could be relevant to this engagement but is nevertheless subject to a contractual, equitable or statutory obligation of confidentiality, and that Evercore is under no obligation hereby to disclose any such information or include such information in its analysis or advice provided to the Special Master. In addition, Evercore or one or more of its affiliates may in the past have had, and may currently or in the future have, investment banking, investment management, financial advisory or other relationships with the Sale Process Parties and their affiliates, potential parties to any transaction and their affiliates or persons that are competitors, customers or suppliers of (or have other relationships with) the Sale Process Parties or their affiliates or potential parties to any transaction or their affiliates, and from which conflicting interests or duties may arise. Nothing contained herein shall limit or preclude Evercore or any of its affiliates from carrying on (i) any

As of [●], 2021
Page 9

business with or from providing any financial or non-financial services to any party whatsoever, including, without limitation, any competitor, supplier or customer of the Sale Process Parties, or any other party which may have interests different from or adverse to the Sale Process Parties or (ii) its business as currently conducted or as such business may be conducted in the future. The Special Master also acknowledges that Evercore and its affiliates engage in a wide range of activities for their own accounts and the accounts of customers, including corporate finance, mergers and acquisitions, equity sales, trading and research, private equity, asset management and related activities. In the ordinary course of such businesses, Evercore and its affiliates may at any time, directly or indirectly, hold long or short positions and may trade or otherwise effect transactions for their own accounts or the accounts of customers, in debt or equity securities, senior loans and/or derivative products relating to the Sale Process Parties or their affiliates, potential parties to any transaction and their affiliates or persons that are competitors, customers or suppliers of the Sale Process Parties. Without limiting the foregoing, so long as customary information barriers are created and maintained by Evercore, Evercore's engagement hereunder will not limit the ability of Evercore or its affiliates to provide service to any third party, including in relation to a Sale Process Party or any affiliate thereof.

18. The Special Master agrees to provide and use reasonable efforts to procure all corporate, financial, identification and other information regarding the Special Master, as Evercore may require to satisfy its obligations as a U.S. financial institution under the USA PATRIOT Act and Financial Crimes Enforcement Network regulations.
19. Evercore may, in the performance of its services hereunder, delegate the performance of all or certain services as it may select to any of its affiliated entities; *provided* that no such delegation by Evercore shall in any respect affect the terms hereof, and Evercore shall be responsible for any acts or omissions by any of its affiliated entities in the performance of any services delegated to such entity.
20. For the convenience of the parties hereto, any number of counterparts of this Agreement may be executed by the parties hereto, each of which shall be an original instrument and all of which taken together shall constitute one and the same Agreement. Delivery of a signed counterpart of this Agreement by facsimile or electronic mail transmission shall constitute valid sufficient delivery thereof.
21. Except as provided herein, the parties hereby irrevocably consent to the exclusive jurisdiction of the Court over any action or proceeding arising out of or relating to this Agreement, and the parties hereby irrevocably agree that all claims in respect of such action or proceeding may be heard by the Court. The parties irrevocably agree to waive all rights to trial by jury in any such action or proceeding and irrevocably consent to the service of any and all process in any such action or proceeding by the mailing of copies of such process to each party at its address set forth above. The parties agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The Agreement and any claim related directly or indirectly to this Agreement shall be

As of [●], 2021
Page 10

governed by and construed in accordance with the laws of the State of New York (without regard to conflicts of law principles that would result in the application of any law other than the law of the State of New York). The parties further waive any objection to venue in the Court and any objection to any action or proceeding in such state on the basis of forum non conveniens.

As of [●], 2021
Page 11

If the foregoing correctly sets forth the understanding and agreement between Evercore and the Special Master, please so indicate in the space provided below, whereupon this letter shall constitute a binding agreement as of the date hereof.

Very truly yours,

Evercore Group L.L.C.

By: _____
David Ying
Senior Managing Director

Agreed to and Accepted as of
[●], 2021:

Special Master of the United States District Court for the District of Delaware

By: _____
Robert B. Pincus
In his capacity as Special Master
of the United States District Court for the District of Delaware

Exhibit 4

Form of Confidentiality Arrangement

[●], 2021

[●]

DEAR [●]:

In connection with the consideration by [●], a [●] (“you” or “your”), of a possible negotiated transaction (the “Possible Transaction”) for the sale of shares of PDV Holding, Inc. (“PDVH” and together with its direct and indirect subsidiaries, the “Company”) owned by Petróleos de Venezuela, S.A. in accordance with that certain order of the United States District Court for the District of Delaware (the “Court”) authorizing, among other things, the Court-appointed special master, Robert B. Pincus (the “Special Master”) to implement certain bidding procedures for the sale of shares of PDVH [(D.I [●])] (each of you and the Special Master, a “Party,” and together, the “Parties”), the Special Master is prepared to make available to you and your Representatives (as defined below) certain information concerning the Company. In consideration for and as a condition to such information being furnished to you and your Representatives (as defined below), you agree that you and your Representatives will treat any information or data concerning or relating to the Company or any of its affiliates (whether prepared by the Special Master or the Company, either of their advisors or other Representatives or otherwise and irrespective of the form of communication) which has been or will be furnished, or otherwise made available, to you or your Representatives by or on behalf of the Special Master or the Company or any of its affiliates, whether before or after the date of this Agreement, including, without limitation, any confidential or proprietary information of the Company or any of its affiliates and any information or data concerning or relating to the business, financial condition, properties, services, products, technology, employees, operations, strategy, actual or potential prospects, assets or liabilities of the Company or any of its affiliates (collectively referred to as, and together with the Transaction Information (as defined below), the “Confidential Information”), in accordance with the provisions of this letter agreement (this “Agreement”), and to take or abstain from taking certain other actions hereinafter set forth.

1. Confidential Information. (a) The term “Confidential Information” shall include all notes, memoranda, summaries, analyses, compilations, forecasts, data, models, studies, interpretations or other documents or materials prepared by the Special Master, the Company or any of its affiliates, their Representatives or you or your Representatives, which use, contain, reflect or are based upon or derived from, in whole or in part, information furnished to you or your Representatives by or on behalf of the Special Master. The term “Confidential Information” shall not include information that you can demonstrate (i) at the time of disclosure by you is generally available to the public other than as a result of a disclosure by you or your Representatives in breach of this Agreement, (ii) was within your possession prior to it being furnished or made available to you or your Representatives hereunder or becomes available to you on a non-confidential basis from a source other than the Special Master or any of his Representatives; *provided* that, in each case, the source of such information was not known by you or your Representatives (after reasonable inquiry) to be bound by a contractual, legal or fiduciary obligation of confidentiality to the Special Master, the Company or any other person with respect to such information, or (iii) has been or is subsequently independently developed by you or your Representatives (on your behalf) without (A) use or benefit of or reference to

any Confidential Information or any information from a source known (after reasonable inquiry) by you or your Representatives to be bound by a contractual, legal or fiduciary obligation of confidentiality to the Special Master or the Company, or (B) breaching this Agreement.

(b) For purposes of this Agreement:

(i) “Representatives” shall mean:

(A) with respect to you: your controlled affiliates and your and such controlled affiliates’ directors, officers, employees and professional advisors (including, without limitation, accountants, consultants, attorneys and financial advisors); *provided* that your “Representatives” shall not include, without the prior written consent of the Special Master: (1) any actual or potential bidding partners or equity financing sources, or (2) any actual or potential debt financing sources;

(B) with respect to the Company: the Company’s affiliates and each of the Company’s and its respective affiliates’ directors, officers, employees, professional advisors (including, without limitation, attorneys, accountants, consultants and financial advisors), agents and other representatives;

(C) with respect to the Special Master: the Special Master’s professional advisors (including, without limitation, attorneys and financial advisors), agents and other representatives;

(ii) the term “person” shall be broadly interpreted to include the media and any individual, corporation, limited or general partnership, limited liability company, trust, association, joint venture, governmental or self-regulatory agency or body or other entity or group;

(iii) the term “affiliate” means, with respect to any specified person, any other person that, directly or indirectly, controls, is controlled by or is under common control with, such specified person; and

(iv) the term “control” and derivative terms mean, as used in the definition of the term “affiliate” or in relation to the term “affiliate,” the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

2. Use and Disclosure of Confidential Information.

(a) You hereby agree that you and your Representatives (i) shall keep the Confidential Information confidential and use the Confidential Information solely for the purpose of evaluating, and participating in discussions with the Special Master regarding, the Possible Transaction and for no other purpose and (ii) shall not disclose any of the Confidential Information in any manner whatsoever; *provided* that you may disclose such information (A) to those of your Representatives who have a need to know such information for the sole purpose of evaluating and, if applicable, negotiating, documenting and consummating the Possible Transaction on your behalf and who are provided with a copy of this Agreement and agree to be bound by the applicable terms hereof to the same extent as if they were parties hereto and (B) subject to Section 2(c), to the extent you are Legally Required (as defined below) to disclose such information. In any event, you agree, at your sole expense, to (y) undertake reasonable precautions to safeguard and protect the confidentiality of the Confidential Information and to prevent you and your Representatives from making any unauthorized disclosure or unauthorized use of such information (such measures to be no less stringent than the measures taken with respect to your own confidential and proprietary information and in any event shall involve no less than a reasonable degree of care) and (z) be responsible for any breach of, or failure to comply with, this Agreement by any of your Representatives as if such Representatives were parties hereto (it being understood that such responsibility shall be in addition to and does not limit any right or remedy the Special Master or the Company may have against your Representatives with respect to such breach).

(b) Without the prior written consent of the Special Master, you and your Representatives will not disclose to any person (i) the fact that either of the Parties is considering the Possible Transaction, (ii) the fact that this Agreement exists (or the contents hereof) or that any Confidential Information has been made available to you or your Representatives or (iii) that discussions, negotiations or investigations are taking place or have taken place concerning the Possible Transaction, the Special Master or the Company, or any of the terms, conditions or other facts with respect to the Possible Transaction or such discussions, negotiations or investigations (including, without limitation, the timing or status thereof) (all of the foregoing being referred to as "Transaction Information"). All Transaction Information shall be deemed Confidential Information for all purposes of this Agreement.

(c) In the event that you or any of your Representatives are (i) required by applicable law or regulation or (ii) legally compelled by deposition, interrogatories, requests for information or documents in legal or administrative proceedings, subpoena, civil investigative demand or other similar legal process) (any of the foregoing in clauses (i) or (ii), "Legally Required") to disclose any of the Confidential Information, you or such Representative, as applicable, shall provide the Special Master with prompt (and in any event prior to any disclosure) written notice, to the extent not legally prohibited, of the existence, terms and circumstances of any such requirement so that the Special Master may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. If, in the absence of a protective order or other remedy or the receipt of a waiver by the Special Master, you or any of your Representatives are nonetheless, upon advice of outside counsel, Legally Required to disclose Confidential Information, you or your Representatives may disclose only that portion of the Confidential Information which such outside counsel advises is Legally Required to be disclosed; *provided* that (i) you shall exercise (and shall cause your Representatives to exercise) reasonable best efforts to preserve the confidentiality of the Confidential Information, including, without limitation, exercising reasonable best efforts to

obtain an order or other reliable assurance that confidential treatment shall be afforded to such information and (ii) such disclosure was not caused by or resulted from a previous disclosure by you or any of your Representatives in violation of this Agreement. You and your Representatives shall cooperate fully with (and shall not oppose any action by) the Special Master (or the Company, if applicable) to obtain a protective order or other relief to prevent or narrow the disclosure of the Confidential Information or to obtain reliable assurance that confidential treatment will be afforded to the Confidential Information.

(d) Notwithstanding anything to the contrary in this Agreement, neither you nor any of your Representatives will, without the prior written consent of the Special Master, enter into any agreement, arrangement or understanding with any person (or make any offers or have any discussions which might lead to such agreement, arrangement or understanding) with respect to participating in the Possible Transaction, including, without limitation, an equity or debt participation in the Possible Transaction, a sale of a portion of the equity or assets of the Company simultaneously with or following a transaction involving the Company, or any other form of joint transaction by you or your affiliates and such person or its affiliates involving the Company. Furthermore, you acknowledge and agree that neither you nor your Representatives has, prior to the date hereof, entered into any such agreements, arrangements or understandings with any person or made any such offers or had any such discussions. Neither you nor any of your Representatives shall, without the prior written consent of the Special Master, (i) communicate with any potential bidding partners, financing sources or creditors of the Company regarding the Possible Transaction or (ii) enter into any agreement, arrangement or understanding (or have any discussions which might lead to such agreement, arrangement or understanding), whether written or oral, with any actual or potential bidding partners or financing sources that could reasonably be expected to limit, restrict, restrain or otherwise impair in any manner, directly or indirectly, the ability of such partners or financing sources to provide financing or other assistance to any other person in any other possible transaction involving the Company.

3. Destruction of Confidential Information. If you determine you do not wish to proceed with the Possible Transaction, you will promptly notify the Special Master in writing of that decision. In that case or if otherwise requested by the Special Master or one of his Representatives, you will, and will cause your Representatives to, promptly (and in any event within ten (10) days of such event or request) destroy (including by erasure) all Confidential Information (and all copies thereof) in your or your Representatives' possession, as applicable. If requested by the Special Master, you shall deliver to the Special Master a written certification executed by an authorized officer that such destruction has occurred. Notwithstanding the foregoing, you and your Representatives may retain one copy of any Confidential Information to the extent required to comply with applicable legal or regulatory requirements or established bona fide document retention policies for use solely to demonstrate compliance with such requirements, *provided* that any retained information shall solely be accessible by information technology personnel to demonstrate compliance with legal or regulatory requirements and shall be destroyed (including by erasure) in the ordinary course of your business. Notwithstanding the destruction or retention of the Confidential Information, you and your Representatives will continue to be bound by your obligations hereunder and such obligations will survive the termination of this Agreement with respect to any retained Confidential Information.

4. Inquiries. You agree that Evercore Group, L.L.C. ("Evercore") has responsibility for arranging appropriate contacts for due diligence in connection with the Possible Transaction

and that (a) all communications regarding the Possible Transaction, (b) requests for additional information and requests for facility tours, management or similar meetings in connection with the Possible Transaction or Confidential Information, and (c) discussions or questions regarding procedures with respect to the Possible Transaction will be submitted or directed only to Evercore or such other person as may be expressly designated by the Special Master in writing, and not to any other Representative of the Special Master. You further agree that, except in the ordinary course of your business unrelated to the Possible Transaction or with the prior written consent of the Special Master, neither you nor any of your Representatives shall, directly or indirectly, initiate, solicit or maintain contact or otherwise engage in any communication with the Company, any director, officer, current or former employee, equityholder, affiliate, creditor, supplier, distributor, vendor, partner, customer, provider, agent or regulator (other than, in the case of a regulator, as permitted in Section 2(c) above) of the Company or other commercial counterparty of the Company regarding the Company, any Confidential Information, the Special Master or the Possible Transaction.

5. No Representations or Warranties; No Agreement. You acknowledge and agree that neither of the Special Master nor the Company (nor any of their Representatives) (a) makes any representation or warranty, express or implied, as to the timeliness, accuracy or completeness of the Confidential Information, (b) is under any obligation to provide or make available to you or your Representatives any information that in the Special Master's sole and absolute discretion he determines not to provide or (c) shall have any obligation or liability to you or to any of your Representatives on any basis relating to or resulting from the use of the Confidential Information or any errors therein or omissions therefrom (including, but not limited to, any obligation to update, supplement or correct any Confidential Information). You agree that only those representations, covenants or warranties which are made in a final definitive agreement with you regarding the Possible Transaction (a "Definitive Transaction Agreement"), subject to such limitations and restrictions as may be specified therein, when, as and if executed, will be relied on by you or your Representatives and have any legal effect. You acknowledge and agree that unless and until a Definitive Transaction Agreement between the Special Master and you has been executed and delivered, neither you nor the Special Master will be under any legal obligation with respect to the Possible Transaction by virtue of this Agreement or any other written or oral expression. You further agree that you and your Representatives shall not have any claims against the Special Master or his Representatives arising out of or relating to (x) the Possible Transaction or your evaluation thereof or (y) the Confidential Information or any action or inaction taken or occurring in reliance on such information, other than claims against the parties to a Definitive Transaction Agreement in accordance with the terms thereof. You further acknowledge and agree that neither the Special Master nor any of his Representatives shall have any legal, fiduciary or other duty to any prospective or actual purchaser with respect to the manner in which any sale process is conducted and that the Special Master reserves the right, in his sole discretion, to conduct the process leading up to the Possible Transaction, if any, as the Special Master and his Representatives determine, including, without limitation, by negotiating with any third party and entering into a preliminary or definitive agreement with a third party, rejecting any and all proposals made by you or any of your Representatives with regard to the Possible Transaction, terminating discussions and negotiations with you or your Representatives at any time and for no reason and terminating or denying access to the Confidential Information at any time and for no reason. Furthermore, nothing contained in this Agreement nor the furnishing of Confidential Information shall be construed as granting or conferring any rights by license or otherwise in any intellectual property of the Company, and all right, title and interest in the Confidential Information shall remain with the Company.

6. No Waiver of Privilege. To the extent you or your Representatives are provided with any Confidential Information that is subject to a claim of attorney-client privilege, attorney work product or any other applicable privilege, immunity or ground on which production of such information should not be made to a third-party, the provision of such Confidential Information is inadvertent and shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of attorney-client privilege, work product or other applicable privilege or immunity. If the Special Master identifies any such Confidential Information under this Agreement, you and your Representatives shall: (i) refrain from any further disclosure or examination of such Confidential Information; (ii) if requested, promptly make a good faith effort to return such Confidential Information and all copies thereof; and (iii) not use such Confidential Information for any purpose.

7. No Solicitation. Except as otherwise agreed in a definitive agreement with the Special Master, for a period of two (2) years from the date hereof, neither you nor any of your controlled affiliates or any person acting on your or their behalf will, without the prior written consent of the Company, directly or indirectly, solicit, hire, employ, engage (including, without limitation, as an independent contractor), or offer to hire, employ or engage, any of the officers, employees or independent contractors of the Company; *provided* that the foregoing shall not prohibit you or such affiliates from (i) making any general solicitation for employment by use of advertisements in the media that is not specifically directed or targeted at any officer, employee or independent contractor of the Company and (ii) hiring any such officer, employee or independent contractor who responds to any such general solicitation. You agree that you and your Representatives will not, without the prior written consent of the Special Master, engage in discussions with management of the Company regarding the terms of their post-transaction employment or equity participation as part of, in connection with or after the Possible Transaction.

8. Material Non-Public Information. You acknowledge and agree that you are aware (and that your Representatives are aware or, upon providing any Confidential Information to such Representatives, will be advised by you) that Confidential Information being furnished to you or your Representatives may contain material non-public information regarding the Company and that the United States securities laws generally prohibit any persons who have material, non-public information from purchasing or selling securities of the Company on the basis of such information or from communicating such information to any person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities on the basis of such information.

9. Remedies. You recognize and acknowledge the competitive value and confidential nature of the Confidential Information and the damage that would result to the Company (and to the process being conducted by the Court through the Special Master) if such information is disclosed in breach of this Agreement. You hereby agree that any breach of this Agreement by you or any of your Representatives would result in irreparable harm to the Company (and to the process being conducted by the Court through the Special Master) and that money damages would not be a sufficient remedy for any such breach. Accordingly, you agree that the Company and the Special Master shall be entitled to equitable relief, including, without limitation, injunction and specific performance, as a remedy for any breach or threatened breach hereof by you or your Representatives and that neither you nor your Representatives shall oppose the granting of such relief. Such relief shall be available without the obligation to prove any damages. You further agree not to raise, as a defense or objection to the request for or granting of such relief, that any breach would be compensable by an award of money

damages. You agree to waive, and to cause your Representatives to waive, any requirement for the securing or posting of any bond in connection with any such remedy. Such remedies shall not be deemed to be the exclusive remedies for a breach or threatened breach by you or your Representatives of this Agreement but shall be in addition to all other remedies available to the Special Master and the Company at law or equity. If the Company or the Special Master prevails in any enforcement proceeding in respect of this Agreement, or a court of competent jurisdiction determines that you or any of your Representatives have breached this Agreement (including upon any appeal), then you shall be liable and pay to and reimburse the Company and/or the Special Master and their Representatives, as applicable, for their respective costs of such enforcement and/or litigation, including, without limitation, their reasonable legal fees incurred in connection therewith.

10. Governing Law; Jurisdiction; Waiver of Jury Trial. This Agreement, and all proceedings, claims or causes of action (whether in contract, tort, statute or otherwise) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement, shall be governed by, construed and enforced in accordance with the laws of the State of Delaware, without giving effect to any laws, rules or provisions that would cause the application of the laws of any jurisdiction other than the State of Delaware. You hereby irrevocably and unconditionally (a) consent and submit to the exclusive jurisdiction of the United States District Court for the District of Delaware sitting in the City of Wilmington, Delaware (the "Court"), for all proceedings, claims or causes of action (whether in contract, tort, statute or otherwise) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement and (b) waive any objection you may now or may hereafter have to laying of venue in the Court, including, without limitation, based on improper venue or forum non conveniens. You agree not to commence any such proceeding, claim or cause of action, except in the Court. **ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY PROCEEDING, CLAIM OR CAUSE OF ACTION (WHETHER IN CONTRACT, TORT, STATUTE OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT IS EXPRESSLY AND IRREVOCABLY WAIVED.**

11. Authority to Enter into Agreement. You hereby represent and warrant to the Special Master and the Company that this Agreement has been duly authorized by all necessary action, has been duly executed and delivered by one of your duly authorized officers and is enforceable against you in accordance with its terms.

12. Third-Party Beneficiaries. This Agreement is not intended to, and does not, confer upon any person other than the Parties any rights or remedies hereunder; *provided* that each person included in the definition of the Company is an express third-party beneficiary of, and shall have the right to enforce the terms of, this Agreement; *provided further* that the Company may only seek to enforce this Agreement as a third-party beneficiary in accordance with this Section 12 (a) with the prior written consent of the Special Master or (b) if the Special Master unreasonably declines to prosecute an alleged breach of this Agreement after receiving notice of such alleged breach.

13. Entire Agreement. This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof, and supersedes all prior negotiations, understandings, arrangements, agreements and discussions, whether oral or written, between the Parties or their Representatives related to the subject matter hereof. In the event of any conflict between this Agreement, on the one hand, and the terms of any confidentiality legend set forth in a confidential information memorandum (or similar document) related to the

Possible Transaction or the terms of any “click-through” or other similar agreement with respect to the access to Confidential Information, including through an electronic data room, now or hereafter applicable to you or any of your Representatives in connection with the Possible Transaction, on the other hand, the terms and conditions of this Agreement shall govern and supersede any such conflicting terms and conditions.

14. Assignment. This Agreement and the rights and obligations herein may not be assigned or otherwise transferred, in whole or in part, by you without the written consent of the Special Master. The benefits of this Agreement shall inure to the respective successors and permitted assigns of the Parties, and the obligations and liabilities of the Parties under this Agreement shall be binding upon their respective successors and permitted assigns. Any attempted assignment not in compliance with this Agreement shall be void ab initio.

15. No Modification. No provision of this Agreement can be waived, modified or amended without the prior written consent of the Parties, which consent shall specifically refer to the provision to be waived, modified or amended and shall explicitly make such waiver, modification or amendment. It is understood and agreed that no failure or delay by the Special Master or the Company in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

16. Counterparts. This Agreement may be executed in counterparts, which may be delivered and exchanged by electronic means and each of which when executed shall be deemed an original, and all such counterparts shall together constitute one instrument.

17. Severability. If any term or provision of this Agreement is found to violate any law, statute, regulation, rule, order or decree of any governmental authority, court or agency, such invalidity shall not be deemed to affect any other term or provision hereof or the validity of the remainder of this Agreement, and there shall be substituted for the invalid term or provision a substitute term or provision that shall as nearly as possible achieve the intent of the invalid term or provision.

18. Term. This Agreement shall terminate and cease to have any force and effect on the date that is two (2) years from the last disclosure by the Special Master, the Company or any of their Representatives of any Confidential Information to you or any of your Representatives; *provided* that (a) such termination shall not relieve you of any liability for any breach of this Agreement by you or your Representatives prior to such termination and (b) Section 3 of this Agreement shall survive such termination.

19. Notices. All notices to be given to the Special Master or you, as applicable, shall be in writing and delivered by email or personally to:

If to the Special Master: Robert B. Pincus
Email: Rbpincus@gmail.com

With copies (which shall not constitute notice) to:

Weil, Gotshal & Manges LLP
Attention: Ray C. Schrock, P.C.
Alexander W. Welch

Jason Hufendick
Email: Ray.Schrock@weil.com
Alexander.Welch@weil.com
Jason.Hufendick@weil.com

If to you:

[•]
Attention: [•]
Email: [•]
Address: [•]

[Remainder of Page Intentionally Left Blank]

Please confirm your agreement with the foregoing by signing and returning one copy of this Agreement to the undersigned, whereupon this Agreement shall become a binding agreement between you and the Special Master.

Very truly yours,

Robert B. Pincus

Name: Robert B. Pincus
Title: Special Master

Accepted and agreed as of
the date first written above:

[●]

By: _____
Name:
Title:

TABLE OF CONTENTS

| | <u>Page</u> |
|---|-------------|
| I. Preliminary Statement..... | 1 |
| II. Overview of the Special Master’s Process..... | 4 |
| A. Appointment of Special Master | 4 |
| B. Retention of Advisors | 5 |
| C. Entry of Protective Order..... | 16 |
| D. Proposed Sale Process Party Engagement | 18 |
| E. United States Government Outreach | 20 |
| F. Due Diligence of PDVH and CITGO | 22 |
| G. Relevant Claims and Interests..... | 23 |
| 1. Crystallex’s Judgment..... | 24 |
| 2. ConocoPhillips’ Judgment | 26 |
| 3. PDVSA 2020 Bondholders & CITGO Holding Pledge..... | 28 |
| 4. RTSA Loan & RTSA Pledge..... | 29 |
| 5. Additional Judgment Creditors of Venezuela and PDVSA | 31 |
| III. CITGO and Sale Process Design Considerations | 31 |
| A. CITGO’S Complex Corporate and Capital Structure | 32 |
| B. CITGO Sale Process Design Considerations | 34 |
| 1. OFAC Considerations..... | 35 |
| 2. Illustrative Clearing Price | 35 |
| 3. Structurally Senior Liens | 36 |
| 4. COVID-19’s Impact on CITGO’s Business and Operations..... | 37 |
| 5. Management and CITGO’s Cooperation | 38 |
| 6. Ability to Purchase A Controlling Stake in CITGO | 39 |
| 7. Broader Powers and Process May Ultimately Be Required | 40 |
| IV. Sale Procedures Order and Bidding Procedures Summary..... | 42 |
| V. Recommendation | 71 |

EXHIBITS

EXHIBIT A Hiltz Declaration

EXHIBIT B Recommended Voluntary Settlement Process Timeline

I, Robert B. Pincus, solely in my capacity as special master (the “**Special Master**”) for the United States District Court for the District of Delaware (the “**Court**”) in *Crystallex International Corp. v. Bolivarian Republic of Venezuela* (D. Del. Case. No. 17-151-LPS) (“the “**Crystallex Case**”), hereby submit this report and recommendation (“**Report**”) ¹ to the Court in connection with the proposed sale procedures order filed contemporaneously herewith [D.I. No. 302] (the “**Sale Procedures Order**”):²

I. Preliminary Statement

1. Each of the interested parties in the Crystallex Case has argued that, if a sale of the PDVH Shares is to occur, the procedures for such sale should be designed to achieve a sale transaction that is fair, open, and maximizes the value of the PDVH Shares to be sold. Although parties may ultimately disagree on the method to achieve a value-maximizing transaction, I believe that all interested parties are, and remain, committed to the fundamental goal of designing a sale and marketing process that provides the best opportunity of achieving a value maximizing result.

2. With that guiding principle and the input of the Sale Process Parties (as defined below), my Advisors (as defined below) and I have designed the proposed Sale Procedures Order that strikes the balance between many competing interests in a dynamic and internationally sensitive set of circumstances to provide the best opportunity of achieving a value-maximizing Sale Transaction, while achieving fairness to all involved. I am submitting this Report to assist

¹ This Report has been filed under seal pursuant to paragraph ¶3 of the *Special Master Confidentiality Order* [D.I. 291] (the “**Protective Order**”). As discussed further in paragraph ¶32 of this Report, the Special Master anticipates that the Sale Process Parties (as defined below) will jointly submit proposed redactions to this Report no later than five calendar days after the date hereof for the Special Master to file publicly on the docket in the Crystallex Case. Further, as this Report contains or reflects certain information that has been marked “highly confidential” by the Venezuela Parties and Crystallex, the Special Master will serve appropriate redacted version on each Sale Process Party that is specific to them.

² Capitalized terms used but not defined shall have the meaning ascribed to such terms below or, if not defined below, the meaning ascribed to such terms in the Sale Procedures Order.

the Court and other parties in interest in understanding the Special Master's process and the facts and circumstances considered in connection with proposing the Sale Procedures Order and the rationale for the provisions therein.

3. The focal point of discussion among the Sale Process Parties in preparation of the proposed Sale Procedures Order has been and remains when to ultimately launch the Marketing Process following entry of the order by the Court. Given that current public guidance from the Department of the Treasury's Office of Foreign Assets Control ("OFAC") at FAQ 809 states that a specific license from OFAC is required "prior to conducting an auction or other sale... or taking other concrete steps in furtherance of a sale" of shares of a Government of Venezuela entity (such as the PDVH Shares), barring a change in circumstances, my recommendation is to launch the Marketing Process only once I am confident that I am able to provide Potential Bidders with comfort that they can participate in the process without subjecting themselves to the risk of violating U.S. sanctions. If we were to proceed based on OFAC's public guidance as of today, I do not believe that Potential Bidders will participate in the process for fear of violating such sanctions.

4. In the proposed Sale Procedures Order, I have proposed what I believe to be the most reasonable and workable solution: following entry of the Sale Procedures Order, unless otherwise directed by the Court, I intend to hold off on preparing for launch of the Marketing Process until I am comfortable that OFAC's posture will not impair a successful or value maximizing Sale Process. In the meantime, I will continue to take a proactive approach with respect to engagement with the United States Government regarding the OFAC decision-making process and obtaining assurances for Potential Bidders that they can participate in the sale process.

5. Notwithstanding OFAC-related temporary delay, I do not believe this time should be wasted by the Sale Process Parties. Based on my review of the facts, circumstances, and following numerous discussions with the Sale Process Parties, my assessment of the situation is that all interested stakeholders could benefit – and that substantial value could be unlocked – if the Sale Process Parties, in addition to the PDVSA 2020 Bondholders, were able to reach a voluntary negotiated outcome on a claims waterfall (such a resolution, a “**Negotiated Outcome**”). Based on my discussions with the Sale Process Parties, I believe this would be a welcome development for those parties and will make the best use of time prior to launching the Marketing Process. Of course, facilitating such discussions around a Negotiated Outcome is not an express component of my current mandate, however, it is a step that is likely to aid my mandate and, if the Sale Process Parties consent or the Court otherwise deems it appropriate in exchange for a short delay to implement the proposed Sale Procedures Order, as discussed more fully below, I have proposed and recommended a process for the parties to engage in such discussions with my assistance.

6. Except as otherwise indicated herein, this Report and the findings herein are based on the facts as presented, identified, and determined by me, with the assistance of my Advisors, and the circumstances relating to the Crystallex Case, PDVH, CITGO, my review of relevant pleadings and documents, information provided to me by the Sale Process Parties, publicly available information, or my opinion based upon my experience and knowledge. Contemporaneously herewith, William O. Hiltz of Evercore Group L.L.C. (“**Evercore**”) has submitted the *Declaration of William O. Hiltz in Support of Special Master’s Report and Recommendation Regarding Proposed Sale Procedures Order* in Support of this Report (the “**Hiltz Declaration**”), attached hereto as **Exhibit A**.

II. Overview of the Special Master's Process

A. Appointment of Special Master

7. On January 14, 2021, the Court issued an opinion and corresponding order [D.I. 234, 235] (the “**January 2021 Ruling**”) following pleadings filed by Plaintiff Crystallex International Corporation (“**Crystallex**”), Defendant Bolivarian Republic of Venezuela (the “**Republic**”), Intervenor Petróleos de Venezuela, S.A. (“**PDVSA**”), Garnishee PDV Holding, Inc. (“**PDVH**”), Intervenor CITGO Petroleum Corporation (“**CITGO Petroleum**,” and collectively with the Republic, PDVSA, and PDVH, the “**Venezuela Parties**”), non-parties Phillips Petroleum Company Venezuela Limited and ConocoPhillips Petrozuata B.V. (together, “**ConocoPhillips**,” and collectively with Crystallex and the Venezuela Parties, the “**Sale Process Parties**”) and the United States.

8. The January 2021 Ruling set out “some contours of the sale procedures that [the Court would] follow in conducting a sale of PDVSA’s shares in PDVH,” including the appointment of a special master to “oversee the day-to-day and detailed implementation of the sales procedures” and to “prepare for and conduct the sale.” [D.I. 234 at 34-35]. The Court further explained that “the Venezuela Parties will have a fair and reasonable opportunity to be involved in the prefatory procedures, the sale, and any negotiations, but the Court will retain control of the sale. The Venezuela Parties will have a seat at the table, but they will not be running the process.”³

9. Consistent with the January 2021 Ruling, on April 13, 2021, the Court appointed me as Special Master to assist the Court with the sale of PDVSA’s shares in PDVH [D.I. No. 258]. On May 27, 2021, the Court entered the *Order Regarding Special Master* [D.I. No. 277] (the “**May**

³ [D.I. 234 at 36. *See also id.* at 37 (“Importantly, it would be inequitable to permit PDVSA to conduct the sale at this point . . . the Court is not going to permit a highly-recalcitrant judgment debtor to conduct its own sale process over the objection of its repeatedly-victorious judgment creditor”).]

2021 Order”) formalizing my appointment as Special Master and directing me to, among other things:

- a. devise a plan for the sale of shares of PDVH (the “**PDVH Shares**”) as necessary to satisfy the outstanding judgment of Crystallex and the judgment of any other judgment creditor added to the sale by the Court and/or devise such other transaction as would satisfy such outstanding judgment(s) while maximizing the sale price of any assets to be sold (collectively, the “**Sale Transaction**”);
- b. oversee the execution of a protective order;
- c. work to become knowledgeable about the business operations and assets of CITGO and PDVH; and
- d. ascertain the total amounts of the outstanding judgment owed to Crystallex by the Republic and the total amount of the outstanding judgment owed to ConocoPhillips by PDVSA.

10. The May 2021 Order further authorized me to retain, after consultation with the Sale Process Parties, counsel, financial advisors, and other professionals (collectively, including those already retained by the Special Master, the “**Advisors**”) to assist and advise me with respect to the performance of my duties as Special Master.

B. Retention of Advisors

11. Immediately upon my appointment as Special Master, it was clear that retaining skilled counsel and advisors that have the resources, experience, and expertise in the sale of complex and large assets, particularly in a Court supervised process and distressed situation, would be critical to maximizing the value of the PDVH Shares. Accordingly, I immediately took steps to retain counsel and advisors that are subject matter experts with relevant experience and expertise.

12. In retaining counsel, I interviewed and met with several leading law firms with the relevant experience, expertise and reputation. In consultation with the Sale Process Parties,

I selected, in each case based on their excellent reputation and strong track record of relevant experience, Weil, Gotshal & Manges LLP to serve as lead transaction counsel, Potter Anderson & Corroon LLP to serve as Delaware counsel, and Jenner and Block LLP to serve as OFAC counsel. Each law firm has been retained on an hourly basis and performs work at my direction.

13. In consultation with my counsel, I determined that engaging a highly qualified investment banker to advise me in fulfilling my mandate—familiarizing myself with the CITGO business and designing and overseeing a sale process for the PDVH Shares—was critical in accomplishing the Court’s goals. Undertaking a sale of this complexity and magnitude without engaging an investment banker on whose advice and experience I would be entitled to rely upon would be essentially impossible and, in my opinion, result in a chaotic, inefficient process, and ultimately would not reach the goal of generating a value maximizing outcome. Further, I believe foregoing the engagement of an investment banker would likely increase the risk of litigation, appeal and challenge to any eventual outcome of the Sale Procedures.

14. Accordingly, following my retention of counsel and upon their input and guidance, I solicited proposals from several market-leading investment banking advisory firms and conducted an interview of each firm that submitted a proposal. After a round of interviews and several follow-up discussions, I selected Evercore based on their extensive experience and excellent reputation in providing high quality investment banking services in (a) complex and financially distressed situations, including their extensive experience in advising debtors, creditors, and other constituents in court-supervised sale processes and restructurings; and (b) applicable subject matter investment banking advisory roles in a variety of downstream oil and gas transactions. The resources, capabilities, and experience of Evercore in advising me in connection with the tasks identified above is critical to obtaining a value-maximizing Sale

Transaction (as explained in greater detail below). In accordance with the Court's mandate to conduct the sale, as discussed further below, I have proposed to engage Evercore now for the implementation of the Sale Procedures Order but would not direct Evercore to begin any work for that process until I am satisfied that I am able to provide Potential Bidders with comfort that they can participate in the process without subjecting themselves to the risk of violating U.S. sanctions.

15. Since being engaged, my Advisors have acquired significant knowledge of the Crystallex Case and have conducted the requisite due diligence review of the businesses of PDVH and CITGO, including their business operations, capital structure, key stakeholders, financing documents and other related material information, necessary for the design of the Sale Procedures Order, but have not completed all diligence required for launching the Marketing Process. My Advisors have advised me in all aspects of preparing and designing the proposed Sale Procedures Order, including analyzing and evaluating potential sale structures, analyzing the proposals from each of the Sale Process Parties, and assisting me with various other activities related to the Special Master process. On my instructions, my Advisors have been actively involved in discussions and outreach to the Sale Process Parties and in coordinating with the United States Government, including representatives from the Department of Justice, Department of the Treasury and Department of State (collectively, the "USG").

16. As a result of the work performed in connection with designing the proposed Sale Procedures Order and the significant knowledge gained therefrom, I believe that my Advisors are in the best position to advise me and the Court in connection with entry of the Sale Procedures Order and the ultimate implementation thereof. Since I expect that the Sale Process Parties will be focused on monitoring the expenses of my Advisors in connection with such implementation, the proposed Sale Procedure Order provides for the provision of a rolling 13-week Budget (with

applicable revisions) to the Sale Process Parties of my anticipated expenses immediately following entry of the Sale Procedures Order. I anticipate providing such a Budget to the Sale Process Parties each month. *See* Sale Procedures Order at ¶48.

17. With respect to Evercore, their current engagement ends upon entry of the Sale Procedures Order. As previously mentioned, I will not be able to fulfill my duties under the January 2021 Ruling and May 2021 Order without a skilled and competent investment banker. Since their engagement, Evercore has become intimately familiar with the sale process, the Crystallex Case, PDVH, CITGO, and the other circumstances of the current situation. It would be damaging to the Special Master process if I were required to retain a new investment banker at this stage. In particular, Evercore will be critical in connection with, among other things:

- reviewing and analyzing PDVH and CITGO's business, operations, and financial projections;
- preparing for and implementing the Marketing Process;
- identifying interested parties and/or potential acquirers and, at my request, contacting such interested parties and/or potential acquirers;
- reviewing any Non-Binding Initial Indications of Interest, Stalking Horse Bids, or other Bids that are received pursuant to the Bidding Procedures;
- structuring and effectuating a Sale Transaction;
- advising my Advisors and I in connection with negotiations with potential interested parties and/or acquirers and aiding in the consummation of a Sale Transaction;
- if requested by the Court or the Sale Process Parties, facilitating discussions in furtherance of a Negotiated Outcome and advising my Advisors and I in connection with such a process;
- advising on tactics and strategies for negotiating with Bidders and Potential Bidders; and

- participating in discussions with and otherwise interacting with the Sale Process Parties and the United States Government (explained in more detail below).

18. Accordingly, I propose to engage Evercore to advise me in connection with implementation of the Sale Procedures Order. For the period following entry of the Sale Procedures Order, I negotiated a new engagement letter with Evercore (the “**Proposed Evercore Engagement letter**”), a copy of which is attached as Exhibit 3 to the Sale Procedures Order, and am proposing that I be granted the authority to enter into that engagement letter under the proposed Sale Procedures Order.

19. As is typical and customary for retention of an investment banker, the Proposed Evercore Engagement Letter contains a fee structure where the majority of Evercore’s compensation is structured as a “success fee” that is payable based on the “Aggregate Consideration” provided by a buyer in connection with the applicable Sale Transaction (the “**Sale Fee**”).⁴ As Evercore’s primary compensation will be tied to the success of the sale process, I believe the Sale Fee properly incentivizes Evercore to facilitate a value-maximizing Sale Transaction. Unsurprisingly, consistent with sale processes of this type and complexity where an investment banker is engaged, every investment banker that I interviewed insisted on such a construct as their primary form of compensation.

⁴ As used in the Proposed Evercore Engagement Letter, the term “Aggregate Consideration” means “the total fair market value (determined at the time of the closing of a Sale) of all consideration paid or payable, or otherwise to be distributed to, or received by, directly or indirectly, the Court (or the Special Master) in connection with the Sale Transaction or the Company, its bankruptcy estate (if any), its creditors and/or the security holders of the Company in connection with a Sale, including all (i) cash, securities and other property, (ii) Company debt assumed, satisfied, or paid by a purchaser or which remains outstanding at closing (including, without limitation, the amount of any indebtedness, securities or other property “credit bid” in any Sale) and any other indebtedness and obligations, including litigation claims and tax claims that will actually be paid, satisfied, or assumed by a purchaser from the Company or the security holders of the Company and (iii) amounts placed in escrow and deferred, contingent and installment payments.”

20. In addition to the Sale Fee, under the Proposed Evercore Engagement Letter, Evercore is entitled to a monthly fee of \$200,000 (each, a “**Monthly Fee**”). The first nine (9) Monthly Fees actually paid are 50% creditable against any Sale Fee earned by Evercore in connection with a Sale Transaction. The first Monthly Fee will be due and payable on the date that I instruct Evercore to begin assisting me in preparing for the Marketing Process or I otherwise request their services (such as in connection with facilitating discussions regarding a Negotiated Outcome). Further, at any time after the Monthly Fees begin to accrue, if implementation or consummation of a Sale Transaction is stayed or otherwise delayed for any reason (other than a delay caused by a necessary regulatory approval unrelated to required OFAC authorization or guidance), I am entitled to send a notice that, three business days after it is received by Evercore, will have the effect of ending the accrual of Monthly Fees until such time as I rescind the notice. Finally, the Proposed Evercore Engagement Letter further provides for reimbursement of reasonable and customary out-of-pocket expenses incurred by Evercore in connection with their engagement thereunder.

21. In light of this structure and following consultation with the Sale Process Parties, I have submitted a copy of the Proposed Evercore Engagement Letter for approval by the Court. I believe that my continued retention of Evercore is necessary and the terms on which I propose to engage them is consistent and comparative with market terms for an engagement of this nature.

22. As required by the May 2021 Order, I have consulted with the Sale Process Parties regarding my proposed engagement of Evercore following entry of the proposed Sale Procedures Order.⁵ To varying degrees, each of the Sale Process Parties have raised concerns regarding the

⁵ [See May 2021 Order at 13 (“The Special Master is authorized to enter into any agreements with such Advisors on terms that he, after consultation with the Parties and ConocoPhillips, believes are appropriate.”)]

Proposed Evercore Engagement Letter. I have attempted to resolve each of their objections, including through further negotiation with Evercore. The Proposed Evercore Engagement Letter reflects these efforts, which are summarized as follows:

- Delaying the incurrence of any Monthly Fees owed to Evercore under the Proposed Evercore Engagement Letter until I provide Evercore with notice of my determination to begin preparations for the Marketing Process;⁶
- Reducing Evercore’s Sale Fee in the event the only bona fide Bid generated by the Marketing Process is a credit bid by Crystallex;
- Modifying the timing of payment of the Sale Fee to be no more than \$7,000,000 at announcement and signing of any Sale Transaction (the “**Upfront Amount**”); and
- Excusing Crystallex or ConocoPhillips from the obligation to pay the Upfront Amount if, based on the implied value of the Sale Transaction, they are “out of the money” and unlikely to receive any of the proceeds from the Sale Transaction.

I am hopeful that the foregoing amendments will resolve the objections of Crystallex and ConocoPhillips.⁷ Nonetheless, I anticipate that certain objections of the Venezuela Parties may remain unresolved. As such, I will address the Venezuela Parties’ objections briefly now, and will respond more fully to any objections with whatever evidence the Court deems appropriate, if any party prosecutes an objection.

23. The Venezuela Parties have ostensibly raised concern that the proposed Sale Fee (or any “success fee”) paid to Evercore will create an “incurable” conflict of interest that taints

⁶ The Proposed Evercore Engagement Letter further provides that if the Court or the Sale Process Parties request that I participate or otherwise assist with facilitating a Negotiated Outcome (as discussed more fully below), then, I may request Evercore’s services and, in which case, Monthly Fees will be incurred in connection therewith. Depending on the proposed course of negotiations, it may also necessitate the need to negotiate a “Restructuring Fee” (as defined in the Proposed Evercore Engagement Letter) in consultation with the Sale Process Parties.

⁷ If, prior to entry of the Sale Procedures Order, a Sale Process Party (other than the Venezuela Parties) does not wish to be involved in the process, either as a consultation party or otherwise, and elects to withdraw from inclusion in the Marketing Process, then such party presumably would request that the Court revisit the fee apportionment so that it is no longer required to pay for the expenses of the sale process.

both me as Special Master and any advice or services rendered by Evercore. More specifically, they argue that by linking Evercore's compensation to the success of the Sale Transaction, Evercore will, for their own personal gain, encourage me to recommend to the Court a process that ensures the sale of 100% of the PDVH Shares.⁸ On such basis, the Venezuela Parties have stated that if Evercore is retained I will be disqualified from serving as Special Master in the Crystalex Case because I have been tainted by Evercore's alleged conflict of interest. *See* Federal Rule 53(a)(2) (subjecting masters appointed under Federal Rule 53 to disqualification in the same circumstances as a judge would be disqualified under 28 U.S.C. § 455).

24. In support of their proposition, the Venezuela Parties referred me to the Third Circuit Court of Appeals' decision in *In re Kensington Intern. Ltd.*, 368 F.3d 289 (2004) ("**Kensington Decision**"). My counsel and I have reviewed the Kensington Decision and believe there are fundamental differences between the facts of that case and the circumstances here, rendering the Kensington Decision's import regarding my retention of Evercore inapposite.

25. In *Kensington*, the Bankruptcy Court had appointed consultants to assist him as neutral-advisors in the administration of five separate asbestos-related bankruptcy cases. Two such advisors simultaneously served as advocates—in a fiduciary capacity—on behalf of asbestos claimants in a separate, yet related, bankruptcy case. As a result, the Third Circuit in the Kensington Decision found that these two advisors faced competing fiduciary obligations that created a clear conflict of interest for both advisors, which arose primarily out of the close relationship between the future asbestos claimants and the issues in the five asbestos cases and the

⁸ Tellingly, the Venezuela Parties' argument is premised on a gross mischaracterization of the sale process that I have recommended to the Court. The proposed Sale Procedures Order that I have recommended does not require 100% of the PDVH Shares to be sold. The proposed Bidding Procedures clearly require me to select a Bid for a lesser percentage of the PDVH Shares if, *ceteris paribus*, it satisfies at least as much of the Attached Judgments as a Bid for a greater percentage of the PDVH Shares.

separate bankruptcy case. *See* Kensington Decision at 11. Because these two advisors were no longer disinterested parties, it was determined that the Bankruptcy Court was tainted by the appearance of a conflict because of the special position of trust and influence they had over the Bankruptcy Court. As a result, the Bankruptcy Court Judge was subject to disqualification from serving as judge in such cases by application of 28 U.S.C. § 455(a). *Ibid* at 14. Here, neither I nor Evercore face any competing fiduciary obligations in the design of the Sale Procedures Order or implementation of the Marketing Process.

26. Equally as important, the procedural posture of the Kensington Decision is categorically different than the Crystallex Case. At the time of the Kensington Decision, it was anticipated that the Bankruptcy Court would continue to rule on issues and the merits of disputes in the applicable bankruptcy cases. Here, as the Court noted in the January 2021 Ruling, the Third Circuit has left the Court with “*nothing left to do but execute*” the sale of the PDVH Shares. *See* January 2021 Ruling at 19. Neither Evercore nor I will be ruling on the merits of any dispute in the Crystallex Case.⁹ Moreover, Evercore’s retention on a “success fee” basis is occurring only once the Court has already approved the Sale Procedures Order and the Bidding Procedures pursuant to which Bids will be solicited from Potential Bidders.

27. The inapposite Kensington Decision aside, respectfully, it is not, in my view, credible for the Venezuela Parties to argue that retaining an investment banker that is compensated by a success fee for executing the Court’s judgment after merits have been decided creates a conflict of interest in this case. The proposed compensation structure for Evercore is reflective of

⁹ Moreover, as the Venezuela Parties insisted, the Court is required to review *de novo* all factual and legal positions contained in any recommendation I submit to the Court. *See* May Order at ¶ 12.] [*See In re Zenith Elecs. Corp.*, 241 B.R. 92, 102 (Bankr. D. Del. 1999) (“many retention agreements with investment bankers, financial advisors (and even counsel) contain such [success fee] arrangements. That does not, per se, disqualify such firm from testifying as an expert witness.”)]

industry standards for investment bankers serving in similar advisory roles both in and out of court supervised contexts. In addition to being the industry standard, the open and transparent manner of the proposed Court-approved engagement of Evercore pursuant to the Proposed Evercore Engagement Letter that the Sale Process Parties have all had an opportunity to provide input on further disavows the notion of a conflict of interest. Crystallex and ConocoPhillips have each argued that Evercore should not receive any Sale Fee unless the Marketing Process is ultimately successful in generating bona fide Bids. Tellingly, each Sale Process Party that desires a successful Sale Transaction to occur supports linking Evercore's compensation to the ultimate success of the Marketing Process. This is in stark contrast to the position of the Venezuela Parties.

28. I also believe retention of Evercore on a "success fee" basis comports with applicable law and the practice of other Courts. Courts have appointed trustees, brokers, fiduciaries or liquidators that are paid on a success fee or contingency fee basis – particularly bankruptcy cases – to sell assets without finding that such a compensation structure creates a conflict of interest for such professionals. *See e.g., In re: Caritas Health Care, Inc., et al.*, 2011 WL 4442884 (Bankr. E.D.N.Y.) (Court-appointed broker retained pursuant to retention letter that provided for a 1.5% sale commission in connection with the sale of property). Indeed, this practice is further codified in the Bankruptcy Code that such persons must be found by the Court to be "disinterested persons" and that such disinterested persons may be paid on a percentage fee basis in an analogous context. *See* 11 U.S.C. § 327(a) ("Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, **and that are disinterested persons**, to represent or assist the trustee in carrying out the trustee's duties under this title"); 11 U.S.C. § 328(a) ("The trustee, or a committee appointed under

section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed **or percentage fee basis, or on a contingent fee basis**") (emphasis added). Of course, Evercore's retention by estate fiduciaries in such cases has frequently and routinely been approved by Delaware Courts. *See, e.g., In re: GNC Holdings, Inc., et al.*, Case No. 20-11662-KBO (Bankr. D. Del. 2020) [D.I. 467]; *In re: Chisholm Oil and Gas Operating, LLC, et al.*, Case No. 20-1159-BLS (Bankr. D. Del. 2020) [D.I. 203]; *In re: FAH Liquidating Corp. (f/k/a Fisker Automotive Holdings, Inc.), et al.*, Case No. 13-13087 (KG) (Bankr. D. Del. 2013) [D.I. 756]; and *In re: Delta Petroleum Corporation, et al.*, Case No. 11-14006 (KJC) (Bankr. D. Del. 2011) [D.I. 185].

29. I believe, as noted above, the heart of the Venezuela Parties' objections on this issue relate to the mistaken assumption that I have recommended to the Court to sell-off 100% of the PDVH Shares instead of only so many of those shares as are necessary. However, as I make clear throughout this Report, I have recommended a process to only sell so many shares as are necessary to satisfy the judgment(s) attached in accordance with applicable law. Thus, such contention is misplaced.

30. Relatedly, in their feedback to the draft Sale Procedures Order, the Venezuela Parties argued that my role should be limited to overseeing CITGO's implementation of the sale process, similar to how a board of directors oversees a management team. As the Court already rejected arguments that the Venezuela Parties should be the party conducting the sale process in the January 2021 Ruling, I do not know if they will continue to press these arguments again before the Court. Regardless, although I readily embrace that I will be working in close coordination

with CITGO and its management team¹⁰ in executing the sale, in the context here—executing on a judgment that it wants to stop through continuous litigation and appeals—I do not believe having CITGO execute the process with oversight from the Special Master would be a workable outcome and, as noted above, I believe Evercore fulfills a critical need that complements the services offered by my other Advisors.¹¹

C. Entry of Protective Order

31. On June 16, 2021, following consultation with the Sale Process Parties, I filed a proposed confidentiality order with the Court [D.I. 283], which was entered by the Court, with certain modifications, on July 6, 2021. *See* Protective Order [D.I. 291]. The Protective Order provides for certain information to be marked as “Confidential” and “Highly Confidential.” I have relied on certain Confidential and Highly Confidential material in preparing this Report and, accordingly, have filed it under seal in accordance with the procedures set forth in the Protective Order.

32. Although each of the Sale Process Parties should have access to this Report,¹² I anticipate certain Sale Process Parties will propose that certain (and minimal) aspects of this Report should remain under seal and should not be accessible to Potential Bidders in the sale

¹⁰ Thus far, the members of CITGO’s management team have been cooperative and helpful in connection with our initial due diligence requests.

¹¹ If the Court believes that Evercore should be retained on a fixed fee regardless of the outcome of the sale process, I understand that Evercore would consider working on a fixed fee basis. However, such fixed fee would presumably be based on assuming a successful outcome of the sale process. Accordingly, I do not believe the other Sale Process Parties would support the payment of such a fee irrespective of the ultimate outcome. Even in the fixed fee context, unless the Court orders the Sale Process Parties to pay the fixed fee in advance, Evercore’s compensation would still be tied to an outcome regardless of whether it was value maximizing. Indeed, other Sale Process Parties have proposed the exact opposite, that Evercore should be paid less if the outcome of the sale process results in a sale from a credit bid, which is feedback that I incorporated and successfully negotiated into the Proposed Evercore Engagement Letter.

¹² I believe each Sale Process Party should have full access to this Report. I strongly encourage each Sale Process Party that has designated information contained in this report “highly confidential” to consent to the sharing of unredacted version of this Report with the other Sale Process Parties.

process, particularly the portions that include my commentary and the views of myself and my Advisors on the strategy underlying the sale process. In connection with the Marketing Process described more fully below, I believe it is important that Potential Bidders receive a clear and consistent message after my Advisors and I have had an opportunity to complete the due diligence and preparation stage. As such, I may also propose additional (and minimal) redactions after I receive the proposed redactions to this Report from the Sale Process Parties pursuant to paragraph ¶3 of the Protective Order.¹³

33. With respect to the entire proposed Sale Procedures Order, I have initially filed it under seal pursuant to paragraph ¶5 of the May Order solely out of an abundance of caution. I propose to file an unredacted version of the proposed Sale Procedure Order on Friday, August 13, 2021.¹⁴ Although I have filed it initially under seal out of an abundance of caution, I do not believe that the Sale Procedures Order contains any information that is subject to paragraph 3 of the Protective Order. As such, following the filing of this Report, I intend to work with the Court regarding service of the Intervenor Bondholders (as defined in the Court’s Memorandum Order dated July 6, 2021 [D.I. 290]) in light of their August 25, 2021 deadline to object to the proposed Sale Procedures Order.¹⁵

¹³ I understand that there is a public interest in viewing the pleadings and am cognizant of the Court’s prior rulings. *See Memorandum Order* dated July 6, 2021 [D.I. 290] (“All involved in the Special Master proceedings should understand, however, that the Intervenor Bondholders, the media, and the public have certain rights. Any or all of those entities may seek to effectuate those rights, which could eventually lead the Court to require disclosure (on a redacted or unredacted basis) of material marked ‘Highly Confidential’”).

¹⁴ If any Sale Process Party believes that a portion of the proposed Sale Procedures Order should be redacted, they should be prepared to explain the legal basis for such redactions in writing in connection with proposing any such redactions.

¹⁵ *See* Rule 5 of the Federal Rule of Civil Procedure (“Unless these rules provide otherwise . . . papers must be served on every party”).

D. Proposed Sale Process Party Engagement

34. Since entry of the May 2021 Order, I have worked diligently with my Advisors to develop the Sale Procedures Order in accordance with the January 2021 Ruling and the May 2021 Order. After retaining Advisors, my first steps taken in the process were to familiarize myself with the situation and review available information related to PDVH and CITGO, including prior pleadings filed by the Sale Process Parties in the Crystallex Case and other associated litigation. In connection therewith, I consulted and engaged with each of the Sale Process Parties on numerous occasions and, as a result, the proposed Sale Procedures Order is informed by my own and my Advisors' due diligence into PDVH and CITGO as well as discussions and other communications my Advisors and I have had with each of Sale Process Parties. By way of example, since entry of the May 2021 Order, my Advisors and I have:

- held scheduled calls with counsel to the Venezuela Parties, in addition to numerous informal communications;
- held scheduled calls with counsel to Crystallex, in addition to numerous informal communications;
- held scheduled calls with counsel to ConocoPhillips, in addition to numerous informal communications;
- sent formal request letters to the Sale Process Parties; and
- directed numerous diligence related requests and questions to CITGO.

35. After my Advisors and I familiarized ourselves with the relevant facts and circumstances of the current situation, my first formal step in the outreach process was to solicit informal input from the Sale Process Parties, which I did through a "listening tour" in the first two weeks of June 2021. Over the course of the listening tour, I met and conferred with counsel to each Sale Process Party and solicited their views and input on my initial impressions regarding the potential structure of the process and any other considerations they thought relevant to design of

the Sale Procedures Order. Following those conversations, my Advisors and I considered the initial informal input of the Sale Process Parties, balanced against our collective analysis and understanding of the available information; I then began to formulate my own views with respect to the design of the Sale Procedures Order.

36. To ensure that I fully understood each Sale Process Parties' position, I further solicited written proposals from each Sale Process Party to provide them with a thorough opportunity to outline their specific views regarding the Sale Procedures Order and any information they believed should be considered by me in relation to the development of the Sale Procedures Order. I ultimately received a timely written response and proposal (the "**Alternative Proposals**") from each Sale Process Party (Crystallex's written proposal was received during my listening tour and Crystallex was offered an opportunity to supplement thereafter), which I have taken into account in designing the Sale Procedures Order.¹⁶ The Alternative Proposals were largely similar to the proposals made by the Sale Process Parties in the pleadings filed with the Court leading up to the January 2021 Ruling. I sought to incorporate as many applicable comments into the Sale Procedures Order as I considered reasonable.

37. Following my review of the Alternative Proposals, in particular, I support the pursuit of a Negotiated Outcome (prior to commencing the Marketing Process) whereby voluntary settlement discussions among the Parties, ConocoPhillips, and the PDVSA 2020 Bondholders are pursued with my assistance as Special Master. I respectfully submit that, given the intractable nature of the dispute among all parties to date, the Court's enforcement of the Sale Procedures Order and the involvement of a third party, my assistance as Special Master may provide a fresh opportunity for all parties to maximize value. Further, I anticipate that in any sale process, bidders

¹⁶ I have retained copies of the Alternative Proposals and can share them with the Court, if requested.

may well propose compromises for various parties if value proves insufficient to satisfy all of CITGO's and its immediate parent companies' obligations, thus my involvement in these discussions as they affect the sale process will only prove useful to the Court, the Parties, and ConocoPhillips.

38. I believe that having these negotiations may provide the best opportunity for Crystallex and ConocoPhillips to realize the greatest value of their judgments by reaching a negotiated claims waterfall, which my Advisors and I also believe should have the advantage of being more likely endorsed by OFAC. *See* OFAC FAQ 595 (“To the extent an agreement may be reached on proposals to restructure or refinance payments due to the [PDVSA 2020 Bondholders] . . . OFAC would encourage parties to apply for a specific license and would have a favorable licensing policy toward such an agreement”). Although the Parties have been unable to reach a consensual resolution on their own following ten years of litigation, recent developments in the Crystallex Case and the opportunity for the settlement process with my oversight as Special Master provides an opportunity for consensual resolution. Accordingly, attached as **Appendix B** hereto is my recommended approach for pursuit of a voluntary settlement process should the Court and the Parties, ConocoPhillips, and the PDVSA 2020 Bondholders wish to pursue such a path.

E. United States Government Outreach

39. In tandem with my consultation with the Sale Process Parties, my Advisors and I also met with representatives from the USG, including representatives from the Department of Justice, Department of the Treasury and the Department of State, on three separate occasions.

- At the first meeting, on June 6, 2021, I introduced myself and my Advisors and we provided the USG with an overview of the Special Master process and outlined a number of considerations upon which their input would be welcomed.

- At the second meeting, on July 12, 2021, I provided the USG with an outline and overview of my preliminary conclusions with respect to the design of the Sale Procedures Order and, again, outlined a number of considerations for their specific input, including the timing and milestones contemplated by the Court's schedule and embedded in the Sale Procedures Order.
- Finally, at the third meeting on July 15, 2021, my Advisors and I answered follow-up questions the USG representatives had regarding the information presented at the prior meetings and specifically solicited any feedback regarding the USG's position with respect to the Special Master process. We also asked about the status of the USG decision-making processes, particularly as relevant to OFAC guidance or authorization. At the conclusion of the meeting, we agreed to schedule a follow-up meeting once I have filed the proposed Sale Procedures Order with the Court.

40. At each meeting, I provided the USG representatives with an opportunity to give input into the design of the Sale Procedures Order. At no point did the USG express any objection to the proposed process that my Advisors and I presented to them and, at the third meeting, they indicated they had no further questions and that they did not require any additional information at that time. Further, on July 14, 2021, I understand that OFAC advised the Venezuela Parties that they did not require an OFAC license to pay certain expenses in connection with the Special Master process incurred as of the date thereof.

41. Although I have not received formal USG feedback, the USG, including OFAC, is aware of the process being proposed and to be implemented pursuant to the Sale Procedures Order, including its specific terms and timetable. I have consistently, unambiguously, and proactively solicited their input. I understand that the USG's policy process remains ongoing and I will continue to proactively engage with the USG representatives with respect to the implementation of the Sale Procedures Order. I intend to schedule a fourth meeting with the USG representatives shortly after the filing of the proposed Sale Procedures Order and this Report.

F. Due Diligence of PDVH and CITGO

42. Consistent with the Court’s mandate in the May 2021 Order, I have worked to become knowledgeable about the business operations and assets of PDVH, including CITGO, through a review of both publicly available information and information produced by PDVH and CITGO.

43. On June 8, 2021, through my Advisors, I delivered a thorough due diligence request list to counsel to PDVH and CITGO. On June 23, 2021, PDVH and CITGO made a dataroom available to my Advisors, which they have since populated with certain responsive information on a rolling basis. In addition to the information produced in the dataroom, on July 1, 2021, my Advisors and I met with members of the CITGO management team, including its most senior members.

44. To date, my Advisors and I have conducted a review of publicly available information and information provided to me by CITGO relevant to the design of the Sale Procedures Order, which has entailed a review of the Company’s corporate and capital structure, historical and projected financial performance, a review and analysis of CITGO’s business operations, other relevant business due diligence, and a review of certain of its material contracts, including its funded debt facilities. I further instructed my Advisors to conduct diligence on the competitive market and Potential Bidders to ensure that the procedures contemplated by the Sale Procedures Order best reflected a fair and optimal sale process given the market dynamic and most likely participants therein. At this stage, my Advisors and I focused on due diligence that was necessary for the design of the Sale Procedures Order; however, we have not yet conducted all of the due diligence and analysis necessary in preparation for launch of the sale process, including items such as preparing the “teaser,” confidential information memorandum (or “CIM”), and other marketing materials to send to Potential Bidders. My Advisors and I will complete the due

diligence necessary to launch and implement the Sale and Marketing Process prior to launching any sale process. The Sale Procedures Order also provides for a period of “reverse-diligence” on Potential Bidders to ensure their wherewithal and ability to close on a winning bid from a regulatory perspective. I anticipate that the diligence and analysis necessary to prepare for launch of the Marketing Process will take at least 45 days and as much as 90 days to complete.

G. Relevant Claims and Interests

45. Consistent with the Court’s mandate in the May 2021 Order, I have begun work to “ascertain the total amounts of the outstanding judgment owed to Crystallex by the Republic of Venezuela and the total amount of the outstanding judgment owed to ConocoPhillips by PDVSA.” I have also reviewed and analyzed certain other claims and interests relevant to design of the Sale Procedures Order, particularly the claims of those certain PDVSA 2020 Bondholders (as defined below) and Rosneft Trading S.A. (“**RTSA**”) that purport to be secured by a pledge of the equity interests of CITGO Holding, Inc. (“**CITGO Holding**” and together with CITGO Petroleum, “**CITGO**,” and the pledge of CITGO Holding’s equity interests, the “**Structurally Senior Liens**”).

46. On June 15, 2021, I sent a letter to both Crystallex and ConocoPhillips requesting they each provide a written statement of the amount that they assert remains outstanding with respect to their respective claims, together with relevant supporting documentation, as applicable. ConocoPhillips responded by written letter on June 25, 2021 (as further supplemented on July 20, 2021 and July 27, 2021) and Crystallex responded on July 9, 2021 (as further supplemented on August 6, 2021). Thereafter, my Advisors and I reviewed the information provided and compared it with publicly available information that I have obtained and, with respect to Crystallex, information received from the Venezuela Parties regarding the amount of their outstanding claims.

1. Crystallex's Judgment

47. Crystallex is a Canadian corporation, headquartered in Toronto, Canada, that engaged in gold mining and exploration in Venezuela. As the Third Circuit observed, Crystallex spent hundreds of millions of dollars developing a gold mine at Las Cristinas, Venezuela, which Venezuela subsequently nationalized and seized. In response, Crystallex successfully invoked a bilateral investment treaty between Canada and Venezuela and filed for arbitration before the International Centre for Settlement of Investment Disputes (the “**ICSID**”). The arbitration took place in Washington, D.C., following which the ICSID arbitration panel awarded Crystallex damages in the amount of \$1,202,000,000 (plus interest) for Venezuela's expropriation of its investment (the “**Crystallex's ICSID Arbitral Award**”).

48. On March 25, 2017, the United States District Court for the District of Columbia confirmed Crystallex's ICSID Arbitral Award and directed entry of a judgment in the amount of \$1,202,000,000, plus (i) pre-award interest from April 13, 2008 to April 4, 2016 (the date of the award) at a rate of 6-month average U.S. Dollar LIBOR plus 1%, compounded annually, (ii) post-award interest on the total amount awarded, inclusive of pre-award interest, at a rate of 6-month average U.S. Dollar LIBOR plus 1% compounded annually, from April 4, 2016 until April 7, 2017, (iii) post-judgment interest on the total amount awarded at the rate set forth in 28 U.S.C. § 1961 (the “**Federal Judgment Rate**”), from April 7, 2017 until the date of full payment, and (iv) the costs of the proceeding (“**D.C. Order Directing Judgment**”). On April 7, 2017, the Clerk of the Court for the United States District Court for the District of Columbia entered the judgment (the “**D.C. Judgment**”) and, as noted below, appears to have unintentionally omitted items (ii)-(iv) noted above from the D.C. Order Directing Judgment. Crystallex thereafter commenced the Crystallex Case and registered the D.C. Judgment with the Court on June 19, 2017 [D.I. 1].

49. On August 6, 2021, I received a signed letter from counsel to Crystallex, which amended an earlier letter that I received from them that was dated July 9, 2021, asserting that the amount of the D.C. Judgment which remains outstanding totals \$969,918,374.24 as of August 6, 2021. Based on information provided to me by Crystallex and certain of the Venezuela Parties, Crystallex has received (or seized) at least \$500,078,632.14 in payments or additional consideration from Venezuela on account of the D.C. Judgment (of which many such payments were reportedly made in Euros). The following chart shows the reported payments and the applicable conversion rate to U.S. Dollars:

| Date received | EUR Amount Received | EUR/USD (BBG) | USD Amount Received/Seized | USD-equivalent Amount Received |
|---------------|---------------------|---------------|----------------------------|--------------------------------|
| 2/16/2018 | €4,218,393.72 | 1.24064 | | \$5,233,507.98 |
| 3/5/2018 | €4,061,738.42 | 1.23359 | | \$5,010,519.90 |
| 4/10/2018 | | | \$20,832,165.50 | \$20,832,165.50 |
| 4/13/2018 | €12,213,989.09 | 1.23307 | | \$15,060,703.53 |
| 8/31/2018 | €4,255,681.33 | 1.16016 | | \$4,937,271.25 |
| 8/31/2018 | €4,306,261.33 | 1.16016 | | \$4,995,952.14 |
| 8/31/2018 | €17,041,967.91 | 1.16016 | | \$19,771,409.49 |
| 10/2/2018 | | | \$319,579,394.70 | \$319,579,394.70 |
| 10/15/2018 | €45,685,716.75 | 1.15794 | | \$52,901,318.85 |
| 11/23/2018 | €45,650,618.57 | 1.13375 | | \$51,756,388.80 |
| Total: | | | | \$500,078,632.14 |

50. My Advisors and I have reviewed the information provided by Crystallex and certain other information provided by certain of the Venezuela Parties and, based on the information received, have determined that Crystallex has accurately accounted for the disclosed payments and the accrual of interest at the Federal Judgment Rate, although we have not checked the underlying security documents and, although I do not dispute with Crystallex’s conclusions at this time, there are two nuances that I note for the Court’s attention:

- First, there appears to be a clerical error in the D.C. Judgment entered by the Clerk of the Court for the United States District Court for the District of Columbia in that the D.C.

Judgment omits the post-award interest that is clearly provided for in the D.C. Order Directing Judgment. *Cf. D.C. Order Directing Judgment with D.C. Judgment.* This error was carried over into the judgment that the Court ultimately ordered to be attached to the PDVH Shares. If Crystallex's Judgment is calculated without including the post-award interest, Crystallex's outstanding judgment as of July 9, 2021 is \$936,689,442.92, which is \$33,3228,931.32 less than if the post-award interest were to be included. In light of the clear language of the D.C. Order Directing Judgment, I do not believe the D.C. Judgment intentionally omitted the post-award interest; and

- Second, approximately \$319,579,394 of the disclosed consideration received by Crystallex was paid in the form of securities issued by either PDVSA or the Republic (the "**Transferred Securities**") pursuant to a settlement agreement between Crystallex and the Republic in 2018 (the "**2018 Crystallex Settlement**"). The Transferred Securities have a face amount of \$1,347,195,942, but, due to the discount at which the Transferred Securities were trading at the time of the 2018 Crystallex Settlement, the parties agreed to a stipulated value of \$319,579,394. My Advisors and I have reviewed publicly available information and believe that the stipulated value reasonably reflects the market price of the Transferred Securities at the time of the 2018 Crystallex Settlement. Further, counsel to Crystallex has informed my Advisors that Crystallex continues to hold the Transferred Securities as of the date hereof.

2. ConocoPhillips' Judgment

51. ConocoPhillips has initiated arbitral proceedings against Venezuela, PDVSA, and several PDVSA subsidiaries. Relevant to the Sale Procedures Order, ConocoPhillips has obtained confirmation and recognition of the following arbitral awards in the United States District Court for the Southern District of New York¹⁷ (collectively, the "**ConocoPhillips' Judgment**"):

¹⁷ See *Phillips Petroleum Company Venezuela Limited et al. v. Petróleos De Venezuela, S.A., et al.*, C.A. No. 1:18-cv-03716 (S.D.N.Y. 2018).

| Plaintiff(s) | Defendant(s) ¹⁸ | Confirmed Amount |
|---|--|---|
| Phillips Petroleum Company Venezuela Limited | Corpoguanipa, S.A. and PDVSA | \$1,498,399,209, plus simple interest at a rate of 3-month LIBOR, running from April 26, 2018 to August 22, 2018 (and the Federal Judgment Rate thereafter) |
| ConocoPhillips Petrozuata B.V. | PDVSA Petroleo. S.A. and PDVSA | \$434,884,356, plus simple interest at a rate of 12-month LIBOR, running from April 26, 2018 to August 22, 2018 (and the Federal Judgment Rate thereafter) |
| Phillips Petroleum Company Venezuela Limited and ConocoPhillips Petrozuata B.V. | PDVSA, PDVSA Petroleo. S.A, and Corpoguanipa, S.A. | \$231,200, plus simple interest at a rate of 12-month LIBOR, running from April 26, 2018 to August 22, 2018 (and the Federal Judgment Rate thereafter) |

52. On July 27, 2021, I received a signed letter from counsel to ConocoPhillips (which supplemented prior letters received from ConocoPhillips on June 25, 2021 and July 27, 2021) asserting that the amount of the ConocoPhillips’ Judgment that remains outstanding totals \$1,287,664,420 as of July 20, 2021. Based on information provided to me by ConocoPhillips, ConocoPhillips has received (or seized) at least \$753,998,726 in consideration from PDVSA on account of the ConocoPhillips’ Judgment. The following chart shows the reported payments and the applicable conversion rate to U.S. Dollars:

| Date received | Amount Received |
|---------------|-------------------------|
| 8/18/2018 | \$288,337,707.33 |
| 9/25/2018 | \$100,000,000.00 |
| 11/14/2018 | \$100,000,000.00 |
| 2/8/2019 | \$88,553,673.00 |
| 5/23/2019 | \$88,553,673.00 |
| 8/23/2019 | \$88,553,673.00 |
| Total: | \$753,998,726.33 |

53. My Advisors and I have reviewed the information provided by ConocoPhillips and, based on the information received, have determined that ConocoPhillips has accurately accounted for the disclosed payments and the accrual of interest at the Federal Judgment Rate. Further, the

¹⁸ Each defendant is jointly and severally liable for the full amount of the award.

Venezuela Parties have indicated that they have reached an agreement with ConocoPhillips regarding the outstanding amount of ConocoPhillips' Judgment.

3. PDVSA 2020 Bondholders & CITGO Holding Pledge

54. In exercising my duties as set forth in the May 2021 Order, I am cognizant of the fact that the shares in CITGO Holding, which are 100% held by PDVH, are or may be subject to the Structurally Senior Liens. Treatment and resolution of the Structurally Senior Liens may have a material impact on the sale process and the potential for a value-maximizing Sale Transaction as such liens create uncertainty for Potential Bidders as to their ability to acquire an interest in CITGO upon consummation of a Sale Transaction. Accordingly, my Advisors and I have considered the Structurally Senior Liens in developing the Sale Procedures Order. I summarize my findings below.

- As discussed in greater detail in *Petroleos de Venezuela S.A. v. MUFG Union Bank, N.A.*, 495 F.Supp.3d 257 (2020) (the “**PDVSA 2020 Bondholder Decision**”), PDVSA issued two series of bonds due 2017 in the aggregate principal amount of \$9,150,000,000 (the “**2017 Bonds**”). The 2017 Bonds were scheduled to mature in April and November of 2017. In anticipation of an inability to repay the 2017 Bonds, and to avoid a potential default thereunder, Venezuela structured a bond-swap transaction (the “**Exchange Offer**”) whereby the 2017 Bonds were exchanged for notes scheduled to come due in 2020 (the “**PDVSA 2020 Bonds**” and any such holder, the “**PDVSA 2020 Bondholders**”). In connection with the Exchange Offer, and as agreed to by the government of Venezuela at the time, the PDVSA 2020 Bonds were secured by a pledge of 50.1% of the equity in CITGO Holding held by PDVH (the “**CITGO Holding Pledge**”). See PDVSA 2020 Bondholder Decision at 1.
- According to the PDVSA 2020 Bondholder Decision, the District Court for the Southern District of New York found that PDVSA paid the first two installments of the principal payments on the PDVSA 2020 Bond in 2017 and 2018, and made interest payments in

2017, 2018, and the first half of 2019. However, PDVSA failed to make required payments on October 27, 2019, and thus defaulted on its obligations under the PDVSA 2020 Bonds.

- Thereafter, the Republic, PDVSA, and PDVSA Petróleo, S.A. sought a declaratory judgment finding that the PDVSA 2020 Bonds and related agreements (including the CITGO Holding Pledge) were null and void *ab initio* because they were entered without proper approval from Venezuela's National Assembly in violation of the Republic's constitution. In response, MUFJ Union Bank, N.A., as trustee for the PDVSA 2020 Bonds, and GLAS Americas LLC, as collateral agent, sought an order finding that PDVSA was in default under the PDVSA 2020 Bonds.
- The litigation culminated in the PDVSA 2020 Bondholder Decision that awarded the PDVSA Bondholders' a judgment in the amount of \$1,924,126,058 as of December 1, 2020. *See Judgment Pursuant to Fed. R. Civ. P. 54(b)*, Case 1:19-cv-10023-KPF, entered December 1, 2020 (D.I. 229). However, as of the date hereof, the PDVSA 2020 Bondholders' ability to exercise the CITGO Holding Pledge remains stayed pending appeal of the PDVSA 2020 Bondholder Decision.

55. As a result of the CITGO Holding Pledge, the PDVSA 2020 Bondholders may be able to exercise remedies with respect to the 50.1% interest in CITGO Holding stock secured thereunder should the current stay pending appeal of the PDVSA 2020 Bondholders Decision cease to remain in force. I believe that the impact of this potentiality on the viability of any sale process for the PDVH Shares is obvious and inevitable and will likely need to be addressed prior to or in conjunction with any actionable bids being received.

4. RTSA Loan & RTSA Pledge

56. Similar to the CITGO Holding Pledge, a purported pledge in favor of RTSA poses similar risk to Potential Bidders. On August 31, 2018, RTSA filed a motion [D.I. 100] (the "**RTSA Motion**") seeking to intervene in these proceedings to protect its interest in a purported pledge from PDVH of 49.9% of the equity of CITGO Holding (the "**RTSA Pledge**") pursuant to a pledge

agreement among PDVH, PDVSA, and RTSA. The Court granted RTSA's Motion to intervene on December 12, 2019 [D.I. 154].

57. In RTSA's Motion, RTSA alleged that the RTSA Pledge secured "certain obligations owed by PDVSA and its affiliates", but did not specify the amount owed. Publicly available information suggests that, at the time, the RTSA Pledge secured a \$1.5 billion loan (the "**RTSA Loan**") made in 2016. Since then, in March of 2020, RTSA announced it was ceasing operations in Venezuela and selling, closing, or liquidating all of its assets related to Venezuela.¹⁹

58. According to the RTSA Motion, the RTSA Pledge provides RTSA with a number of remedies upon the occurrence of certain events, such as a bankruptcy or insolvency event in relation to PDVSA or PDVH, a change in the ownership chain including PDVH and the CITGO entities, and the occurrence of any event that has or is reasonably likely to have a material adverse effect on PDVSA's ability to perform under its commercial agreements. According to RTSA, in the event of such occurrences, the RTSA Pledge provides RTSA with certain remedies, including, (i) proceeding by suit to foreclose the agreement and sell the pledged CITGO Holding stock, (ii) triggering the sale of the pledged CITGO Holding stock at a public or private sale, and (iii) collecting all profits on the pledged CITGO Holding stock.

59. As of the date hereof, neither my Advisors nor I have been able to ascertain the outstanding balance, if any, under the RTSA Loan or any other obligations purported to be secured by the RTSA Pledge. Publicly available information suggests that the RTSA Loan was repaid in full. Following discussions with CITGO's management team, I understand that the RTSA Loan was scheduled to mature in November of 2020 and that CITGO is not aware of any events of

¹⁹ See <https://www.spglobal.com/platts/en/market-insights/latest-news/oil/032820-rosneft-to-cess-venezuela-operations-sell-assets-to-russian-government>.

default or extensions thereunder, suggesting the RTSA Loan was repaid or otherwise satisfied in 2020. Further, following discussions with the Venezuela Parties, my Advisors and I understand that the RTSA's interest in the RTSA Pledge may have been assigned or otherwise transferred to a third-party. If such assignment occurred without OFAC's authorization and in violation of OFAC regulations, the lien on CITGO Holding's shares granted under the RTSA Pledge may be void or subject to avoidance. However, in light of RTSA's potential remedies, I believe that uncertainty as to the amount outstanding may unfairly chill bidding. Accordingly, the Sale Procedures Order provides a mechanism to assist me and the Sale Process Parties in obtaining information regarding any outstanding amounts that RTSA purports may still be secured by the RTSA Pledge by requiring that RTSA (and PDVSA) to declare any amounts owed or risk that the shares will be sold free and clear of the RTSA Pledge upon further entry of an order approving the Sale Transaction by the Court. *See* ¶¶ 35-37 of the Sale Procedures Order.

5. Additional Judgment Creditors of Venezuela and PDVSA

60. As the Court is aware, a number of other judgment creditors are seeking to attach their judgments against Venezuela and/or PDVSA to the PDVH Shares. The additional judgment creditors are at various stages in the attachment process, including two of which that are currently under consideration by the Court. *See e.g., OI European Group B.V. v. Bolivarian Republic of Venezuela*, C.A. No. 19-mc-00290-LPS; *Northrop Grumman Ship Systems, Inc. v. The Ministry of Defense of the Republic of Venezuela*, C.A. No. 20-mc-00257-LPS. As of the date of this Report, only Crystallex has been granted an order attaching the applicable judgment to the PDVH Shares.

III. CITGO and Sale Process Design Considerations

61. As set out in more detail in the Hiltz Declaration, CITGO's complex corporate and capital structure poses a number of challenges to achieving a value-maximizing sale of the PDVH Shares, which I have worked to account for in the Sale Procedures Order and the procedures

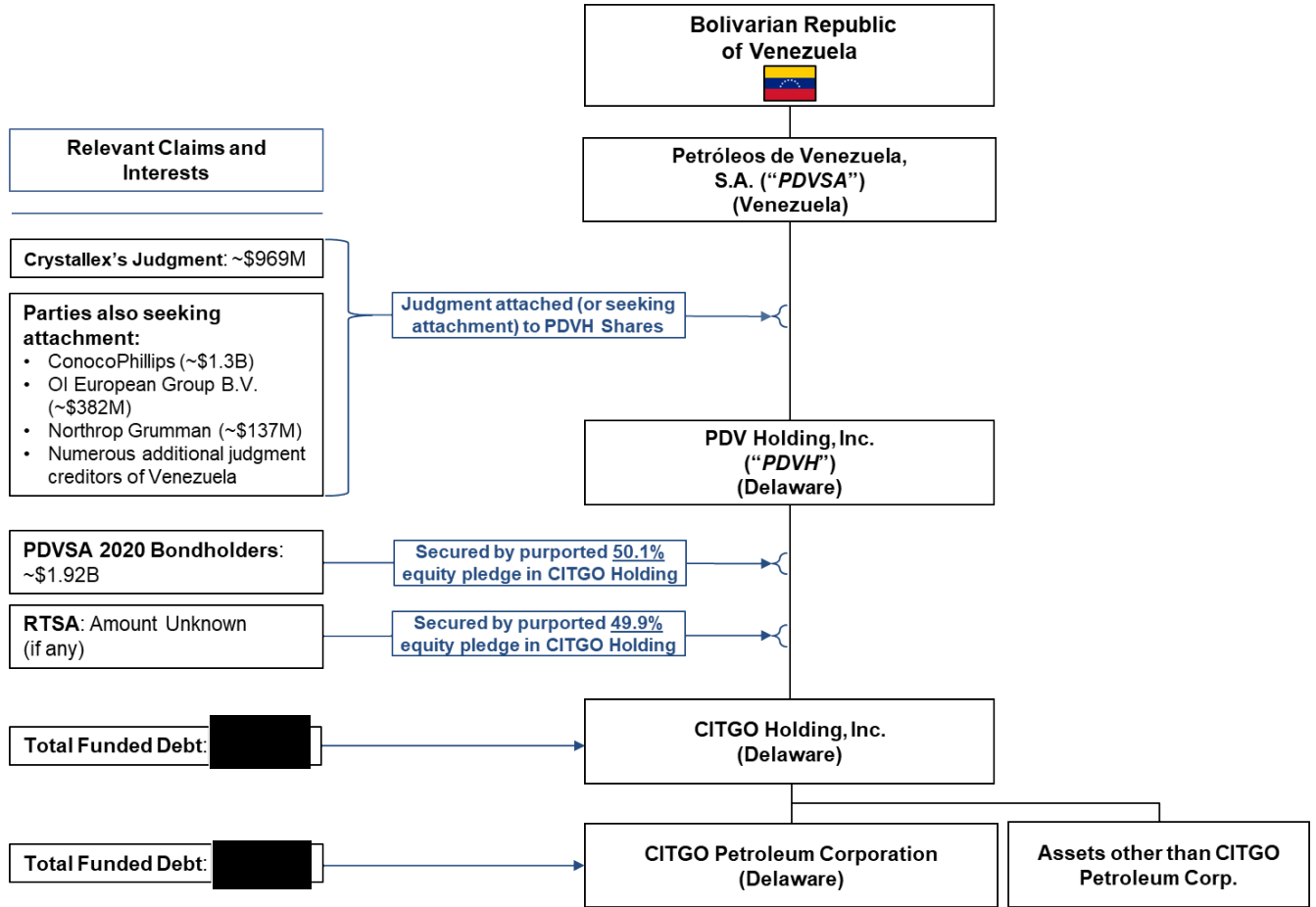
contemplated therein. The following section describes, at a high level, CITGO's complex structure and these challenges as they relate to the proposed design of the Sale Procedures Order, which is based on information I have obtained from the Sale Process Parties or otherwise obtained through public sources.

A. CITGO'S Complex Corporate and Capital Structure

62. PDVH is the parent company of CITGO Holding, which in turn is the parent company of CITGO Petroleum. CITGO Holding and CITGO Petroleum are incorporated in Delaware and both have headquarters in Houston, Texas. PDVH and CITGO each have a number of their own direct and indirect subsidiaries organized in various jurisdictions (collectively, the "**Company**" or "**CITGO**").

63. CITGO operates three complex large-scale petroleum refineries located in Lake Charles, Louisiana, Corpus Christi, Texas, and Lemont, Illinois. CITGO's refining operations are supported by an extensive distribution network, which provides access to the Company's refined product end markets. CITGO also has a recognized brand presence at the retail level in the United States through its network of locally owned and independently operated CITGO-branded retail outlet licensees.

64. The following chart shows, in abridged and annotated form, the corporate and capital structure of PDVH in the context of the relevant claims and interests described in the prior Section:



65. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

B. CITGO Sale Process Design Considerations

66. The potential for a value-maximizing Sale Transaction is complicated by the corporate and capital structure of CITGO set out above, the number of interested parties in the Crystallex Case, and the other dynamic and internationally sensitive circumstances implicating a potential sale of the PDVH Shares. The combination of these factors create unique challenges to achieving a value-maximizing Sale Transaction. I believe the Sale Procedures Order strikes an appropriate balance between these challenges, which are described in greater detail below.

20

21

1. OFAC Considerations

67. As has been briefed in numerous pleadings before the Court in the Crystallex Case and other associated cases, the PDVH Shares and other CITGO assets are “blocked property” pursuant to applicable OFAC regulations. *See e.g.*, 31 CFR § 591.201, § 591.407, § 591.509. Uncertainty surrounding what, if any, transaction OFAC will ultimately license creates an overhang that I believe will materially chill bidding. Accordingly, my Advisors and I have worked extensively to coordinate with the USG, including OFAC, in developing the Sale Procedures Order. While the USG’s policy process and consideration of a potential Sale Transaction remains ongoing, I will continue to proactively engage with the USG’s representatives following entry of the Sale Procedures Order and will seek explicit guidance or authorization from OFAC with respect to a potential Sale Transaction that is public or can be shared with Potential Bidders.

68. Following my interactions with the USG, including OFAC, which are described in detail above, it is my belief and the belief of my Advisors that the Court’s entry of the Sale Procedures Order would assist with prompting USG action. In paragraph 6 of the proposed Sale Procedures Order, I have suggested a proposal for prompting the USG to provide their input into the process at the proposed Initial Status Conference. Alternatively, the Court could, on a more expedited basis, consider issuing the USG an order to show cause as to why the Court should not enter a sale procedures order that directs the Special Master to immediately prepare for and launch the Marketing Process or why such order would not be vested with the authority to transfer such shares.

2. Illustrative Clearing Price

69. Based on a review of information provided or otherwise available to me, a bidder will likely have to submit a bid with an implied total enterprise value of at least [REDACTED] to

generate sufficient consideration for Crystallex's Judgment to be satisfied in full (subject to certain exclusions and potential working capital adjustments), and ultimately [REDACTED] if ConocoPhillips's judgment is added to the Sale Transaction by the Court (subject to certain exclusions and potential working capital adjustments). See Hiltz Declaration at ¶19. Any additional judgments added to the Sale Transaction by the Court will further increase the clearing price.

70. Although neither my Advisors nor I have conducted a valuation of the PDVH Shares or CITGO, the illustrative clearing price is useful for the purposes of illustrating the importance of obtaining a Bid that results in sufficient proceeds to satisfy the relevant claims and interests described above. Bids with an implied enterprise value below the illustrative clearing price will likely require a compromise of claims for less than their face value before a Potential Bidder is willing to pay any material value for the PDVH Shares.

3. Structurally Senior Liens

71. As described above, resolution of the Structurally Senior Liens of the PDVSA 2020 Bondholders and RTSA will likely be necessary for minimizing uncertainty of the process and maximizing the value of any Sale Transaction. I do not believe that credible Potential Bidders will be willing to submit a bid for the PDVH Shares without an understanding as to how the Structurally Senior Liens will be resolved or otherwise addressed in connection with any Sale Transaction. For example, if the CITGO Holding Pledge of the PDVSA 2020 Bondholders remains outstanding following any Sale Transaction, the PDVSA 2020 Bondholders could at some point exercise remedies against 50.1% of the equity interests of CITGO Holding and ultimately seize a controlling stake in CITGO. The would-be purchaser of the PDVH Shares would then be relegated to an indirect owner of a minority stake in CITGO. Accordingly, Potential Bidders will either seek to have the uncertainty resolved or severely discount their Bids as a result.

72. The purported 50.1% pledge to the PDVSA 2020 Bondholders is further complicated by a purported 49.9% pledge in favor of RTSA. If both the PDVSA 2020 Bondholders and RTSA exercise remedies, then the buyer of the PDVH Shares will be left with no interest in CITGO. In light of these risks, I do not believe that any credible bidder will invest their time and resources into submitting a Bid unless and until uncertainty around these Structurally Senior Liens is resolved or proposed to be resolved as part of the party's Bid. *See* Hiltz Declaration at ¶¶ 15-16.

73. Accordingly, I anticipate that Potential Bidders will either (i) propose a solution to addressing or resolving the claims secured by the Structurally Senior Liens in connection with their Bid, or (ii) condition their Bid on the resolution of these issues by the Special Master, each of which likely require a negotiation to take place with the PDVSA 2020 Bondholders (or RTSA, if applicable). For this reason, the Sale Procedures Order is designed to provide my Advisors and I with the necessary flexibility to facilitate these discussions.

4. COVID-19's Impact on CITGO's Business and Operations

74. Any serious and credible bidder will need to invest substantial time and resources in understanding CITGO's business in order to formulate a credible Bid, which is complicated by the recent industry downturn and justifies a robust marketing process that provides Potential Bidders with sufficient time to perform the due diligence and analysis necessary to formulate a Bid. *See* Hiltz Declaration at ¶ 29. Based on information provided to my Advisors and I by CITGO, the novel coronavirus ("COVID-19") has had an adverse impact on CITGO's refinery utilization and operating margins since the outbreak developed into a pandemic in March of 2020. As a result of governmental stay-at-home orders and other social distancing measures, there was a rapid and significant decline in the demand for the refined petroleum products that CITGO manufactures and sells. Further, concerns over the negative effects of COVID-19 on global

economic and business prospects have contributed to increased market and oil price volatility, both of which have had a negative impact on CITGO's business and operations.

75. As a result of COVID-19, CITGO Petroleum's adjusted EBITDA dramatically declined from \$1.92 billion and \$1.18 billion in 2018 and 2019, respectively, to negative \$432 million in 2020. [REDACTED]

[REDACTED]

76. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

77. Further, in consultation with my Advisors, I expect Potential Bidders will be focused on CITGO's recovery from the recent downturn in the refining industry, with a particular focus on the impact of new variants of the COVID-19 virus, such as the Delta variant, which have been widely reported to spread more easily than previous strains of the virus.

78. Guiding bidders through CITGO's recent financial performance and future projections will require substantial work and time on both the part of myself and my Advisors, and the CITGO management team. The proposed Marketing Process is designed to address such requirements by providing ample time for Potential Bidders to perform necessary due diligence.

5. Management and CITGO's Cooperation

79. Given the size and complexity of any potential Sale Transaction, the cooperation of CITGO's management team will be critical to value maximization and the successful

implementation of the Sale Procedures. Further, it will be an expected component of any process by Potential Bidders and crucial to obtaining actionable bids that are not subject to ongoing “diligence outs.” To date, my Advisors and I have engaged constructively with CITGO’s counsel and representatives since my appointment as Special Master, including two productive meetings held with the most senior members of CITGO’s management team on July 1, 2021. I am hopeful and optimistic that the CITGO management team will continue to support my Advisors and I in the exercise of my duties pursuant to the Sale Procedures Order.

80. However, out of an abundance of caution, due to the potential for a negative impact on the sale process, the Sale Procedures Order contains cooperation provisions that would compel, if it becomes necessary, the cooperation of the CITGO management team. *See* ¶¶ 32-33 of the Sale Procedures Order. I believe that these provisions, which, hopefully, will never need to be enforced by the Court, are appropriate and send a positive message to Potential Bidders that, if they invest their time and resources into formulating a Bid, they will have access to and receive the necessary cooperation from the CITGO management team. For the avoidance of doubt, I do not intend to employ this relief at the whim of Potential Bidders. Instead I will rely heavily on the counsel of my Advisors to ensure that requests of Potential Bidders for information or access are measured and reasonable and not designed to frustrate the process, pursue ulterior motives, or unnecessarily burden CITGO or its employees.

6. Ability to Purchase A Controlling Stake in CITGO

81. In my discussions with the Venezuela Parties, they have sought to characterize my recommended process as one that is indubitably structured to ensure that 100% of the PDVH Shares are sold. This could not be farther from the truth. Based on my review and analysis of available information and discussions with my Advisors, I believe that Potential Bidders are much more likely to (a) participate in the process, and (b) pay more for a controlling stake in CITGO

than they would for a minority stake, particularly if PDVSA remains the majority shareholder of the Company. *See* Hiltz Declaration at ¶¶ 22-23. As a result, uncertainty around the ability of Bidders to submit Bids and ultimately consummate a transaction for a majority stake or full-company bid will discourage value-maximizing Bids from being submitted. Accordingly, I have recommended Bidding Procedures that do not place a restriction or limitation at the outset of the Marketing Process as to the percentage of PDVH Shares that Potential Bidders could include in their Bid. Instead, on the back-end, the Bidding Procedures contain specific procedures for the consideration and evaluation of Bids once they are received.

82. I am also cognizant of the interests of the Venezuela Parties, and the Court’s January 2021 Ruling which called for the design of sale procedures that result in the sale of only so many shares as are necessary to be sold. *Cf.* May 2021 Order at ¶ 2 with section 324 of the Delaware General Corporation Law (permitting a “sufficient” amount of shares to satisfy the applicable debt to be sold) and 28 U.S.C. §§ 2001, 2004 (granting Federal District Courts broad power to order the sale of shares independent of section 324 of the Delaware General Corporation Law). As further discussed in paragraphs 31 to 33 of the Hiltz Declaration, the Sale Procedures Order balances these competing considerations through the appointment of a Stalking Horse Bidder, an overbid process and related procedures for comparing Bids for varying percentages of the PDVH Shares based on the implied equity value of the applicable Bids.

7. Broader Powers and Process May Ultimately Be Required

83. I do not believe that entry of the proposed Sale Procedures Order (or the Court’s January 2021 Ruling) will limit the Court’s broad power and authority to enforce its judgment or otherwise supplement its prior orders, particularly in response to a change in circumstances or if implementation of the prior order becomes infeasible. Federal courts have inherent authority “to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” *See*

Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991) (quoting *Link v. Wabash R. Co.*, 370 U.S. 626, 630–631 (1962)); *Lemon v. Kurtzman*, 411 U.S. 192, 200 (1973) (“In shaping equity decrees, the trial court is vested with broad discretionary power.”); *see also Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 15 (1971) (Where “a right and a violation have been shown, the scope of a district court’s equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.”). The Court’s inherent power to enforce its judgments is further bolstered by the All Writs Act. This authority includes the power to enforce and protect federal court orders, including against non-parties. *See United States v. New York Tel. Co.*, 434 U.S. 159, 172 (1977) (“This Court has repeatedly recognized the power of a federal court to issue such commands under the All Writs Act as may be necessary or appropriate to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained”); *See Berger v. Zeghibe*, 666 Fed.Appx. 119, 123 (3d Cir. 2016) (“The All Writs Act authorized the District Court to enjoin Jatinder, a nonparty, because, as demonstrated at the preliminary injunction hearing, she is in a position to frustrate Judgment Creditors’ attempts to collect on their judgment by receiving income from Chawla family businesses in which Ravinder may have an interest.”); *see also Catalytic, Inc. v. Monmouth & Ocean Cty. Bldg. Trades Council*, 829 F.2d 430, 434 (3d Cir. 1987) (holding that the All Writs Act empowers federal courts to enjoin nonparties to enforce orders in civil cases). The Court’s broad authority takes on even greater significance where, as here, a judgment debtor has an established pattern or practice of delaying or attempting to avoid the judgment. *See Gregris v. Edberg*, 645 F. Supp. 1153, 1157 (W.D. Pa. 1986) (“The courts of the United States have inherent statutory power and authority to enter such orders as may be necessary to enforce and effectuate their lawful orders and judgments, and to prevent them from being thwarted and interfered with by force, guile, or otherwise, whether or not

the person charged with the violation of the judgment or decree was originally a party defendant to the action”).

84. At this time, I am not asking the Court to approve the tools necessary to address the unforeseen contingencies or impediments that may arise in the sale process; however, the Sale Procedures Order includes a provision entitling the Special Master to, upon notice of the Sale Process Parties, seek to revisit the scope of the Sale Procedures Order and/or revisit the Special Master’s mandate. If the circumstance presents itself, my Advisors and I will craft the appropriate request tailored to the particular circumstance necessitating any such request to the Court.

IV. Sale Procedures Order and Bidding Procedures Summary

85. The Sale Procedures Order, including the bidding procedures and notices attached thereto as **Exhibit 1** (the “**Bidding Procedures**”), set forth the proposed procedures for the sale and marketing process to be conducted by the Special Master (the “**Marketing Process**”). As noted above, I have developed and designed these procedures, with the assistance of my Advisors, with the objective of providing for the best opportunity of achieving a value maximizing Sale Transaction. Accordingly, the Bidding Procedures are designed to promote a competitive and expedient bidding process and to generate the greatest level of interest in the PDVH Shares.

86. The Sale Procedures Order and Bidding Procedures establish the following key dates and deadlines for the Marketing Process:

| Key Event | Deadline |
|--|----------------------------|
| Special Master to Launch Marketing Process and Establish Data Room in accordance with terms of the Sale Procedures Order | Launch (“L”) ²² |
| Deadline to Submit Non-Binding Indications of Interest | L+ 45 days |

²² Prior to launch of the marketing process, a notice will be filed on the docket of the Crystallex Case setting forth the specific date of each deadline.

| Key Event | Deadline |
|--|--|
| Deadline to Submit Stalking Horse Bids | L+ 90 days |
| Deadline for Special Master to Designate Stalking Horse Bidder and Enter into Stalking Horse Agreement | L + 150 days |
| Deadline for Special Master to File Notice of Stalking Horse Bidder | As soon as reasonably practicable following designation by the Special Master |
| Deadline to Submit Bids | L + 210 days |
| Deadline for Special Master to Notify Bidders of Status as Qualified Bidders | L + 217 days |
| Auction to be conducted at the offices of Potter Anderson & Corroon LLP (1313 N. Market Street, 6th Floor, Wilmington, DE 19801-6108) or such other location as is mutually agreeable to the Special Master and each of the Sale Process Parties | L + 230 days |
| Deadline to File Notice of Successful Bid | As soon as reasonably practicable following conclusion of the Auction or, if no Auction, selection of the Successful Bid |
| Deadline to File Objections to Sale Transaction | L + 250 days |
| Deadline for Parties to Reply to Objections to Sale Transaction | L + 263 days |
| Sale Hearing | L + 270 days |

87. In formulating the Marketing Process, in consultation with my Advisors, I balanced the need to provide adequate and appropriate notice to parties in interest and Potential Bidders with the need to quickly and efficiently run a value-maximizing sale process. The Bidding Procedures are tailored to account for the sale process design considerations described in the prior Section and are, at their core, designed to promote a competitive and expedient sale process for the PDVH Shares that encourages all prospective bidders to submit value-maximizing bids.

88. The material terms of the Sale Procedures Order and Bidding Procedures are summarized in the following chart along with an explanation of the rationale underlying certain of the provisions:

| Summary of Sale Procedures Order and Bidding Procedures¹ | | |
|--|---|--|
| Term / Provision | Description | Primary Rationale and Considerations |
| Overview of Sale Process | | |
| Launch Date & Preparation Launch Date | <ul style="list-style-type: none"> The Special Master shall launch and conduct the Marketing Process at the earlier of (i) when (x) the Special Master determines, in his sole discretion but in consultation with the Sale Process Parties, (y) the Special Master and his Advisors have performed sufficient due diligence necessary or desirable to launch a value-maximizing sale process, and (z) the Special Master is satisfied with the authorization, FAQs, or other applicable guidance issued by OFAC regarding the launch and viability of the Marketing Process, including any lack of Executive Branch objection to a potential future order to show cause as to why the launch and participation of prospective bidders in the Marketing Process is not authorized; and (ii) such other time as ordered by the Court (the date on which the Marketing Process is launched, the “Launch Date”). | <ul style="list-style-type: none"> As stated above, if we were to proceed based on OFAC’s public guidance as of today, I do not believe that Potential Bidders will participate in the process for fear of violating such sanctions. <i>See</i> OFAC FAQ 809 (stating that a specific license from OFAC is required “prior to conducting an auction or other sale... or taking other concrete steps in furtherance of a sale” of shares of a Government of Venezuela entity (such as the PDVH Shares). Accordingly, the proposed Sale Procedures Order provides for launch of the Marketing Process to be delayed until I am satisfied that Potential Bidders will participate in the Marketing Process because of revised guidance or comfort gained from the Court’s Order. In paragraph 6 of the proposed Sale Procedures Order, in consultation with my Advisors, I have proposed a mechanism for soliciting feedback and input from the USG with the Court’s assistance, if it becomes necessary. |
| Preparation Launch Date | <ul style="list-style-type: none"> Prior to the Launch Date, the Special Master shall not prepare in a material way for the Marketing Process or take material steps toward implementation of the Sale Procedures until the Special Master is satisfied with the | <ul style="list-style-type: none"> For the same reason as above and following consultation with the Sale Process Parties, I do not believe that it makes practical sense for me incur the substantial fees and expenses that will be necessary to prepare for the |

¹ This summary is qualified by reference to the Sale Procedures Order (including the Bidding Procedures). To the extent there is an inconsistency between this summary and the Sale Procedures Order, the Sale Procedures Order shall govern.

| Summary of Sale Procedures Order and Bidding Procedures¹ | | |
|--|---|---|
| Term / Provision | Description | Primary Rationale and Considerations |
| | <p>authorization, FAQs, or other applicable guidance issued by OFAC regarding preparation for launch of the Marketing Process or the launch and viability of the Marketing Process, including any lack of Executive Branch objection to a potential future order to show cause as to why the launch and participation of prospective bidders in the Marketing Process is not authorized (the date on which the Special Master is satisfied, the “Preparation Launch Date”); <i>provided</i>, that, notwithstanding the foregoing, the Special Master shall be authorized to (i) proactively engage with representatives from the Executive Branch (as defined below) and to take all steps or actions reasonably in furtherance of the issuance of OFAC guidance and/or authorization, (ii) proactively engage with the Sale Process Parties and their advisors, (iii) prepare for and participate in any discussions with the Court and/or any hearing held by the Court, including the Initial Status Conference, and (iv) participate in any settlement discussions with parties regarding a global claims waterfall or related issues is so directed by the Court. On and after the Preparation Launch Date, the Special Master and the Special Master’s Advisors are hereby directed to prepare for the Marketing Process and take all such preliminary actions in connection therewith, including conducting or performing appropriate due diligence and related analysis.</p> | <p>ultimate launch of the Marketing Process until I am satisfied that Potential Bidders will participate in the Marketing Process. Thereafter, I anticipate that it will only take 45 to 90 days to prepare for and ultimately launch the Marketing Process or in connection with settlement discussions, as needed. As a result, delaying launch as set forth in the proposed Sale Procedures Order will not materially delay the process.</p> |

| Summary of Sale Procedures Order and Bidding Procedures¹ | | |
|--|---|---|
| Term / Provision | Description | Primary Rationale and Considerations |
| Sale Process Phases | <p>The proposed Marketing Process includes two bidding phases and a call for overbids (and an Auction) pursuant to the Bidding Procedures and the Timeline described above:</p> <ul style="list-style-type: none"> • Phase I: The Special Master will seek Bids for the PDVH Shares and may designate a Stalking Horse Bidder based on the bids received on or prior to the Stalking Horse Bid Deadline. • Phase II: The Special Master will conduct a second phase marketing process seeking Bids that have a greater equity value than the equity value implied by the total enterprise value of any Stalking Horse Bid. The Special Master will specifically market for any Bids for less than 100% of the shares of PDVH (and also any full-company overbids), <i>provided</i> that a Bid for less than 100% must match or falls within an acceptable deviation from the equity value implied by the Stalking Horse Bid Implied Value. Thereafter the Special Master will conduct an Auction with appropriate procedures matching the circumstances. • Following the Bid Deadline (and Auction, if applicable), the Special Master will select the highest Qualified Bid(s) that the Special Master reasonably believes to be capable of being timely consummated after taking into account the factors set forth in the Bidding Procedures as the Successful Bid. | <ul style="list-style-type: none"> • The proposed two-phase process is intended solicit the best price for PDVH Shares on a per-share basis and subsequently market test any Stalking Horse Bid selected to ensure that any Sale Transaction will be value maximizing. • The procedures for comparing Bids based on their implied equity value ensures that the Bid ultimately selected as the Successful Bid will be one that is value maximizing. In evaluating any Bid (including a Stalking Horse Bid), the Special Master will take into account, among other things, (i) the treatment of any assumed debt and/or treatment of any claims secured by Structurally Senior Liens in calculating the Stalking Horse Implied Value, and (ii) conditions or assumptions included the Bid regarding third parties or obligations owed by parties other than PDVH. • Provides Potential Bidders with roughly 12 weeks from receiving initial information to conduct diligence to submit a Stalking Horse Bid and provides a second opportunity to Bid in the overbid process and ensures that only so many shares as are necessary to be sold are actually sold. • Overbid process ensures a final market check for the highest bid prior to a Successful Bid being selected |

| Summary of Sale Procedures Order and Bidding Procedures¹ | | |
|--|--|---|
| Term / Provision | Description | Primary Rationale and Considerations |
| Shares to be Sold | <ul style="list-style-type: none"> Interested parties may submit bids for the purchase and sale of up to 100% the PDVH Shares in accordance with the terms and conditions set forth in the Bidding Procedures. To avoid any ambiguity, parties may submit bids for less than 100% of the shares of PDVH so long as such bid satisfies the Attached Judgments. | <ul style="list-style-type: none"> A value maximizing transaction is one that ensures the most suitable bidders participate in the process. Suitable bidders participate when the offer is enticing. The more enticing the offer the greater likelihood of participation. Accordingly, the Special Master wishes to make the most enticing offer available in the circumstances: an offer of 100% of the PDVH Shares. Notwithstanding the offer of 100% of the PDVH Shares, Potential Bidders are encouraged to submit any and all types of Bids consistent with the Bidding Procedures, which encourages value-maximizing Bids of any sort; however, foreclosing the option to purchase a controlling stake or Bids for less than 100% of the PDVH Shares will discourage bidding. As explained in greater detail in ¶ 81 of the Report and ¶¶ 21-23 of the Hiltz Declaration, a Bid for 100% of the PDVH Shares (or at least a controlling stake) is likely to achieve Bids with a higher implied equity value. Accordingly, such Bids should be encouraged as value maximizing. |
| Designation of Stalking Horse Bidder | <ul style="list-style-type: none"> At the conclusion of the first phase of the sale process, the Special Master may, in the exercise of his judgment and at his sole discretion, designate a Stalking Horse Bidder and enter into a Stalking | <ul style="list-style-type: none"> Designation of a Stalking Horse Bid will promote a competitive and robust bidding process and will facilitate a final market check and overbid process before a Successful Bid is ultimately selected. |

| Summary of Sale Procedures Order and Bidding Procedures¹ | | |
|--|---|---|
| Term / Provision | Description | Primary Rationale and Considerations |
| | <p>Horse Agreement in accordance with the terms of the Sale Procedures Order and Bidding Procedures.</p> <ul style="list-style-type: none"> • The Special Master will consider all Stalking Horse Bids received, including any bid that contemplates a Credit Bid, for designation as a Stalking Horse Bid, but shall not be required to designate any bid as a Stalking Horse Bid. • The Special Master may, subject to the Bidding Procedures and approval of the Court: • establish an initial overbid minimum and subsequent bidding increment requirements not to exceed 5.00% of the Stalking Horse Bid Implied Value, subject to adjustment for any Bids for a lesser percentage of the PDVH Shares than the Stalking Horse Bid; • offer any Stalking Horse Bidder a break-up fee in an amount agreed to by the Special Master in consultation with the Sale Process Parties but not to exceed 3.0% of the Stalking Horse Bid Implied Value (a “Termination Payment”) payable either (a) in the event that an overbid is consummated, out of the proceeds from the consummation of such overbid and (b) by PDVH, CITGO Holding, and CITGO Petroleum in circumstances where any of PDVH, CITGO Holding, and/or CITGO Petroleum | <ul style="list-style-type: none"> • More specifically, designation of a Stalking Horse Bid early in the process, will, among other things, provide transparency and foster competitive bidding by exposing the highest bid to a subsequent round of bidding, set an easily identifiable bid floor for the remainder of the sale process, and facilitate the form of definitive sale agreement that other bidders can utilize in submitting their Bids. • The Stalking Horse Bid Protections are reasonably calculated to incentivize Potential Bidders to participate in a competitive bidding process, designed to encourage robust bidding by compensating a bidder whose definitive agreement in connection with a Sale Transaction is terminated for the risks and costs incurred in signing and announcing an agreement for a transaction that may not ultimately be completed, and reasonably calculated so as to not unreasonably deter Qualified Bidders from submitting a Qualified Bid. • Finally, selection of a Stalking Horse Bid will provide certainty that a Sale Transaction will take place, meeting the expectations of certain parties that relief granted by the Court with respect to their Attached Judgment claims will be honored through to remedy. |

| Summary of Sale Procedures Order and Bidding Procedures¹ | | |
|--|--|---|
| Term / Provision | Description | Primary Rationale and Considerations |
| | <p>is materially responsible for the events that give rise to a Termination Payment;</p> <ul style="list-style-type: none"> • provide that, if the Stalking Horse Bidder bids on PDVH Shares at the Auction, the Stalking Horse Bidder will be entitled to a credit in the amount of its Termination Payment against the increased purchase price for the PDVH Shares; • provide for the reimbursement of reasonable and documented fees and expenses actually incurred by the Stalking Horse Bidder by PDVH, CITGO Holding and CITGO Petroleum solely under certain circumstances in which the transactions contemplated by the Stalking Horse Agreement are not consummated; • provide that any sale order will seek to transfer the PDVH Shares free and clear of any claims upon them; and • in consultation with the Sale Process Parties, provide other appropriate and customary protections to a Stalking Horse Bidder. • The Special Master is authorized to offer the Stalking Horse Bid Protections at his sole discretion if he determines that such Stalking Horse Bid Protections would be in furtherance of a value maximizing transaction and argue that any sale order | |

| Summary of Sale Procedures Order and Bidding Procedures¹ | | |
|--|---|---|
| Term / Provision | Description | Primary Rationale and Considerations |
| | shall seek to transfer the PDVH Shares free and clear of any claims upon them. | |
| Credit Bidding | <ul style="list-style-type: none"> • Crystallex and any other party holding an attached judgment may submit a Credit Bid under the following conditions: <ul style="list-style-type: none"> • Any Credit Bid must include a cash component or other funding mechanism sufficient to pay (or otherwise contemplate payment in full in cash in a manner acceptable to the Special Master): (i) any applicable Termination Payment, (ii) all Transaction Expenses, and (iii) all obligations secured by senior liens on the PDVH Shares (if any); and • Any party seeking to submit a Credit Bid must cause two of its representatives to each submit a sworn statement and affidavit unequivocally and unconditionally stating (i) the amount of such party’s judgment as of the date of the Credit Bid and (ii) that such representative submits to the personal jurisdiction of the Court in connection with making such statement and affidavit. | <ul style="list-style-type: none"> • The Court has authorized Crystallex to credit bid the D.C. Judgment. <i>See</i> May 27th Order. • The conditions imposed for submitting a Credit Bid ensures that the Sale Transaction selected as the Successful Bid will ultimately be feasible. • The Sale Procedures Order authorizes parties with Attached Judgments, including Crystallex, to Credit Bid in a way that does not deter bidding and will provide certainty in the implementation of the sale process. |
| Criteria for Selecting Successful Bid | <ul style="list-style-type: none"> • The Special Master may select, in the exercise of his judgment, and recommend to the Court for confirmation the highest bid resulting from the public process described above that the Special Master reasonably believes to be capable of being timely consummated | <ul style="list-style-type: none"> • The Bidding Procedures provide parties with notice of the clear framework that the Special Master will utilize to ultimately select the Successful Bid. I believe that an open and transparent process is important for all |

| Summary of Sale Procedures Order and Bidding Procedures¹ | | |
|--|---|--|
| Term / Provision | Description | Primary Rationale and Considerations |
| | <p>after taking into account the factors set forth in the Bidding Procedures.</p> <ul style="list-style-type: none"> The Special Master may, in consultation with the Sale Process Parties and in accordance with the Bidding Procedures, identify the highest Qualified Bid capable of being timely consummated, other than the Stalking Horse Bid, if any, as the Successful Bid. If a Stalking Horse Bid was designated in such a case, the Special Master will designate the Stalking Horse Bid as a Back-Up Bid. If a Sale Transaction with a Successful Bidder is terminated prior to the Back-Up Bid Expiration Date, the Back-Up Bidder shall be deemed a Successful Bidder and shall be obligated to consummate the Back-Up Bid as if it were a Successful Bid. | <p>participants, including Potential Bidders and the Sale Process Parties.</p> <ul style="list-style-type: none"> The flexibility in selecting the highest bid capable of being timely consummated after taking into account the factors set forth in the Bidding Procedures ensures that I, in consultation with the Sale Process Parties, may select the best overall bid and am not forced to select a bid that is not feasible. Common reasons that a Bid may not be feasible include risks associated with Qualified Bidders' financing source(s) (particularly if it is contingent) or regulatory risks, such as antitrust, OFAC, or CFIUS concerns. Upon receipt of any such Bids, my Advisors and I will review and evaluate these such Bids in consultation with the Sale Process Parties. |
| Court Approval of Sale Transaction | <ul style="list-style-type: none"> Following selection of the Successful Bid, the Special Master will submit the proposed Sale Transaction to the Court for approval. | <ul style="list-style-type: none"> Although the Special Master is granted flexibility to conduct and implement the Sale Procedures Order, any Sale Transaction is subject to approval by the Court. |
| Mechanics of Sale Process | | |
| Non-Binding Indications of Interest | <ul style="list-style-type: none"> Parties wishing to participate in the sale of PDVH Shares are encouraged to submit a Non-Binding Indication of Interest that identifies the percentage of PDVH shares they are seeking to purchase. The Special Master requests (and strongly encourages) Potential Bidders to include in their Non-Binding Indication of | <ul style="list-style-type: none"> To maximize participation of credible and eligible bidders, I believe it makes sense to implement certain procedural characteristics of a traditional sale process. The proposed requirements of a Non-Binding Indication of Interest are intended to collect information necessary to ensure that a Potential Bidder will be able to |

| Summary of Sale Procedures Order and Bidding Procedures¹ | | |
|--|---|--|
| Term / Provision | Description | Primary Rationale and Considerations |
| | Interest, at a minimum, the items enumerated in the Bidding Procedures. | successfully close a Sale Transaction if selected as the Successful Bidder. The information requested is customary of a traditional sale process and/or may become necessary in light of the regulatory approvals required to consummate a Sale Transaction in light of the circumstances. |
| Form and Content of a Bid | <ul style="list-style-type: none"> To be considered for selection as a Stalking Horse Bid and/or to constitute a “Qualified Bid,” a Bid must include, at a minimum, the items enumerated in the Bidding Procedures. | <ul style="list-style-type: none"> Implementation of these procedural characteristics of a traditional sale process will ensure that my Advisors and I have adequate information with respect to all Bids. These procedures further encourages participation of credible and eligible bidders |
| Mandatory Requirements of Qualified Bid | <ul style="list-style-type: none"> Solely if the Court has approved of the Special Master entering into a Stalking Horse Agreement and such Stalking Horse Agreement has been executed, no other Bid shall be considered a Qualified Bid unless such Bid meets the following “Mandatory Requirements” set forth in the Bidding Procedures: <ul style="list-style-type: none"> The Bid must have a greater Implied Value than the Stalking Horse Bid Implied Value or be within a range of such Implied Value which, in the Special Master’s judgment, is sufficient to meet the requirements of obtaining a value maximizing Sale Transaction; | <ul style="list-style-type: none"> If a Stalking Horse Bid has been selected, the Mandatory Requirements are intended to provide for a true market-test of such Stalking Horse Bid. The Mandatory Requirements further encourage Potential Bidders to submit topping bids that satisfy as much or more of the Attached Judgments than the Stalking Horse Bid (or the same amount of the Attached Judgments for less of the PDVH Shares). |

| Summary of Sale Procedures Order and Bidding Procedures¹ | | |
|--|---|---|
| Term / Provision | Description | Primary Rationale and Considerations |
| | <ul style="list-style-type: none"> In addition to the minimum amount of consideration necessary to satisfy the foregoing requirement, the Bid must provide for additional consideration sufficient to pay in full in cash all Stalking Horse Bid Protections, including any Termination Payment and Expense Reimbursement amounts payable; The Bid must provide for either (i) sufficient proceeds to pay no less of the Attached Judgments than the Stalking Horse Bid or (ii) proceeds in excess of the proceeds provided for in the Stalking Horse Bid after payment of all Stalking Horse Bid Protections. | |
| Sale Notice Procedures and Requirements | <ul style="list-style-type: none"> The Special Master will cause a notice of the sale process and Bidding Procedures, substantially in the form attached to the Sale Procedures Order, to be published (i) following the launch of the sale process, and (ii) prior to any Auction or designation of any Stalking Horse Bidder as the Successful Bidder, in each case for two successive weeks. A copy of the Sale Procedures Order shall be served by e-mail on counsel to the Venezuela Parties. If any Sale Process Party believes that further service of the Sale Procedures Order, the Sale Notice or any additional publication or notice is necessary or appropriate, such Sale Process Party shall, within 10 calendar days of entry thereof, provide the Special Master with a specific list of specific actions or service that the Sale Process | <ul style="list-style-type: none"> The Notice Procedures in the proposed Sale Procedures Order are designed to ensure that each Sale Process Party has ample opportunity to provide input on the form of service and publication notice that I ultimately employ. For example, the proposed form of Sale Notice, which each Sale Process Party has had an opportunity to comment on and provide input on, is attached as <u>Exhibit 2</u> to the proposed Sale Procedures Order. I believe it makes sense for the Court to approve the form in advance, with input from the Sale Process Parties, to mitigate “foot fault” arguments that may be raised later. Section 324 of the Delaware Corporation Law proscribes certain notice and service requirements for notice of any Auction, which I have incorporated into the Proposed Sale Procedures Order to the extent set forth therein. Due |

| Summary of Sale Procedures Order and Bidding Procedures¹ | | |
|--|--|---|
| Term / Provision | Description | Primary Rationale and Considerations |
| | <p>Party believes should be undertaken, subject to order of the Court or with the consent of the Special Master.</p> | <p>to the judgment debtor’s (the Republic’s and PDVSA’s) active participation in the Crystallex Case and the other unique circumstances and sensitive political issues at play, I believe it is prudent to obtain their input on the specific notice procedures to be incorporated into the proposed Sale Procedures Order with respect to service on and notice in Venezuela (particularly with respect to any required publication notice in Venezuela).</p> |
| <p>Good Faith Deposit</p> | <ul style="list-style-type: none"> • A cash deposit (that is refundable under the circumstances described in the Bidding Procedures) in the amount of 10% of the Implied Value of the applicable Bid will be paid by: <ul style="list-style-type: none"> • the Stalking Horse Bidder upon entry into a Stalking Horse Agreement, unless otherwise agreed to by the Special Master, in consultation with the Sale Process Parties and the Stalking Horse Bidder; and • any other Potential Bidder, unless otherwise agreed to by the Special Master, in consultation with the Sale Process Parties and a Potential Bidder; <i>provided</i> that, a Potential Bidder submitting a Credit Bid shall only be required to provide a deposit in the amount of 10% of the cash component of such Bid. | <ul style="list-style-type: none"> • The Court previously held that “bidders will be required to make a substantial good faith deposit, which will be refundable to all but the winning bidder. The winning bidder may be required to make an additional non-refundable deposit to provide adequate incentive to close the deal.” The Good Faith Deposit limits the execution risk and ensures that only credible bids that can ultimately be consummated are taken into consideration. (<i>See</i> ¶37 of the Hiltz Declaration). |
| <p>Sale Process Parties</p> | <ul style="list-style-type: none"> • At all times during the bidding process, the Special Master will consult with the Court and the Sale Process Parties and may do so on an <i>ex parte</i> basis <i>in camera</i>. In | <ul style="list-style-type: none"> • Consistent with the Court’s mandate, my Advisors and I intend to consult with various parties in interest |

| Summary of Sale Procedures Order and Bidding Procedures¹ | | |
|--|---|---|
| Term / Provision | Description | Primary Rationale and Considerations |
| | <p>addition, throughout the bidding process, the Special Master and his Advisors will regularly and timely consult with the following parties (through their applicable advisors): (i) the Venezuela Parties, including PDVH and CITGO; (ii) Crystallex; and (iii) ConocoPhillips.</p> <ul style="list-style-type: none"> • The Special Master shall use reasonable efforts to timely provide copies of any Non-Binding Indications of Interest, Bids, Stalking Horse Bids, and other relevant documents to the Sale Process Parties, <i>provided</i> that the Special Master shall not consult with or provide copies of any Non-Binding Indications of Interest, Bids, or Stalking Horse Bids to any Sale Process Party pursuant to the terms of these Bidding Procedures if such Sale Process Party has a Bid pending, or has expressed any written interest in bidding for the PDVH Shares. • If a Sale Process Party chooses not to submit any Bid, then such party may receive copies of all Bids following expiration of the latest possible Bid Deadline (as such Bid Deadline may be extended by the Special Master pursuant to the terms of these Bidding Procedures); <i>provided</i>, that (i) such Sale Process Party shall be required to hold any Bids or other documents received in strict confidence in accordance with the terms of the <i>Special Master Confidentiality Order</i> [D.I. 291], and (ii) upon a Sale Process Party's receipt of a copy of any Bid, such Sale Process Party shall thereafter be | <p>throughout the sale process and balance competing interests.</p> <ul style="list-style-type: none"> • To maintain the integrity of the sale process and to facilitate a competitive, fair and value-maximizing Sale Transaction, I do not believe it is prudent to consult with any Sale Process Party regarding Bids or strategies with respect to Potential Bidders if that Sale Process Party has also submitted a Bid or expressed any written interest in bidding for any of the assets. For this reason, the Bidding Procedures contain a customary and typical limitation on my obligation to consult with any such Sale Process Party that intends to or has submitted a Bid. |

| Summary of Sale Procedures Order and Bidding Procedures¹ | | |
|--|--|---|
| Term / Provision | Description | Primary Rationale and Considerations |
| | <p>precluded from submitting any bid or other offer for the PDVH Shares. For the avoidance of doubt, if the only Bid that a Sale Process Party receives is a copy of the Stalking Horse Bid designated by the Special Master, such Sale Process Party may submit a Bid like any other Potential Bidder pursuant to the terms of the Bidding Procedures.</p> | |
| Auction | <ul style="list-style-type: none"> • If the Special Master receives more than one Qualified Bid (inclusive of any Stalking Horse Bid) for the PDVH Shares, the Special Master will conduct the Auction. • Only a Qualified Bidder will be eligible to participate at the Auction, subject to such limitations as the Special Master may impose in good faith. • The Special Master may, in consultation with the Sale Process Parties, adopt rules for the Auction, subject to the limitations set forth in the Bidding Procedures, at any time that the Special Master reasonably determines to be appropriate to promote a spirited and robust Auction. | <ul style="list-style-type: none"> • To facilitate a value-maximizing Sale Transaction through the proposed two-phase sale process, the Special Master will hold an Auction consistent with customary sale procedures if he receives one or more Qualified Bids (including any Stalking Horse Bid). The procedures and forum of such Auction shall be determined by the Special Master to suit the circumstances and ensure a value maximizing Sale Transaction. |
| Data Room Access | <ul style="list-style-type: none"> • As soon as reasonably practicable, the Special Master will provide each Potential Bidder access to the Data Room; <u>provided that</u>, such Data Room access and access to any other due diligence materials and information | <ul style="list-style-type: none"> • Consistent with the January 2021 Ruling, Potential Bidders will expect a robust data room to perform due diligence. |

| Summary of Sale Procedures Order and Bidding Procedures¹ | | |
|--|--|---|
| Term / Provision | Description | Primary Rationale and Considerations |
| | <p>may be terminated by the Special Master in his sole discretion at any time for any reason whatsoever.</p> <ul style="list-style-type: none"> • The Special Master may restrict or limit access of any Potential Bidder to the Data Room if the Special Master determines, based on his reasonable judgment (or after consultation with the Sale Process Parties), that certain information in the Data Room is sensitive, proprietary or otherwise not appropriate for disclosure to such Potential Bidder. • Each of the Sale Process Parties may recommend to the Special Master documents or additional information to be included in the Data Room. | |
| Attached Judgments | | |
| Satisfaction of All Attached Judgments | <ul style="list-style-type: none"> • Nothing in the Sale Procedures Order prohibits or in any way impairs the rights of the Venezuela Parties to satisfy Crystallex’s Judgment (or any other Attached Judgment) in full prior to consummation of a Sale Transaction. If at any time all Attached Judgments become satisfied in full (or otherwise are consensually resolved), then the Special Master shall cease implementation of the Sale Procedures and seek further orders from the Court. • The Sale Process Parties shall remain liable for any Transaction Expenses through the date that is two | <ul style="list-style-type: none"> • The proposed Sale Procedures Order and Bidding Procedures are designed to preserve the Venezuela Parties’ right to end the sale process through satisfaction of all Attached Judgments at any time. |

| Summary of Sale Procedures Order and Bidding Procedures¹ | | |
|--|--|--|
| Term / Provision | Description | Primary Rationale and Considerations |
| | business days after the Special Master receives notice of satisfaction of all Attached Judgments. | |
| Attached Judgments | <ul style="list-style-type: none"> • By no later than a date established by the Court, the Court will decide which, if any, Additional Judgments are to be added to Sale Transaction. Except as otherwise ordered by the Court, following the Additional Judgment Deadline, the Special Master shall implement the Sale Procedures, based on the Attached Judgments as of the Additional Judgment Deadline. • For the avoidance of doubt, the outside date will not impair or in any way limit a person’s or entity’s right to seek attachment to any proceeds following consummation of the Sale Transaction. | <ul style="list-style-type: none"> • Consistent with the Court’s mandate, the Sale Procedures Order provides that the Special Master will implement the sale process in satisfaction of Crystallex’s Judgment and any other judgment attached by the Court. In implementing the Additional Judgment Deadline, the Special Master will have the certainty required to appropriately implement the sale process in carrying out his duties. |
| Amendments and Additional Powers of Special Master | | |
| Additional Guidance from the Court | <ul style="list-style-type: none"> • If the Special Master, in his sole discretion, but after consultation with the Sale Process Parties, determines that (i) a material modification or amendment of the Sale Procedures Order or the Sale Procedures (including the Bidding Procedures) that is not otherwise permitted or (ii) additional powers or guidance from the Court, is reasonably necessary or desirable for any reason, including to (a) ensure a value maximizing sale process or (b) effectuate a value maximizing sale process through a Sale Transaction, the Special Master may seek | <ul style="list-style-type: none"> • Providing a streamlined process for the Special Master to seek additional guidance and/or an amendment to the Sale Procedures Order ensures that the Court will be apprised if an amendment of the Sale Procedures Order becomes warranted under the circumstances. |

| Summary of Sale Procedures Order and Bidding Procedures¹ | | |
|--|--|---|
| Term / Provision | Description | Primary Rationale and Considerations |
| | such proposed amendment or additional powers or guidance, as applicable, by filing a request or recommendation with the Court with notice to the Sale Process Parties. | |
| Requests of the Special Master | <ul style="list-style-type: none"> • In addition to the cooperation provisions in the May 2021 Order, the Sale Process Parties, including CITGO and PDVH, and each of their subsidiaries, including their directors, officers, managers, employees, agents, and advisors, shall promptly cooperate and comply with the requests of the Special Master. If the Special Master specifically invokes paragraph 32 of the Sale Procedures Order in connection with any such request, then the person or entity that is the subject or recipient of such request shall comply no later than five business days after the date upon which the request was made, unless the Special Master sets a different deadline for which a response is due. • If any person objects to a request by the Special Master that specifically invokes paragraph 32 of the Sale Procedures Order, including objections based on a belief that such request is unreasonable, such person shall file a motion with the Court seeking relief from the Special Master’s request. Absent a motion seeking relief from the Court, the Special Master may (but shall have no obligation to) explain the basis of his request to the subject or recipient; <i>provided</i>, that, if requested by the | <ul style="list-style-type: none"> • In connection with carrying out his duties, the Special Master will likely need to request information or make other requests upon the Sale Process Parties or their representatives. Establishing a process to compel compliance with such requests will streamline the process for making any such requests and will mitigate the likelihood that potentially uncooperative parties can jeopardize the process by withholding necessary information (or otherwise). |

| Summary of Sale Procedures Order and Bidding Procedures¹ | | |
|--|--|---|
| Term / Provision | Description | Primary Rationale and Considerations |
| | <p>subject or recipient, the Special Master shall meet and confer with such person at least one business day before such person’s deadline to file a motion seeking relief from the Special Master’s request.</p> <ul style="list-style-type: none"> • The Special Master may, in his sole discretion, recommend to the Court appropriate sanctions with respect to any person or entity that fails to promptly comply with a request absent a timely request for relief from the Court. | |
| CITGO Management Team | <ul style="list-style-type: none"> • If requested by the Special Master, CITGO shall use reasonable efforts to make members of the CITGO management team available for meetings with bidders or potential bidders, which may include, in the Special Master’s sole discretion, the most senior members of the CITGO management team. The CITGO shall further use reasonable efforts to timely respond to the Special Master’s diligence requests or bidder-specific questions, including, if applicable, by providing accurate and complete due diligence materials, documentation, and backup support requested by the Special Master. | <ul style="list-style-type: none"> • As discussed above (<i>see supra</i> ¶¶79-80), the cooperation of the CITGO management team is critical to the value maximization of the PDVH Shares. |
| Additional Powers of the Special Master | <ul style="list-style-type: none"> • The Special Master shall have all of the powers and duties set forth in prior orders of the Court, including the May 2021 Order. Without limiting the foregoing, the Special Master may issue, without limitation, orders, subpoenas and interrogatories in the course of performing his duties. Further, the Special Master may, | <ul style="list-style-type: none"> • In connection with implementing the Sale Procedures Order, I may need to obtain or seek information from third-parties or address unforeseen situation. These additional powers will provide the flexibility and discretion necessary to address such situations in connection with carrying out his mandate under the Sale |

| Summary of Sale Procedures Order and Bidding Procedures¹ | | |
|--|--|--|
| Term / Provision | Description | Primary Rationale and Considerations |
| | <p>in his sole discretion and consistent with Rule 53 of the Federal Rules, issue orders to compel delivery of information from any person or entity in connection with implementing the Sale Procedures, including to ensure a comprehensive and value-maximizing sale process, to ensure that property that is directly or indirectly the subject of the Sale Procedures Order is not transferred or otherwise encumbered by the Venezuela Parties or to determine the amount of claims against the Venezuela Parties. Following consultation with the Sale Process Parties, the Special Master may by order impose on a party any non-contempt sanction provided by Rule 37 or Rule 45 of the Federal Rules, and may recommend a contempt sanction against a party and sanctions against a nonparty, consistent with Rule 53(c) of the Federal Rules.</p> | <p>Procedures Order and, ultimately, a value maximizing Sale Process.</p> |
| Additional Provisions | | |
| <p>Rosneft Trading S.A.</p> | <ul style="list-style-type: none"> By no later than twenty-one calendar days following entry of the Sale Procedures Order and service thereof by the Special Master on counsel of record for both (i) RTSA and PDVSA, each of RTSA and PDVSA shall deliver to the Special Master a separate Disclosure Statement indicating the amount of any outstanding balance of obligations, if any, purported to still be secured by a pledge of the equity of CITGO Holding as | <ul style="list-style-type: none"> As discussed above (<i>see supra</i> ¶¶71-73), the uncertainty surrounding the outstanding obligations, if any, secured by the RTSA Pledge will likely deter bidding and materially hamper the sale process. Accordingly, the Special Master requires Court authority to confirm the outstanding obligations, if any, secured thereby. |

| Summary of Sale Procedures Order and Bidding Procedures¹ | | |
|--|---|--|
| Term / Provision | Description | Primary Rationale and Considerations |
| | <p>well as copies of any documents evidencing any obligations whether now or previously owed.</p> <ul style="list-style-type: none"> • If RTSA or PDVSA fail to respond or otherwise provide sufficient documentation of any alleged obligations, the Special Master shall file a report and recommendation with the Court that includes a proposed order to be issued by the Court in response to the failure of either RTSA or PDVSA to comply with the Sale Procedures Order, which may include, with respect to RTSA, a permanent injunction enjoining RTSA and any entity or person directly or indirectly controlled by RTSA from enforcing any pledge or claim against the equity of CITGO Holding. | |
| Status Conferences | <ul style="list-style-type: none"> • Unless otherwise ordered by the Court, the Court will hold a status conference approximately every thirty days for the Special Master to provide an update to the Court and other interested parties regarding implementation of the Sale Procedures Order; <i>provided</i>, that, subject to the Court’s availability, the Special Master or the Sale Process Parties may request that the status conference occur more or less frequently or on an as-needed basis; <i>provided</i> that nothing shall impede the Special Master’s right to meet <i>in camera</i> or share information with the Court to provide updates on the process. | <ul style="list-style-type: none"> • Regular status conferences will permit interested parties, including the Sale Process Parties, to bring any issues to the attention of the Special Master and the Court so that they may resolve any dispute as early as possible in the process instead of waiting until the Sale Hearing. • If, on the other hand a party does not bring its complaint or issue to the attention of the Court at a status conference (assuming it cannot be resolved between them and the Special Master in lieu of raising it), then the Court may make whatever inference it wishes regarding that party’s decision to wait until the Sale Hearing to raise it. |

| Summary of Sale Procedures Order and Bidding Procedures¹ | | |
|--|--|---|
| Term / Provision | Description | Primary Rationale and Considerations |
| Dispute Resolution | <ul style="list-style-type: none"> All bidders that participate in the sale process shall be deemed to have (i) consented to the jurisdiction of the Court to enter any order or orders, which shall be binding in all respects, in any way related to the Sale Procedures or Bidding Procedures, the bid process, the Auction, the Sale Hearing, or the construction, interpretation, and enforcement of any agreement or any other document relating to a Sale Transaction; (ii) waived any right to a jury trial in connection with the same; and (iii) consented to the entry of a final order or judgment in any way related to the same if it is determined that the Court would lack jurisdiction to enter such a final order or judgment absent the consent of the parties. | <ul style="list-style-type: none"> To implement a value maximizing Sale Process, Potential Bidders must have certainty in the outcome of that process, and the dispute resolution mechanics to be implemented in connection with the same, in order to generate the highest offer for PDVH Shares capable of being timely consummated after taking into account the factors set forth in the Bidding Procedures. |
| Communication and Negotiation with Third Parties | <ul style="list-style-type: none"> The Special Master is authorized and empowered, in his sole discretion and at any time, to communicate and, as applicable, negotiate with any bidder, potential bidder, or governmental or regulatory body. Further, in consultation with the Sale Process Parties, the Special Master is authorized and empowered, in his sole discretion and at any time, to communicate and, as applicable, negotiate with any other person or entity, including any contract counterparty, any indenture trustee, administrative agent, or collateral agent, any PDVSA 2020 Bondholder. | <ul style="list-style-type: none"> Communication of the Special Master with third parties, including contract counterparties of CITGO, will be necessary in connection with implementing the sale procedures and ensuring that any Sale Transaction is feasible, including with respect to negotiation of any “change-of-control” or other restrictions in any of CITGO’s contracts. At this stage I propose to conduct any negotiations or discussions regarding the change, modification, or amendment of any contract of PDVH or CITGO in connection with any Bid in cooperation with and the consent of PDVH and CITGO (as applicable). If this |

| Summary of Sale Procedures Order and Bidding Procedures¹ | | |
|--|---|--|
| Term / Provision | Description | Primary Rationale and Considerations |
| | <ul style="list-style-type: none"> If the Special Master determines it is reasonably necessary or desirable to negotiate a change, modification, or amendment to, or seek a consent or waiver under, any contract of PDVH, CITGO, or any of their subsidiaries in connection with any Bid or Potential Bid or implementation of the Sale Procedures or any Sale Transaction, including with respect to any “change-of-control” provisions in any contract, the Special Master shall work with PDVH and CITGO, as applicable, to negotiate such change, modification, amendment, consent, or waiver. If either PDVH or CITGO, as applicable, does not cooperate with or otherwise consent to any particular negotiation, change, modification, amendment, consent, or waiver, the Special Master shall seek additional guidance from the Court. | <p>proves to be an unworkable construct, the proposed Sale Procedures Order provides that I will seek additional guidance or input from the Court at a later date.</p> |
| Communication with Potential Bidders | <ul style="list-style-type: none"> The Sale Process Parties shall not, directly or indirectly, contact or otherwise communicate with any potential bidders regarding the Sale Procedures Order, the Sale Procedures, any bid or potential bid or any Sale Transaction, other than as expressly permitted in writing by the Special Master. For the avoidance of doubt, the Sale Procedures Order will not prevent or prohibit contact or communications in the ordinary course of business or consistent with past practice on matters unrelated to the Sale Procedures Order, the Sale Procedures, any Bid or potential bid or any Sale | <ul style="list-style-type: none"> For my Advisors and I to effectively oversee the sale process and ensure that all bids are properly and fairly evaluated, I must be authorized to oversee all communication with Potential Bidders. Providing Potential Bidders with a clear and consistent message will be critical to obtaining value-maximizing Bids. It is my strong preference that PDVH and CITGO work cooperatively and constructively with my Advisors and I with respect to communications with Potential Bidders, but, out of an abundance of caution I believe it is prudent |

| Summary of Sale Procedures Order and Bidding Procedures¹ | | |
|--|--|---|
| Term / Provision | Description | Primary Rationale and Considerations |
| | <p>Transaction; <i>provided</i> that such communications (i) do not involve or relate to colluding in connection with a Bid that has been submitted or may be submitted by the applicable Sale Process Party or a Bid by any Potential Bidder; and (ii) are not intended to frustrate the Marketing Process or the Sale Procedures.</p> | <p>for the Court to channel all communications with Potential Bidders through myself and my Advisors.</p> |
| <p>Sharing of Information with Potential Bidders</p> | <ul style="list-style-type: none"> Upon giving notice to the applicable Sale Process Party, the Special Master shall be permitted, in his sole discretion, to share any and all information obtained related to the Sale Process Parties, regardless of whether marked “highly confidential” pursuant to the <i>Special Master Confidentiality Order</i> [D.I. 291], with any bidder or potential bidder that has entered into a confidentiality arrangement, a form of which will be attached to the Sale Procedures Order; <i>provided</i> that the Special Master shall be authorized to make reasonable changes to the extent requested by a Potential Bidder. The Special Master shall exercise reasonable care in providing confidential information to bidders and Potential Bidders and, if applicable, shall use reasonable efforts to consult any Sale Process Party that marks or designates any information as “Confidential” or “Highly Confidential” prior to its disclosure to any Potential Bidder. The Special Master shall use reasonable efforts to consult PDVH and CITGO in connection with sharing competitively sensitive information and, if determined to be appropriate by the Special Master, to establish | <ul style="list-style-type: none"> My Advisors and I will need to have the discretion to share information related to CITGO with Potential Bidders in order facilitate their due diligence. I do not believe that permitting PDVH or CITGO to control what information may be shared through designations of information as “confidential” or “highly confidential” will be a workable construct and, accordingly, in the proposed Sale Procedures Order I have proposed a mechanic for sharing such information. As set forth in the order, I will exercise reasonable care and use reasonable efforts to consult with PDVH and CITGO in connection with sharing any competitively sensitive information. I am hopeful that none of these provisions will be necessary, particularly if the CITGO management team continues to cooperate with my process in connection with sharing due diligence information. As set forth above, it is my strong preference that we work together cooperatively and constructively with respect to communications with Potential Bidders, but, out of an abundance of caution, I believe it is prudent for the Court to authorize the sharing of information in my discretion |

| Summary of Sale Procedures Order and Bidding Procedures¹ | | |
|--|---|--|
| Term / Provision | Description | Primary Rationale and Considerations |
| | firewall protections or “clean team” protocols with respect to any Potential Bidder that is a competitor, customer or supplier or under such other circumstances as the Special Master determines to be appropriate. | pursuant to the procedures set forth in the proposed Sale Procedures Order. |
| Sharing of Information with the United States | <ul style="list-style-type: none"> The Special Master shall be authorized to share with the United States information obtained related to the Sale Process Parties and any bidder or potential bidder that the Special Master determines, in his sole discretion, is reasonably necessary or desirable in connection with the issuance of any regulatory approval or is reasonably necessary or desirable in connection with implementation of the Sale Procedures and any Sale Transaction, including any guidance or license from OFAC, <i>provided</i> that the Special Master shall request confidential treatment of information shared with the United States that has been designated as confidential or highly confidential by a Sale Process Party. | <ul style="list-style-type: none"> As a result of the regulatory considerations and requirements that impact the Sale Procedures and potential consummation of a Sale Transactions, the Special Master requires authority to share information with regulators (including OFAC) regarding the same. |
| Judicial Immunity & Exculpation | <ul style="list-style-type: none"> The Special Master is entitled to judicial immunity in performing his duties pursuant to the Sale Procedures Order, including all actions taken to implement the Sale Procedures, and all other orders of the Court. The Special Master’s Advisors are entitled to judicial immunity in connection with all actions taken at the direction of, on behalf of, or otherwise in connection with representation of or advising the Special Master. | <ul style="list-style-type: none"> Judicial Immunity is customary for special masters and essential for facilitating the retention of my Advisors. I believe the procedures for enforcing the judicial immunity and exculpation are also appropriate in light of my Court proscribed duties and mandate and the absence of customary identification that my Advisors would receive when advising on a typical transaction. |

| Summary of Sale Procedures Order and Bidding Procedures¹ | | |
|--|--|---|
| Term / Provision | Description | Primary Rationale and Considerations |
| | <ul style="list-style-type: none"> No person or entity shall be permitted to pursue any cause of action or commence or prosecute any suit or proceeding against the Special Master or the Advisors, or their respective employees, officers, directors, attorneys, auditors, representatives, agents, successors or assigns, for any reason whatsoever relating to the Crystallex Case, implementation of the Sale Procedures, or in connection with any Sale Transaction, or the performance of the Special Master’s and his Advisors’ duties pursuant to this Order or any other orders of the Court, or any act or omission by the Special Master or any Advisor in connection with the foregoing. All interested persons and entities, including but not limited to the Sale Process Parties, any purchaser or prospective purchaser of the shares, and all persons acting in concert with them, are hereby enjoined and restrained from pursuing any such cause of action or commencing any such action or proceeding. If any person or entity attempts to pursue any such cause of action or commence any suit or proceeding against the Special Master or any of the Advisors with knowledge of this Order (or continues to pursue or prosecute any cause of action, suit or proceeding after having received notice of this Order), the Court shall issue an order to show cause to such person or entity and a hearing will be scheduled to consider appropriate relief, which may include payment of fees and expenses incurred by the Special Master or any of the Advisors in connection therewith. | |

| Summary of Sale Procedures Order and Bidding Procedures¹ | | |
|--|--|--|
| Term / Provision | Description | Primary Rationale and Considerations |
| | <p>To the maximum extent permitted by applicable law, neither the Special Master nor his Advisors nor their respective employees, officers, directors, attorneys, auditors, representatives, agents, successors and assigns will have or incur, and are hereby released and exculpated from, any claim, obligation, suit, judgment, damage, demand, debt, right, cause of action, remedy, loss, and liability for any claim in connection with or arising out of all actions taken to implement the Marketing Process, Sale Procedures, Bidding Procedures, or Sale Transaction, or the performance of the Special Master’s and his Advisors’ duties pursuant to this Order and all other orders of the Court.</p> | |
| <p>Payment of Transaction Expenses</p> | <ul style="list-style-type: none"> • The Special Master shall be compensated and reimbursed for all Transaction Expenses. • The Special Master shall have the discretion to seek from the Court to reallocate payment of any Transaction Expenses if the circumstances require (<i>e.g.</i>, if any single Sale Process Party generates an inordinate number of disputes or if a Sale Process Party’s position in a dispute is found to be unreasonable). | <ul style="list-style-type: none"> • The payment of Transaction Expenses complies with the May 2021 Order, which set forth certain procedures for the compensation and reimbursement of expenses by the Sale Process Parties. |
| <p>Location of PDVH Shares</p> | <ul style="list-style-type: none"> • By no later than 30 calendar days after entry of Sale Procedures Order, the Venezuela Parties, including PDVSA, shall inform the Special Master as to the specific and precise physical location of the PDVH | <ul style="list-style-type: none"> • In its prior pleadings with the Court, PDVSA has stated that it does not know the location of the actual PDVH Shares. The purpose of this provision is to ensure that, when it comes time to sell the PDVH Shares, all parties |

| Summary of Sale Procedures Order and Bidding Procedures¹ | | |
|--|--|---|
| Term / Provision | Description | Primary Rationale and Considerations |
| | <p>Shares held by PDVSA or any other facts relevant for determining the physical location of the PDVH Shares held by PDVSA and the custodian of the shares. If the applicable Venezuela Party is unaware of the location of the PDVH Shares, such party shall inform the Special Master as such in writing. If at any point thereafter the applicable Venezuela Party becomes aware of any change in circumstance regarding the location of the PDVH Shares, then such party shall update the Special Master in writing.</p> <ul style="list-style-type: none"> • If the location of the PDVH Shares cannot be located with reasonable precision or if the Special Master reasonably determines that the custodian of the PDVH Shares is unlikely to cooperate in connection with an order compelling the person or entity to transfer the PDVH Shares in connection with any Sale Transaction, the Special Master shall file a recommendation with the Court in advance of the Sale Hearing regarding the appropriate steps to be taken to ensure that the Successful Bidder is able to actually purchase the applicable PDVH Shares in connection with the applicable Sale Transaction. The Special Master’s recommendation may include, if appropriate, an order compelling PDVH to issue new certificates or uncertificated shares to the applicable Successful Bidder and cancel the registration of the shares attached to the books of PDVH. | <p>have the appropriate information and can ensure that an appropriate procedure is put in place for issuing new PDVH Shares, if necessary.</p> |

V. Recommendation

89. I believe that the proposed Sale Procedures Order strikes the appropriate balance among the many competing interests in a dynamic and internationally sensitive set of circumstances and provides for the best opportunity for achieving a value-maximizing Sale Transaction. Accordingly, pursuant to the Court's May 2021 Order and based on the facts and circumstances as I currently understand them, I hereby submit and recommend the proposed Sale Procedures Order to the Court. I reserve the right to clarify or supplement any statements made in this Report at any time or otherwise respond to any objections or pleadings filed in response to the proposed Sale Procedures Order or this Report.

/s/ Robert B. Pincus

Robert B. Pincus

Special Master for the United States District Court
for the District of Delaware

THIS IS EXHIBIT "F" REFERRED TO IN THE
AFFIDAVIT OF ROBERT FUNG, SWORN BEFORE
ME THIS 25TH DAY OF OCTOBER, 2021.



A Commissioner for Taking Affidavits
NATALIE RENNER

QuickTake

Why Venezuela's 'Two Presidents' Are Ready to Talk

By [Alex Vasquez](#) and [Ezra Fieser](#)

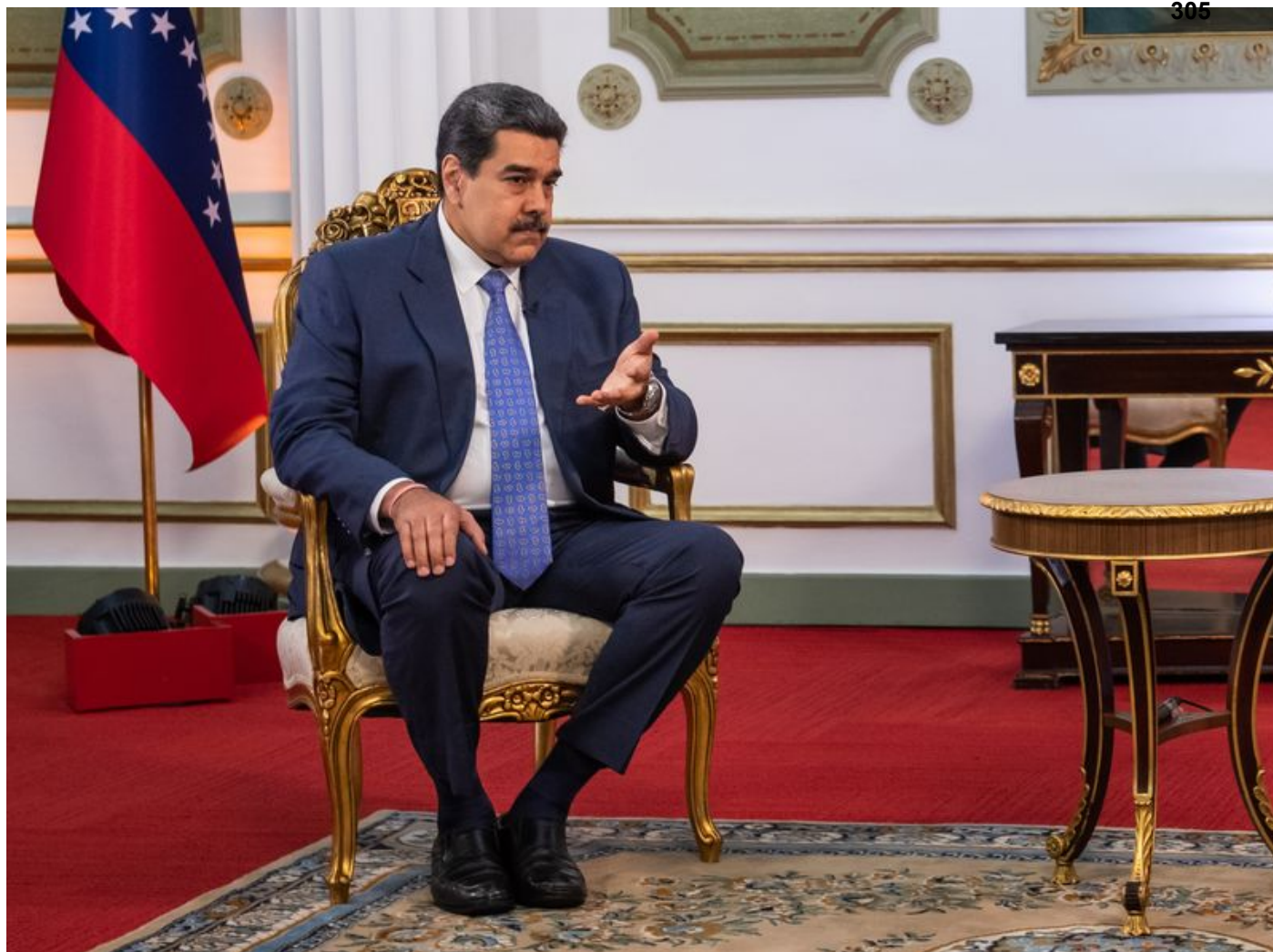
September 2, 2021, 12:00 AM EDT

Updated on September 24, 2021, 12:52 PM EDT

Nicolas Maduro and Juan Guaido have sparred for control of Venezuela for more than two years, each claiming to be country's rightful president. Now, massive protests and police crackdowns have been replaced by sessions at the negotiating table. They've tried before, to little effect. What might be different this time? For one thing, Guaido and other members of the opposition have all but conceded that their attempts to oust Maduro have failed. On his side, Maduro has proved unable to stop Venezuela's continuing economic collapse, in part because of tight economic sanctions imposed by the U.S. and other nations that continue to back Guaido.

1. How did the stalemate develop?

Maduro, 58, a former bus driver and foreign affairs minister, rose through the Socialist Party ranks and won a special presidential election after his mentor, the firebrand Hugo Chavez, died in 2013. In 2018, with the economy already slumping, Maduro was re-elected in a vote opposition leaders said was fraudulent. In January 2019, Guaido, 38, proclaimed himself interim president, saying that Venezuela's constitution allowed him to take that step as head of the National Assembly, which he called the country's last democratically elected body.



Nicolas Maduro *Photographer: Gaby Oraa/Bloomberg*

2. What happened after that?

The U.S. and dozens of allies agreed and still recognize Guaido as leader. They've also repeatedly tightened sanctions first imposed in 2014. But the opposition has never wielded any real power in Caracas. Crucially, Maduro was able to retain the loyalty of the military leadership. He has, in fact, increased his power, by installing his own legislature and putting loyalists in key posts in the judiciary. In response, the opposition boycotted what they saw as tainted elections. But Guaido's overseas and domestic influence gradually waned, although polls show that recent efforts to reconnect with followers at demonstrations on the streets have fanned a small revival in his popularity.

Double Disapproval

Both of Venezuela's main political leaders receive low approval ratings

Source: Datanalisis

NOTE: Survey data not available for every month

3. What prompted the talks?

Even before the standoff began, the economy was in a deep slump, hurt both by falling oil prices and by what the opposition termed Maduro's incompetence and corruption. The tighter U.S. sanctions contributed to a collapse in oil production and the export revenue that was the mainstay of the economy. The U.S. and European governments also blocked Maduro's access to more than \$7 billion of state funds held abroad. The economy has contracted for seven years, hunger is widespread and more than 5 million people have fled the country. Both Maduro and Guaido want the talks to find a solution to the catastrophe.





Juan Guaido *Photographer: Gaby Oraa/Bloomberg*

4. What's on the table?

After a first round of talks in early September, the sides agreed to work together to respond to Covid-19 and hunger crises and to defend a disputed territory near the border with Guyana. They were low-stakes areas where the sides shared common ground. More complicated are negotiations around the key issues of guarantees for upcoming elections and the easing of sanctions. Other topics are political rights, economic measures, cooperation on Covid-19 vaccines and humanitarian aid and how to manage assets frozen abroad -- some under Guaido's control. A memorandum of understanding signed in Mexico City in August and drafted by Norway -- which is brokering the talks -- outlined the negotiations and issues to be discussed. The second round of talks begin Sept. 24.

5. What would success look like for Maduro?

Maduro has repeatedly called for an end to sanctions against his government and the oil industry. He wants direct talks with Washington and the restoration of diplomatic relations. The Biden administration has said it would consider some demands provided Maduro meets conditions starting with electoral guarantees. In Mexico, Maduro's negotiators, led by National Assembly head Jorge Rodriguez, is also seeking access to assets frozen by foreign governments who recognized Guaido. Maduro has already achieved one aim: The memorandum signed by the adversaries identifies the two parties to the talks as the Government of the Bolivarian Republic of Venezuela and the Unitary Platform -- implying recognition of the legitimacy of his government and presidency.

6. What does the opposition want?

The opposition sat out votes for president in 2018 and the legislature in 2020, saying they wouldn't be free and fair, particularly without international observers. The myriad parties in the fragmented opposition coalition are running candidates under a unified ticket in the November election for mayors and governors. Opposition negotiators led by Gerardo Blyde, a former legislator and mayor, seek reassurance on the conditions for presidential elections set for 2024 and the legislature in 2025. They're also calling for the release of political prisoners and for exiled leaders to be allowed back to participate in politics.

7. Are these talks any different from previous rounds?

The latest in global politics

Get insight from reporters around the world in the Balance of Power newsletter.

Enter your email

Sign Up

Please enter a valid email address

Bloomberg may send me offers and promotions.

By submitting my information, I agree to the [Privacy Policy](#) and [Terms of Service](#).

Previous rounds have failed, starting in 2014 in Caracas and most recently in Barbados in 2019. But this time there's a crucial difference: The ground rules allow for interim agreements -- such as those reached after the first round -- before any final deal, which is unlikely for months if at all. Negotiators could, for example, agree on electoral guarantees for the vote in November or the lifting of some sanctions. Both sides have also dropped demands that foiled previous talks. The opposition is more divided and weaker than it was in 2019: While Guaido's camp has taken more of a hard-line approach, former presidential candidate Henrique Capriles leads a group pursuing a long-term transition in the belief that a change of government is far off. This division strengthens Maduro's hand.

8. What role is the U.S. playing? Other governments?

The U.S. isn't playing a direct role, but it has advocated a negotiated solution and indicated it may ease sanctions if the talks go well. Norway is mediating the meetings in Mexico, which is seen as a neutral venue. Russia is advising the government and the Netherlands is assisting the opposition. In addition, several "friendly nations" including the U.S. are monitoring the talks.

The Reference Shelf

The [agreements](#) reached by the government and the opposition after the first round of talks.

A [report](#) by the Washington Office on Latin America and the U.S. Institute for Peace on lessons from 2019 talks.

An [Inside Venezuela](#) video report from the country.

[Bloomberg Intelligence](#) on Venezuela's [oil industry](#).

Venezuela to cut zeros from bolivar.

Bloomberg's Cafe con Leche Index tracks Venezuela's hyperinflation.

– *With assistance by Nicolle Yapur*

[Terms of Service](#) [Manage Cookies](#) [Trademarks](#) [Privacy Policy](#)
©2021 Bloomberg L.P. All Rights Reserved
[Careers](#) [Made in NYC](#) [Advertise](#) [Ad Choices](#) [Help](#)

THIS IS EXHIBIT "G" REFERRED TO IN THE
AFFIDAVIT OF ROBERT FUNG, SWORN BEFORE
ME THIS 25TH DAY OF OCTOBER, 2021.



A Commissioner for Taking Affidavits
NATALIE RENNER

Venezuela's Government Halts Talks After Ally Extradition (1)

Published: Oct 17 2021 12:02:28

News Story

- Government delegation chief said Saab's rights were violated
- Venezuela government's participation in talks suspended

By Nicolle Yapur

(Bloomberg) --

Venezuela's government pulled out of a round of negotiations with the political opposition set to begin on Sunday in Mexico to protest the extradition of a close ally of President Nicolas Maduro to the U.S.

"The government is suspending its participation in the negotiation and dialogue roundtable," Jorge Rodriguez, president of the government-controlled National Assembly and chief of the government delegation, said on Saturday. "We will not be attending the round that was set to start tomorrow in Mexico City."

Colombian businessman Alex Saab was sent on a plane to the U.S. on Saturday, after spending over a year fighting extradition in the courts of Cape Verde, where he was detained. Saab, who faces money laundering charges in a U.S. federal court in Florida, was recently added as a member of the Venezuelan government's negotiation team.

Read: Maduro Dealmaker Extradited to U.S. on Corruption Charges

"This inhumane action constitutes a new act of aggression by the U.S. against Venezuela," Rodriguez said. He demanded that Saab be released immediately after the Maduro administration called the move a "kidnapping."

Hours after Saab was put on a plane to Florida, Venezuela's security forces picked up six Citgo Petroleum Corp. executives, who had been released in May to house arrest in what was widely perceived as peace gesture to the U.S. A Venezuelan judge sentenced them to as many as 13 years in prison on corruption charges in November 2020. All but one of the executives are U.S. citizens.

Venezuelan intelligence police transferred the executives to their headquarters, lawyers for the men said.

Read: Venezuela Secret Police Return Six Citgo Executives to Prison

Juan Guaido, the head of the opposition, called the actions against the Citgo executives "an obvious reprisal" and criticized the government's decision on the talks in a series of tweets late on Saturday.

“With the irresponsible suspension of their participation in Mexico, they are evading once again the attention that urgently needs to be given to this country,” Guaido said.

Saab is scheduled to make an initial appearance in U.S. court on Monday in Miami, the Associated Press quoted a Justice Department spokesperson as saying.

(Updates with details throughout.)

To contact the reporter on this story:

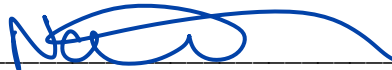
Nicolle Yapur in Caracas Office at nyapur1@bloomberg.net

To contact the editors responsible for this story:

Ezra Fieser at efieser@bloomberg.net

Maya Averbuch , Matthew G. Miller

THIS IS EXHIBIT "H" REFERRED TO IN THE
AFFIDAVIT OF ROBERT FUNG, SWORN BEFORE
ME THIS 25TH DAY OF OCTOBER, 2021.



A Commissioner for Taking Affidavits
NATALIE RENNER

Venezuelan opposition, Norway urge Maduro government to resume talks

DEISY BUITRAGO AND SHARAY ANGULO

CARACAS/MEXICO CITY

REUTERS

PUBLISHED OCTOBER 17, 2021

0 COMMENTS SHARE TEXT SIZE BOOKMARK



A man hold a sign reading 'Freedom for Alex Saab. All of Venezuela is with you. Thank you for your fight against the economic blockade,' referring to Colombian businessman Alex Saab, who was extradited to the US, during a demonstration demanding his release, at the Bolivar square in Caracas, on Oct. 17, 2021.

FEDERICO PARRA/AFP/GETTY IMAGES

The chair of the Venezuelan opposition's negotiating team at talks with the government urged President Nicolas Maduro's administration on Sunday to resume dialogue as soon as possible, after the government suspended its participation this weekend.

The government of Maduro, who scoffed at the invitation to resume talks, put the conversations on ice after Colombian businessman Alex Saab, a Venezuelan envoy, was extradited to the United States from Cape Verde on Saturday to face corruption charges.

It was the latest setback at Norwegian-sponsored talks between the two sides, which have yet to make concrete advances toward ending Venezuela's long social and economic crisis.

A majority of Venezuelans live in poverty, suffering gasoline shortages and frequent power blackouts. Millions have emigrated, seeking work and better living conditions.

"We urge our counterpart to restart as soon as possible the session in Mexico to produce the necessary agreements," said opposition negotiator Gerardo Blyde, speaking from Mexico City.

Norway echoed that call on Twitter, saying negotiations are the only solution.

"We will keep working for the parties to, as soon as possible, continue their important effort at the negotiating table," the Norwegian Ministry of Foreign Affairs tweeted.

Socialist party legislator Jorge Rodriguez, who heads the government's negotiating team, announced the suspension on Saturday.

The Venezuelan government in September named Saab – who was arrested in June 2020 when his plane stopped in Cape Verde to refuel – as a negotiator. His inclusion in the negotiating team was widely seen by Maduro critics as an attempt to delay his extradition.

"The government of the United States knew that by kidnapping Alex Saab they would fatally stab the dialogue and negotiations in Mexico and they acted," Maduro said on state TV on Sunday evening. "They don't want dialogue."

Venezuela will denounce the charges against Saab at the United Nations, Maduro said, adding that other responses to the extradition would come.

The U.S. Justice Department charged Saab in 2019 in connection with a bribery scheme to take advantage of Venezuela's state-controlled exchange rate.

The United States also imposed sanctions on him for allegedly orchestrating a corruption network that Washington says allowed Saab and Maduro to profit from a state-run food subsidy program.

Saab's lawyers have called the U.S. charges "politically motivated."

Dozens of supporters waved placards urging Saab's release at a gathering in Caracas on Sunday attended by his wife, Camilla Fabri.

"What most bothers the United States is that my husband, Alex Saab, will never give in," Fabri said, also reading from a letter from Saab where he says he cannot co-operate with the United States because he has committed no crime.

Saab is expected to make his initial court appearance on Monday.

Hours after Saab's extradition, Venezuela revoked the house arrest of six former executives of refiner Citgo, a U.S. subsidiary of state oil company PDVSA.

Our Morning Update and Evening Update newsletters are written by Globe editors, giving you a concise summary of the day's most important headlines. [Sign up today.](#)

More From The Globe and Mail

OPINION

Hard to watch: A gut-wrenching account of the attack on the U.S. Capitol

JOHN DOYLE



Morning Update: Rogers family, advisers meet to discuss rift in boardroom



Why Alberta voted on changing the Constitution



Morning Update: Rogers boardroom rift deepens as Edward Rogers faces resistance in bid to overhaul telecom giant's leadership



How a Dave Chappelle comedy special led to a staff walkout at Netflix



OPINION

How should the rest of Canada react to Alberta's equalization referendum? By ignoring it

ANDREW COYNE

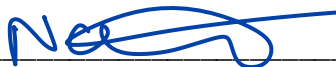


© Copyright 2021 The Globe and Mail Inc. All rights reserved.

351 King Street East, Suite 1600, Toronto, ON Canada, M5A 0N1

Phillip Crawley, Publisher

THIS IS EXHIBIT "I" REFERRED TO IN THE
AFFIDAVIT OF ROBERT FUNG, SWORN BEFORE
ME THIS 25TH DAY OF OCTOBER, 2021.



A Commissioner for Taking Affidavits
NATALIE RENNER

EXHIBIT 1



United States Department of State

*Bureau of Western Hemisphere Affairs
Washington, D.C. 20520-6258*

July 16, 2020

Ethan P. Davis
Assistant Attorney General, Acting
Civil Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Cc: Andrea Gacki, Director, Office of Foreign Assets Control

*Re: Crystallex Int'l Corp. v. Bolivarian Rep. of Venezuela (D. Del.
C.A. No. 17-mc-151-LPS)*

Dear Mr. Davis:

I would appreciate your assistance in forwarding this letter to the District Court for the District of Delaware. This letter is in response to the Court's invitation on December 12, 2019 to file a Statement of Interest concerning the United States' views on this matter.

As the Special Representative for Venezuela since January 24, 2019, I, Elliott Abrams, confirm the following:

Facing an illegitimate regime led by Nicolás Maduro and an inner circle of corrupt officials, Venezuela is in the midst of an unprecedented humanitarian, political and economic crisis. This can be directly tied to a two-decade process, which Maduro continues today, in which the government has destroyed democratic institutions, repressed free speech, committed serious human rights abuses, and ruined the prosperity Venezuela once enjoyed.

The regime has become a source of great instability in the entire region because this continuing conduct has resulted in the greatest refugee crisis in Latin American history. More than five million Venezuelans have left their country seeking freedom, sustenance, or both. This wave has created great social and economic problems for the recipient nations: nearly two million individuals in Colombia, roughly 800,000 in Peru, and an estimated 300,000 each in Ecuador and in Chile. Moreover, the Maduro regime has built a close relationship with foreign adversaries of the United States and which but for the regime's existence would have little foothold in South America: Russia, China, and most recently Iran. That these relationships include military and intelligence aspects makes them even more worrying for U.S. national security.

There have been significant developments within Venezuela since 2018 that have precipitated a fundamental shift in U.S. policy. Fraudulent presidential elections in Venezuela in May 2018 failed to produce any winner. On January 23, 2019, the National Assembly, in its role as the only legitimate branch of government duly elected by the Venezuelan people, invoked the Venezuelan constitution to declare the office of the presidency vacant.¹ Consistent with the Venezuelan constitution, the President of the National Assembly, Juan Guaidó, was sworn in as Interim President of the country. On January 23, 2019, President Trump issued a public statement officially recognizing Guaidó as the Interim President of Venezuela.² The same day, Secretary of State Pompeo also issued a statement concerning the United States' recognition of the "new Venezuelan government."³ On January 5, 2020, Secretary Pompeo congratulated Guaidó on his re-election as president of the National Assembly, and confirmed: "The United States and 57 other countries continue to regard him as the legitimate leader of the National Assembly and thus the legitimate interim president of Venezuela."⁴

United States policy toward Venezuela is to support the full restoration of democracy, beginning with free, fair, and transparent presidential elections in which the Venezuelan people choose their leaders. To achieve this, the Secretary of State recently proposed a "Democratic Transition Framework" to resolve Venezuela's crisis that is rooted in a peaceful, democratic transition that calls for Maduro to step aside, and the establishment of a broadly acceptable, transitional government to administer free and fair presidential elections. This framework also sets forth a viable pathway for lifting Venezuela-related U.S. sanctions.⁵

Since recognizing the Guaidó government on January 23, 2019, the U.S. government has taken steps, including through additional economic sanctions, to ensure Maduro is not able to liquidate in fire sales the financial assets of Venezuela that are located in United States jurisdictions (and especially CITGO, the crown jewel of PdVSA). The United States government recognizes the authority of Interim President Guaidó to preserve these assets. To this end, the National Assembly and President Guaidó have taken such steps, including by appointing new ad hoc boards of directors for PdVSA, PDVH, and CITGO. The State Department takes note of the Government of Venezuela's recent statements to this Court regarding the current independence of these boards and has no reason to doubt the veracity of those representations.

Insofar as interim President Guaidó has responsibility over Venezuela's assets, he also has responsibility for its liabilities. Unfortunately, as a result of years of mismanagement through the regimes of former Presidents Chávez and Maduro, Venezuelan financial assets have been imperiled. CITGO, as part of the U.S.-based assets of PDVH and its parent company PdVSA, is one such example of a national resource that has been placed in legal and economic jeopardy as a result of the actions of former Venezuelan governments. Critical to U.S.

¹ <https://www.whitehouse.gov/briefings-statements/statement-president-donald-j-trump-recognizing-venezuelan-national-assembly-president-juan-guaido-interim-president-venezuela/>

² *Id.*

³ <https://www.state.gov/recognition-of-juan-guaido-as-venezuelas-interim-president/>

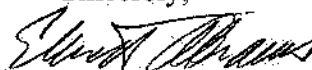
⁴ <https://ve.usembassy.gov/the-united-states-congratulates-interim-president-juan-guaido-on-his-re-election-as-president-of-the-national-assembly/>

⁵ <https://www.state.gov/democratic-transition-framework-for-venezuela/>

foreign policy, the United States assesses that the domestic legitimacy of the interim government under Guaidó would be severely eroded were a forced sale of CITGO to take place while the illegitimate Maduro regime still attempts to cling to de facto power in Caracas. The efforts by creditors to enforce judgments against Venezuela by taking immediate steps toward a conditional sale of PdVSA's U.S.-based assets, including PDVH and CITGO, are detrimental to U.S. policy and the interim government's priorities. Should these assets be advertised for public auction at this time, the Venezuelan people would seriously question the interim government's ability to protect the nation's assets, thereby weakening it and U.S. policy in Venezuela today.

Whatever the eventual settlement of Venezuela's debts or the fate of other accounts or assets, CITGO today is a special case. Every Venezuelan knows of this company and it is viewed, as are Venezuela's oil reserves, as a central piece of the national patrimony. It is clear that its loss through a forced sale in a U.S. court would be a great political victory for the Maduro regime, which has already claimed that the United States and Guaidó are conspiring to 'steal' CITGO. The impact on Guaidó, the interim government, and U.S. foreign policy goals in Venezuela, would be greatly damaging and perhaps beyond recuperation.

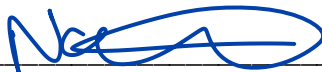
Sincerely,



Elliott Abrams

Elliott Abrams
Special Representative for Venezuela
United States Department of State
2201 C Street N.W.,
Washington D.C. 20520

THIS IS EXHIBIT "J" REFERRED TO IN THE
AFFIDAVIT OF ROBERT FUNG, SWORN BEFORE
ME THIS 25TH DAY OF OCTOBER, 2021.



A Commissioner for Taking Affidavits
NATALIE RENNER

The White House

Office of the Press Secretary

For Immediate Release

March 09, 2015

FACT SHEET: Venezuela Executive Order

President Obama today issued a new Executive Order (E.O.) declaring a national emergency with respect to the unusual and extraordinary threat to the national security and foreign policy of the United States posed by the situation in Venezuela. The targeted sanctions in the E.O. implement the Venezuela Defense of Human Rights and Civil Society Act of 2014, which the President signed on December 18, 2014, and also go beyond the requirements of this legislation.

We are committed to advancing respect for human rights, safeguarding democratic institutions, and protecting the U.S. financial system from the illicit financial flows from public corruption in Venezuela.

This new authority is aimed at persons involved in or responsible for the erosion of human rights guarantees, persecution of political opponents, curtailment of press freedoms, use of violence and human rights violations and abuses in response to antigovernment protests, and arbitrary arrest and detention of antigovernment protestors, as well as the significant public corruption by senior government officials in Venezuela. The E.O. does not target the people or the economy of Venezuela.

Specifically, the E.O. targets those determined by the Department of the Treasury, in consultation with the Department of State, to be involved in:

- actions or policies that undermine democratic processes or institutions;
- significant acts of violence or conduct that constitutes a serious abuse or violation of human rights, including against persons involved in antigovernment protests in Venezuela in or since February 2014;
- actions that prohibit, limit, or penalize the exercise of freedom of expression or peaceful assembly; or
- public corruption by senior officials within the Government of Venezuela.

The E.O. also authorizes the Department of the Treasury, in consultation with the Department of State, to target any person determined:

- to be a current or former leader of an entity that has, or whose members have, engaged in any activity described in the E.O. or of an entity whose property and interests in property are blocked or frozen pursuant to the E.O.; or
- to be a current or former official of the Government of Venezuela;

Individuals designated or identified for the imposition of sanctions under this E.O., including the seven individuals that have been listed today in the Annex of this E.O., will have their property and interests in property in the United States blocked or frozen, and U.S. persons are prohibited from doing business with them. The E.O. also suspends the entry into the United States of individuals meeting the criteria for economic sanctions.

We will continue to work closely with others in the region to support greater political expression in Venezuela, and to encourage the Venezuelan government to live up to its shared commitment, as articulated in the OAS Charter, the Inter American Democratic Charter, and other relevant instruments related to democracy and human rights.

The President imposed sanctions on the following seven individuals listed in the Annex to the E.O.:

1. Antonio José Benavides Torres: Commander of the Strategic Region for the Integral Defense (REDI) of the Central Region of Venezuela's Bolivarian National Armed Forces (FANB) and former Director of Operations for Venezuela's Bolivarian National Guard (GNB).

- Benavides Torres is a former leader of the GNB, an entity whose members have engaged in significant acts of violence or conduct that constitutes a serious abuse or violation of human rights, including against persons involved in antigovernment protests in Venezuela in or since February 2014. In various cities in Venezuela, members of the GNB used force against peaceful protestors and journalists, including severe physical violence, sexual assault, and firearms.

2. Gustavo Enrique González López: Director General of Venezuela's Bolivarian National Intelligence Service (SEBIN) and President of Venezuela's Strategic Center of Security and Protection of the Homeland (CESPPA).

- González López is responsible for or complicit in, or responsible for ordering, controlling, or otherwise directing, or has participated in, directly or indirectly, significant acts of violence or conduct that constitutes a serious abuse or violation of human rights, including against persons involved in antigovernment protests in Venezuela in or since February 2014. As Director General of SEBIN, he was associated with the surveillance of Venezuelan government opposition leaders.
- Under the direction of González López, SEBIN has had a prominent role in the repressive actions against the civil population during the protests in Venezuela. In addition to causing numerous

injuries, the personnel of SEBIN have committed hundreds of forced entries and extrajudicial detentions in Venezuela.

3. Justo José Noguera Pietri: President of the Venezuelan Corporation of Guayana (CVG), a state-owned entity, and former General Commander of Venezuela's Bolivarian National Guard (GNB).

- Noguera Pietri is a former leader of the GNB, an entity whose members have engaged in significant acts of violence or conduct that constitutes a serious abuse or violation of human rights, including against persons involved in antigovernment protests in Venezuela in or since February 2014. In various cities in Venezuela, members of the GNB used excessive force to repress protestors and journalists, including severe physical violence, sexual assault, and firearms.

4. Katherine Nayarith Haringhton Padron: national level prosecutor of the 20th District Office of Venezuela's Public Ministry.

- Haringhton Padron, in her capacity as a prosecutor, has charged several opposition members, including former National Assembly legislator Maria Corina Machado and, as of February 2015, Caracas Mayor Antonio Ledezma Diaz, with the crime of conspiracy related to alleged assassination/coup plots based on implausible - and in some cases fabricated - information. The evidence used in support of the charges against Machado and others was, at least in part, based on fraudulent emails.

5. Manuel Eduardo Pérez Urdaneta: Director of Venezuela's Bolivarian National Police.

- Pérez Urdaneta is a current leader of the Bolivarian National Police, an entity whose members have engaged in significant acts of violence or conduct that constitutes a serious abuse or violation of human rights, including against persons involved in antigovernment protests in Venezuela in or since February 2014. For example, members of the National Police used severe physical force against peaceful protestors and journalists in various cities in Venezuela, including firing live ammunition.

6. Manuel Gregorio Bernal Martínez : Chief of the 31st Armored Brigade of Caracas of Venezuela's Bolivarian Army and former Director General of Venezuela's Bolivarian National Intelligence Service (SEBIN).

- Bernal Martínez was the head of SEBIN on February 12, 2014, when officials fired their weapons on protestors killing two individuals near the Attorney General's Office.

7. Miguel Alcides Vivas Landino: Inspector General of Venezuela's Bolivarian National Armed Forces (FANB) and former Commander of the Strategic Region for the Integral Defense (REDI) of the Andes Region of Venezuela's Bolivarian National Armed Forces.

- Vivas Landino is responsible for or complicit in, or responsible for ordering, controlling, or otherwise directing, or has participated in, directly or indirectly, significant acts of violence or conduct that constitutes a serious abuse or violation of human rights, including against persons involved in antigovernment protests in Venezuela in or since February 2014.

THIS IS EXHIBIT "K" REFERRED TO IN THE
AFFIDAVIT OF ROBERT FUNG, SWORN BEFORE
ME THIS 25TH DAY OF OCTOBER, 2021.



A Commissioner for Taking Affidavits
NATALIE RENNER

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

| | | |
|-----------------------------------|---|--|
| CRYSTALLEX INTERNATIONAL CORP., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | <u>CONFIDENTIAL – FILED UNDER</u> |
| |) | <u>SEAL</u> |
| BOLIVARIAN REPUBLIC OF VENEZUELA, |) | |
| |) | Case No. 1:17-mc-00151-LPS |
| Defendant. |) | |
| |) | |
| |) | |

**DECLARATION OF CARLOS VECCHIO IN SUPPORT OF THE VENEZUELA
PARTIES’ MOTION TO MAINTAIN THE SPECIAL MASTER’S PROPOSED SALES
PROCEDURES ORDER AND EXPLANATORY REPORT UNDER SEAL**

I, Carlos Alfredo Vecchio, declare as follows:

1. I serve as Ambassador to the United States for the Bolivarian Republic of Venezuela (the “Republic”). I am a member of the Interim Government established by President Juan Guaidó. In 2019, the United States recognized the Guaidó government as the legitimate governing authority of the Republic. The administration of President Biden has reaffirmed that recognition. *See* U.S. Dep’t of State, “U.S. Relations with Venezuela: Bilateral Relations Fact Sheet,” (July 6, 2021) *available at* <https://www.state.gov/u-s-relations-with-venezuela> (Biden Administration recognition of Guaidó and National Assembly).

2. I submit this declaration in support of the motion by the Republic, PDVSA, PDV Holding, Inc., and CITGO Petroleum Corporation (“CITGO”) to maintain under seal certain portions of the recently filed Proposed Sales Procedures Order (D.I. 302) and the Special Master’s Report and Recommendation Regarding Proposed Sale Procedures Order (“Explanatory Report”).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. CITGO is by far the most important strategic foreign asset possessed by the people of Venezuela.

4. Any step that is perceived by the people of Venezuela as a loss of control of this vital aspect of the nation's patrimony will damage the reputation and credibility of the Interim Government of President Guaidó in their eyes. To be sure, the current crisis in Venezuela is the fault of the illegitimate Maduro regime, and the Chávez regime that preceded it. In this regard, the Interim Government of President Guaidó recognizes that the actions of the prior regime with respect to Crystallex were improper and that the Republic has an obligation to compensate Crystallex. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

6. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] When this Court lifted the stay in this case in May 2020, Maduro spokesman Jorge Arreaza seized on that action to claim that the United States was conspiring with “lawmaker Juan Guaidó and his accomplices” to undertake “a fraudulent representation of the Republic and PDVSA, which is not only illegal but acts to the detriment of the national interest,” in order to illegally seize Venezuelan assets in the United States. *See* D.I. 189 at ¶ 20 (Decl. of A. R. Brewer-Carías). And Carlos Ron—the Maduro regime’s purported Vice-Minister for North America—falsely said on national television that, after the United States “gave control of Citgo to the phantom government that they recognize headed by Guaidó,” the U.S. courts decided to “give the go-ahead to begin the process of selling Citgo.” *Id.*


7. The United States Government has recognized the reality and the severity of these threats to the Interim Government. The State Department has specifically so stated: “[T]he United States assesses that the domestic legitimacy of the interim government under Guaidó would be severely eroded were a forced sale of CITGO to take place while the illegitimate Maduro regime still attempts to cling to de facto power in Caracas.” D.I. 212-1 at 4. As the State Department asserted in July 2020, taking steps toward a public sale of PDVH shares would cause “the Venezuelan people [to] seriously question the interim government’s ability to protect the nation’s assets, thereby weakening it and U.S. policy in Venezuela today.” D.I. 212-1 at 4.

8. [REDACTED]

[REDACTED]

I declare under penalty of perjury under the law of the United States of America that the foregoing is true and correct.

Executed on August 20, 2021.



Carlos Alfredo Vecchio

THIS IS EXHIBIT "L" REFERRED TO IN THE
AFFIDAVIT OF ROBERT FUNG, SWORN BEFORE
ME THIS 25TH DAY OF OCTOBER, 2021.



A Commissioner for Taking Affidavits
NATALIE RENNER

U.S. DEPARTMENT OF THE TREASURY

FINANCIAL SANCTIONS

[Specially Designated Nationals And Blocked Persons List \(SDN\)](#)

[SDN List - Data Formats & Data Schemas](#)

[Consolidated List Sanctions](#)

[Recent Actions](#)

[Search OFAC's Sanctions List](#)

[Additional Sanctions Lists](#)

[Sanctions Programs and Country Information](#)

[OFAC License Applications Page](#)

[Additional OFAC Resources](#)

[Frequently Asked Questions](#)

[Civil Penalties and Enforcement Information](#)

[OFAC Reporting System](#)

[Contact OFAC](#)

Frequently Asked Questions

[Search all FAQs](#)

78. What agencies other than Treasury review OFAC license applications and what are the roles of these other agencies?

Many of OFAC's licensing determinations are guided by U.S. foreign policy and national security concerns. Numerous issues often must be coordinated with the U.S. Department of State and other government agencies, such as the U.S. Department of Commerce. Please note that the need to comply with other provisions of 31 C.F.R. chapter V, and with other applicable provisions of law, including any aviation, financial, or trade requirements of agencies other than the Department of Treasury's Office of Foreign Assets Control. Such requirements include the Export Administration Regulations, 15 C.F.R. Parts 730 et seq., administered by the Department of Commerce, and the International Traffic in Arms Regulations, 22 C.F.R. Parts 120-130, administered by the Department of State.

June 16, 2006

THIS IS EXHIBIT "M" REFERRED TO IN THE
AFFIDAVIT OF ROBERT FUNG, SWORN BEFORE
ME THIS 25TH DAY OF OCTOBER, 2021.



A Commissioner for Taking Affidavits
NATALIE RENNER



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

Case No. VENEZUELA-EO13850-2020-366869-1

Adam M. Smith
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036

Dear Mr. Smith:

This letter responds to your request, on behalf of Crystallex International Corporation (Crystallex), dated April 9, 2020, and subsequent related correspondence, to the Office of Foreign Assets Control (OFAC), requesting authorization for all activities necessary and ordinarily incident to organizing and conducting a judicial sale of shares in CITGO Petroleum Corp.'s (CITGO) indirect parent holding company, PDV Holding, Inc. (PDVH), that are held by Petróleos de Venezuela, S.A. (PdVSA).

Absent a license from OFAC, any sale of the PDVH shares is prohibited pursuant to OFAC's Venezuela-related sanctions authorities, including Executive Order (E.O) 13808 of August 24, 2017, "Imposing Additional Sanctions with Respect to the Situation in Venezuela" (as amended by E.O. 13857 of January 25, 2019, "Taking Additional Steps To Address the National Emergency With Respect to Venezuela"); E.O. 13835 of May 21, 2018, "Prohibiting Certain Additional Transactions With Respect to Venezuela" (as amended by E.O. 13857); E.O. 13850 of November 1, 2018, "Blocking Property of Additional Persons Contributing to the Situation in Venezuela" (as amended by E.O. 13857); and E.O. 13884 of August 5, 2019, "Blocking Property of the Government of Venezuela."

OFAC has consulted with the U.S. Department of State regarding this license request, and the State Department has considered the request in light of the current situation in Venezuela. As explained in the State Department's foreign policy guidance, denying the license at present and continuing the blocking of these shares is particularly important at this time. After careful consideration, the State Department has determined that authorizing the sale of the PDVH shares at this time would be inconsistent with United States foreign policy interests and therefore recommends that the license request be denied without prejudice to reconsideration in the future should these foreign policy considerations change. While the State Department advises that the situation is particularly sensitive at this time, the State Department has also noted that the National Assembly's mandate ends in January 2022, when the term of the 2015 National Assembly, Venezuela's last democratically elected body, expires following a 12-month extension. A request for a specific license for the sale of the PDVH shares is therefore denied without prejudice to reconsideration at a later time if the foreign policy considerations change. The United States will reassess whether the sale of the PDVH shares is consistent with United States foreign policy, as the situation in Venezuela evolves. The United States anticipates doing so during the first half of 2022 as warranted by changed circumstances.

In reaching a determination to deny the license for the sale at this time, the United States thoroughly reviewed and considered the information and arguments Crystallex provided in written submissions to OFAC on April 9, 2020, April 17, 2020, and May 29, 2020. We summarize below the primary reasons why Crystallex’s submissions do not alter our view that a license for the sale of the PDVH shares should be denied at this time.

1. Alleged “preferential treatment”

Crystallex claims that the PdVSA 2020 8.5 Percent bondholders, who have a lien in the shares of CITGO’s parent, CITGO Holding, are receiving “preferential treatment.” The bondholders claimed to be entitled to seek the sale or purchase of their collateral under the terms of their note, and on July 19, 2018, OFAC issued General License (GL) 5 authorizing, with certain exceptions, all transactions related to, the provision of financing for, and other dealings in the 2020 8.5 Percent Bond that would be prohibited by subsection 1(a)(iii) of E.O. 13835. That authorization ended on October 24, 2019, when GL 5 was replaced and superseded by another GL that delayed the effectiveness of the authorization in GL 5. Subsequent GLs have continued to delay the date upon which the action by the bondholders would be authorized,¹ and the current GL 5H issued on September 10, 2021, further delays that date until January 21, 2022.

Accordingly, since October 24, 2019, there has been no authorization in effect permitting holders of the PdVSA 2020 8.5 Percent Bond to take otherwise prohibited actions with respect to the CITGO Holding collateral. And like Crystallex, the bondholders are not authorized to take any such actions at this time, consistent with the State Department’s assessment that a forced sale of Venezuela’s U.S.-based assets (particularly the CITGO assets) at this time would be inconsistent with U.S. foreign policy interests. OFAC therefore disagrees that the bondholders are receiving preferential treatment.

Crystallex points to FAQ 595, which states that OFAC “would have a favorable licensing policy” toward any “agreement on proposals to restructure or refinance” payments due to the 2020 bondholders. This statement, however, refers to a potential negotiated agreement between the Government of Venezuela and the bondholders to restructure or refinance the debt. Crystallex’s license request here is not for a similar negotiated agreement with the Government of Venezuela, but instead for a forced sale—which entails different policy considerations.

2. Alleged “reliance”

Crystallex appears to indicate that it had initiated and continued legal actions “in reliance on its understanding” that its proposed sale could be engaged in despite OFAC’s Venezuela-related

¹ Crystallex states in its submission dated April 17, 2020 that one such subsequent GL (GL 5C) “exacerbates Crystallex’s situation while highlighting the Company’s unfortunate conclusion concerning its unfair treatment” because it does not “allow Crystallex to benefit from the same authorizations.” As explained, however, the purpose and effect of GL 5A and the subsequent GLs, including GL 5C, is to delay the effectiveness of the authorization in GL 5, with the result that neither the bondholders nor Crystallex are authorized to take otherwise prohibited actions at this time.

sanctions authorities. Specifically, Crystallex appears to indicate that it had derived “comfort that the Executive Branch would not stand in the way of” its proposed sale on the basis of “FAQs prior to FAQ 809,” “General Licenses,” “[t]he Executive Branch’s public statements,” and the fact that as of April 2020, “[t]he Administration ha[d] not sought to be heard before the Delaware District Court or the Third Circuit Court of Appeals.” However, OFAC does not agree that parties can reasonably rely on an assumption that a discretionary license will necessarily be granted for action prohibited by U.S. sanctions, nor even that a license will be continued once initially granted. OFAC’s regulations do not require OFAC to issue a license in any circumstances, and they make clear that licenses may be “amended, modified, or revoked at any time.” 31 CFR §§ 501.801, 501.803. OFAC’s discretionary authority to issue or withhold licenses is essential to the U.S. government’s ability to tailor sanctions to evolving foreign policy and national security needs. As the Court has noted, “the OFAC licensing process provides the [appropriate] mechanism through which the Executive Branch can bring to bear the foreign policy and national security interests on which Crystallex’s collection efforts might have an impact.” *Crystallex Int’l Corp. v. Bolivarian Republic of Venezuela*, No. 17-MC-151-LPS, 2021 WL 129803, at *16 (D. Del. Jan. 14, 2021).

In any event, Crystallex does not clearly specify the particular public statements it claims to have relied upon or the particular actions it claims to have taken in reliance on such statements. Crystallex appears to indicate that it had relied upon “FAQs prior to FAQ 809”² and quotes the following portion of “the initial iteration of FAQ 595 [describing] the rationale for General License 5 [concerning the 2020 bondholders]”:

Authorizing Bondholders to enforce rights related to the PdVSA 2020 8.5 percent bond prevents the Maduro regime from using the E.O. to default on its bond obligations without consequence. . . . OFAC issued General License 5, which removed E.O. 13835 as an obstacle to holders of the PdVSA 2020 8.5 percent bond gaining access to their collateral, and keeps sanctions pressure where it belongs — on the Maduro regime. General License 5 continues in effect and remains operative despite OFAC’s designation of PdVSA on January 28, 2019.

This iteration of FAQ 595 had no application to Crystallex. The FAQ simply explained the reason at that time for OFAC’s issuance of GL 5, a general license that did not authorize Crystallex’s proposed sale. And although Crystallex claims that it had “essentially identical rights” as the bondholders, at least part of the reason given in the FAQ — the need to prevent the Maduro regime from using the E.O. to default on its bond obligations without consequence — applied only to the circumstances of the bondholders at that time. Crystallex thus could not have reasonably relied on an FAQ addressing different transactions in a different context from its

² By contrast, Crystallex characterizes FAQ 809 as a “surprising promulgation” that “change[d] the rules[] with no notice and toward the hopeful end of a multi-year, expensive litigation effort” and “unjustly den[ied] [Crystallex] its rightful property that it acquired through [its litigation]” by “[freezing] longstanding judicial proceedings.”

own. Nor could Crystallex have reasonably relied on GL 5 itself (or any superseding GL), which did not apply to Crystallex.³

Moreover, while this iteration of FAQ 595 was issued on July 19, 2018, OFAC amended FAQ 595 on October 24, 2019, in connection with the issuance of GL 5A. The amended version of FAQ 595 no longer contained the language on which Crystallex claims to rely. Accordingly, FAQ 595 could not have formed the basis for any reasonable reliance by Crystallex with respect to any actions taken prior to July 19, 2018 or after October 24, 2019.

In addition, any assumptions Crystallex may have made about OFAC's future licensing decisions could not ignore the fact that circumstances relating to the situation in Venezuela began to change dramatically in January 2019 when, in the wake of the fraudulent Venezuelan presidential elections, Nicolas Maduro attempted to install himself as president for a second term. Shortly afterwards, Juan Guaidó was sworn in as Interim President. The United States immediately issued public statements officially recognizing Guaidó as the Interim President of Venezuela. After Guaidó assumed office, his administration appointed a new ad hoc board of directors to govern PdVSA's overseas assets, and Guaidó's newly appointed directors then reconstituted, directly or indirectly, the boards of directors of PDVH, CITGO, and CITGO Holding. As the situation in Venezuela has continued to evolve, U.S. foreign policy has also evolved. As explained above, in October 2019, OFAC replaced GL 5 with a new GL delaying the effectiveness of the authorization contained in GL 5, which has continued to be delayed in subsequent GLs. OFAC also modified FAQ 595, removing the language Crystallex cites. To the extent Crystallex continued to rely upon the original version of FAQ 595 and assumed that it (and any U.S. foreign policy reflected therein) would remain unchanged, OFAC considers such reliance to have been unreasonable.

3. U.S. court judgments

Crystallex claims that “denying or delaying a Specific License will render the legitimate judicial orders of several federal courts ineffectual.” While we disagree with Crystallex's characterization, we are mindful of the Judicial Branch's interest in enforcing its judgments, and we have carefully weighed that consideration in making our licensing decision. At the same time, we have also considered the Executive Branch's foreign policy and national security interests.

³ In its submission dated April 9, 2020, Crystallex states that “General License 14 appears to have allowed [certain] official activity” and then claims that GL 14 was revoked. However, GL 14, which relates to official business of the U.S. government, was incorporated into subpart E of the Venezuela Sanctions Regulations, 31 CFR part 591, as 31 CFR § 591.509. Indeed, in its submission dated May 29, 2020, Crystallex acknowledges as follows: “In the Application, we noted that OFAC, on November 22, 2019, revoked General License 14, which previously authorized such dealings. . . . We did not mention in the Application that OFAC on that same day added a general license to the Venezuela Sanctions Regulations that appears to cover much the same ground as General License 14.” In light of Crystallex's acknowledgement, we focus our discussion in this section on General License 5.

On July 16, 2020, the U.S. government filed a Statement of Interest in the Crystallex litigation before the U.S. District Court for the District of Delaware, explaining the U.S. government's current foreign policy and national security view. After considering that statement, the Court elected to proceed with prefatory steps toward a judicial sale, but the Court made clear that "the OFAC licensing process provides the [appropriate] mechanism through which the Executive Branch can bring to bear the foreign policy and national security interests on which Crystallex's collection efforts might have an impact." *Crystallex*, 2021 WL 129803, at *16. The Court further stated that all parties to the litigation "recognize that (under current law and policy) a specific license will be required from OFAC before a sale of PdVSA's shares of PDVH can close." *Id.* Thus, it appears to us that the Court recognized that the Executive Branch's foreign policy and national security interests, if asserted through the OFAC licensing process, could properly necessitate a delay in effectuating court judgments. Accordingly, OFAC has considered the foreign policy and national security interests in connection with Crystallex's license request, and OFAC's denial of a license for the sale reflects those interests at this time.

4. International comity

Crystallex states that granting its request for a specific license would be "consistent with longstanding U.S. government and OFAC practice of avoiding conflicts of laws and taking into consideration the local legal requirements, policy goals, and judicial determinations articulated by the courts and governments of friendly nations." Crystallex also asserts that "OFAC's granting of the requested specific license would be consistent with [a] Canadian court's direct entreaty to the administrative organs of the U.S. government to assist in fully effectuating its judgment." Crystallex further states that not granting its request would result in Crystallex being "unable to make its creditors whole" and therefore "in breach of its obligations under Canadian law," which it claims "would be contrary to core rule of law principles in Canada and would allow the Government of Venezuela to escape Canadian justice."

Crystallex does not specify the provisions of Canadian law that would allegedly be breached by Crystallex in the event OFAC denies its license request. What is clear, however, is that Crystallex's proposed sale is prohibited under U.S. law, unless authorized by an OFAC license. OFAC further disagrees that denying Crystallex's request to sell the PDVH shares will necessarily have the consequences Crystallex predicts, as the denial is without prejudice to reconsideration at a later time if the foreign policy considerations change. As noted above, the United States anticipates that it will reassess whether the sale of the PDVH shares as requested by Crystallex is consistent with U.S. foreign policy as the situation in Venezuela evolves. The foreign policy and national security interests of the United States outweigh the comity concerns expressed by Crystallex at this time.

5. Takings Clause

In requesting authorization for a specific license to conduct transactions that would be prohibited by subsection 1(a)(iii) of E.O. 13835, Crystallex warns that "interfering with Crystallex's lien would risk incurring liability for the U.S. Government." In particular, Crystallex asserts that its "judgment lien is a vested property right protected by the Takings Clause of the U.S. Constitution," and it seems to claim support for this argument by seeking to distinguish its

situation (which involves a post-judgment attachment) from the one at issue in *Dames & Moore v. Regan*, 453 U.S. 654 (1981) (which involved a pre-judgment attachment). OFAC notes that, “[f]or any Fifth Amendment takings claim, the complaining party must show it owned a distinct property interest at the time it was allegedly taken.” *Cienega Gardens v. United States*, 331 F.3d 1319, 1328 (Fed. Cir. 2003). Since the prohibition on Crystallex’s proposed activities under E.O. 13835 entered into effect on May 21, 2018, almost three months before Crystallex was granted its writ of attachment, OFAC does not believe that prohibition could constitute a “taking” under the Fifth Amendment. Moreover, OFAC notes that U.S. sanctions actions imposing full blocking, a far broader restriction than the limited prohibitions contained in E.O. 13835, have not been viewed by courts as “takings” under the Fifth Amendment.⁴ In addition, to the extent Crystallex is asserting that a denial of Crystallex’s license request would constitute a violation of the Fifth Amendment’s Takings Clause, OFAC disagrees. Even assuming that Crystallex’s writ constitutes property in which Crystallex has a constitutionally protected interest under the Fifth Amendment, the mere existence of such an interest would not require OFAC to grant a license authorizing prohibited transactions with respect to such property. *See Paradissiotis v. United States*, 304 F. 3d 1271, 1276 (Fed. Cir. 2002) (holding that the denial of plaintiff’s request for a license to exercise stock options that were frozen as a result of OFAC sanctions was not a compensable taking).

Accordingly, OFAC does not agree that its denial of Crystallex’s requested license with respect to the PDVH shares constitutes a “taking” of property compensable under the Fifth Amendment.

6. NAFTA and the New York Convention

Crystallex also claims that “preventing [it] from freely enjoying its property rights,” including by “any restrictions placed on[] Crystallex’s writ of attachment,” would violate the United States’ international obligations and would give rise to claims under the North American Free Trade Agreement (NAFTA); that “allowing the PdVSA 2020 8.5 Percent bondholders to continue to enforce their rights to the CITGO shares . . . while restricting the ability of Crystallex from doing the same” would violate NAFTA; and that granting the authorization requested by Crystallex would be “an important and necessary step towards fulfilling” the United States’ obligations under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

The U.S. government assesses Crystallex’s argument relating to potential claims under the NAFTA to be relatively weak. Even if Crystallex were to clear certain threshold jurisdictional

⁴ *See, e.g., 767 Third Ave. Assocs. v. United States*, 48 F.3d 1575, 1581 (Fed. Cir. 1995) (holding that no regulatory taking occurred because plaintiff was “on notice that the government, pursuant to its statutory and constitutional authority, could close a foreign government’s offices and freeze its assets”); *Chang v. United States*, 859 F.2d 893, 896 (Fed. Cir. 1988) (“The fact that the plaintiffs were frustrated in making the most beneficial use of their services does not lead to the unavoidable conclusion that the governmental action rises to the level of a taking.”); *Zarmach Oil Servs., Inc. v. U.S. Dept. of the Treasury*, 750 F. Supp. 2d 150, 159 (D.D.C. 2010) (“It is well-established that the blocking of assets pursuant to an executive order is not a taking within the meaning of the Fifth Amendment.”).

hurdles in asserting NAFTA claims, Crystallex is likely to have difficulty establishing its claims on the merits.

Finally, Crystallex's argument regarding the New York Convention misconstrues the United States' obligations under that Convention. The United States has fulfilled its obligation to recognize and enforce Crystallex's arbitral award, as evidenced by the fact that the U.S. District Court for the District of Columbia issued a judgment confirming the award, which the U.S. Court of Appeals for the D.C. Circuit later upheld.

These arguments therefore do not warrant a different decision on the license request, in light of the foreign policy interests of the United States.

7. Effects on Venezuela

Crystallex appears to claim that granting its request for a specific license would assist in "rebuilding, reestablishing, and supporting the rule of law" in Venezuela. In addition, Crystallex asserts that granting its request "would greatly encourage future private sector investment in Venezuela." Crystallex further claims that "the Delaware District Court process could facilitate a sale of PDVH assets without stripping Venezuelan influence over the aspects of CITGO that are actually relevant to the Venezuelan economy" and presents suggested approaches for selling only a portion of PDVH's assets. Crystallex also argues that, even if CITGO were sold as a whole, such a sale "would have significant benefits for the United States and the Venezuelan people," including: (1) "increase[d] third party private sector willingness to do business with CITGO"; (2) benefits to CITGO (including its employees, physical assets, creditors, investors, retirees, pensions), other parties, and the public, and an increase in the "overall strategic value of CITGO to the United States"; and (3) benefits to Venezuela's recovery. With respect to supposed benefits to Venezuela's recovery, Crystallex claims that "[a] sale of PDVH would generate funds for Venezuela." Crystallex states that denying its request for a specific license would "open the door for either unscrupulous investors willing to mortgage Venezuela's future on usurious investments or to competitors of the United States such as China or Russia who are already active in Venezuela and are both less interested in protecting international rule of law and the people of Venezuela, and are looking to undermine U.S. influence in the Americas" and have other deleterious effects.

Crystallex's argument that a forced sale of CITGO at this time to satisfy creditors would have such benefits for the United States or the Venezuelan people is not persuasive. The United States' current foreign policy regarding the ongoing situation in Venezuela includes, among other issues, supporting negotiations with participation from all stakeholders that will lead to credible presidential and parliamentary elections with a view towards a comprehensive negotiated solution to the Venezuelan crisis. As explained in the State Department's foreign policy guidance, denying the license at present and continuing the blocking of these shares is particularly important at this time. The U.S. government believes that such foreign policy considerations outweigh any potential countervailing benefits at this time.