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

MOTION RECORD
Creditor Entitlement and Distribution Order
(Returnable on a date to be set)

VOLUME 2 OF 2

March 26, 2026

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MOTION RECORD INDEX

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1	Notice of Motion Returnable on a Date to Be Set
2	Affidavit of Scott Reid sworn March 26, 2026
	Exhibit "A" - Affidavit of Robert Fung sworn December 22, 2011 (without exhibits)
	Exhibit "B" - Trust Indenture made by Crystallex dated December 23, 2004
	Exhibit "C" - First Supplemental Trust Indenture made by Crystallex dated December 23, 2004
	Exhibit "D" - Short Form Prospectus dated December 17, 2004
	Exhibit "E" - Crystallex Press Release dated December 23, 2004
	Exhibit "F" - Crystallex's List of Creditors
	Exhibit "G" - Stay Extension and Standstill Order dated June 5, 2013
	Exhibit "H" - Affidavit of Robert Fung sworn May 31, 2013 (without exhibits)
	Exhibit "I" - Email from Monitor dated June 14, 2013 re Trustee Post-Filing Fees and Expenses
	Exhibit "J" - Eighteenth Report of the Monitor dated September 11, 2016 (as amended and restated April 5, 2017)

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	Exhibit "K" - Email from Monitor dated May 19, 2016 re Additional Expense Amount
	Exhibit "L" - CCAA Financing Order dated April 16, 2012
	Exhibit "M" - Email from Monitor dated August 13, 2013 re Trustee Pre-Filing Fees and Expense Claim
	Exhibit "N" - Third Credit Agreement Amendment Agreement dated April 16, 2014
	Exhibit "O" - Order (Amendment to Stay Extension and Standstill Order) dated April 14, 2014
	Exhibit "P" - Crystallex's Notice Terminating the Standstill Period
	Exhibit "Q" - Affidavit of Robert Fung sworn December 16, 2015 (without exhibits)
	Exhibit "R" - Factum of Tenor Capital Management Company, L.P. and Affiliates dated May 8, 2012
	Exhibit "S" - Handwritten Endorsement of Blair J.A. dated June 20, 2012
	Exhibit "T" - U.S. Judgment dated March 25, 2017
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	Exhibit "U1" - Special Master's Report and Recommendation dated August 9, 2021
	Exhibit "U2" - Calculations of Representative Basket of Venezuela and PDVSA Debt Securities
	Exhibit "V" - Special Master's Updated Final Recommendation dated August 29, 2025 (without exhibits)
	Exhibit "W" - Order from Delaware Court dated November 25, 2025
	Exhibit "X" - Amber Energy Press Release dated November 25, 2025
	Exhibit "Y" - OFAC Letter to Special Master dated April 7, 2023
	Exhibit "Z" - Projected Distribution Waterfall

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3	Affidavit of Josh Sloan sworn March 25, 2026
4	Proposed Form of Creditor Entitlement and Distribution Order
5	Crystallex CCAA Plan

THIS IS EXHIBIT "U1"
TO THE AFFIDAVIT OF SCOTT REID
SWORN BEFORE ME OVER VIDEOCONFERENCE
ON THE 26TH DAY OF MARCH, 2026.



A Commissioner for Taking Affidavits

CONTAINS REDACTIONS IN ACCORDANCE WITH D.I. 345

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CRYSTALLEX INTERNATIONAL CORPORATION,	:	
Plaintiff,	:	
v.	:	**Misc. No. 17-151-LPS**
BOLIVARIAN REPUBLIC OF VENEZUELA,	:	**PUBLIC VERSION**
Defendant.	:	

SPECIAL MASTER'S REPORT AND RECOMMENDATION
REGARDING PROPOSED SALE PROCEDURES ORDER

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Counsel for Special Master Robert B. Pincus

Dated: August 9, 2021
Public Version Dated: September 15, 2021

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CONTAINS REDACTIONS IN ACCORDANCE WITH D.I. 345

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CONTAINS REDACTIONS IN ACCORDANCE WITH D.I. 345

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

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[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 incentives 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 Crystallex 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 team[10] 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 fix 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]

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[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").

25 CONTAINS REDACTIONS IN ACCORDANCE WITH D.I. 345

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 York[17] (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, MUFG 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-cease-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

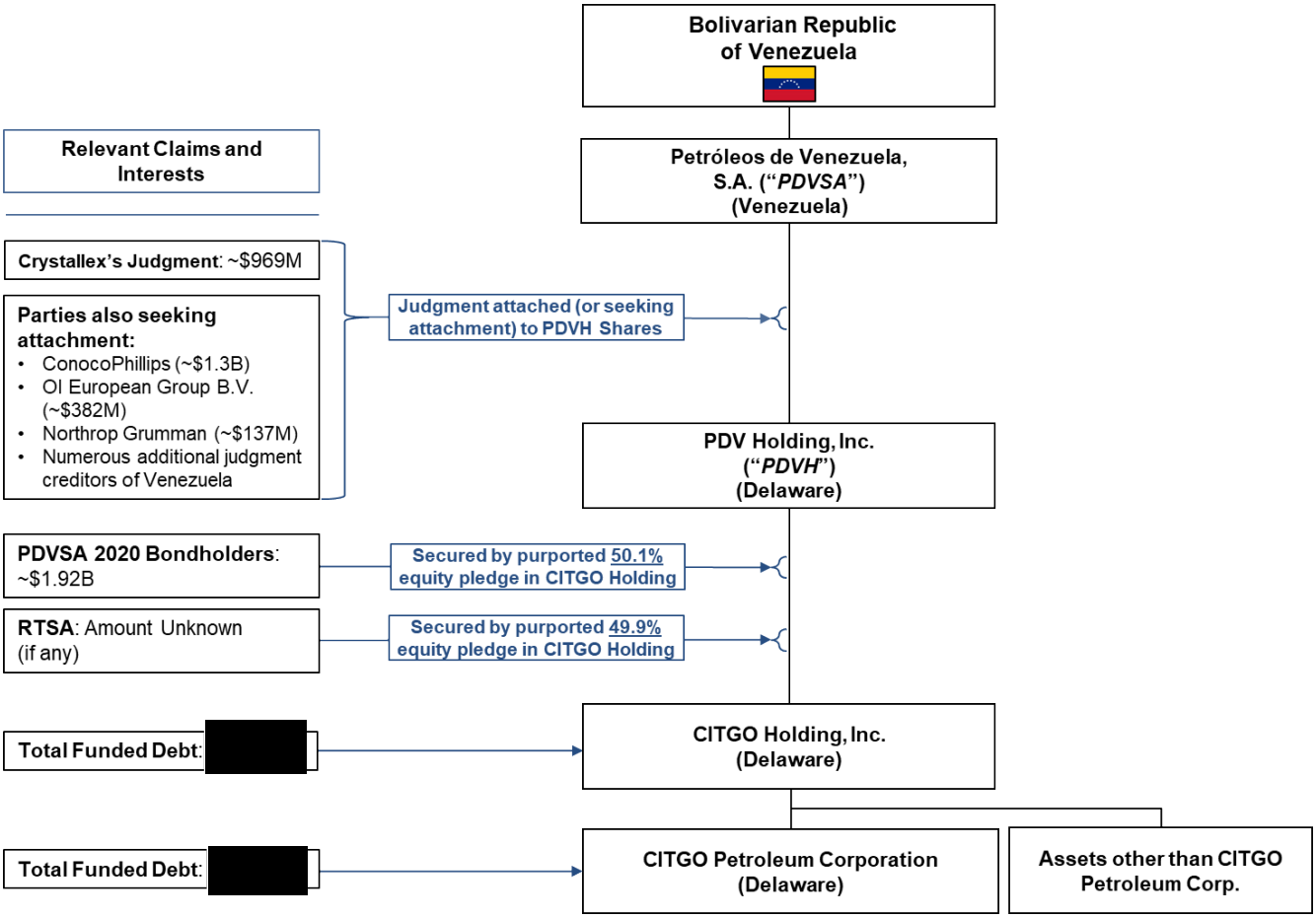
contemplated therein. The following section describes, at a high level, CITGO's complex structure and these challenges as they relate to the proposed design of the Sale Procedures Order, which is based on information I have obtained from the Sale Process Parties or otherwise obtained through public sources.

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]

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[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.

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20 [redacted]

21 [redacted]

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]

76. [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:

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Summary of Sale Procedures Order and Bidding Procedures[1]		
Term / Provision	**Description**	**Primary Rationale and Considerations**
Overview of Sale Process		
Launch Date & Preparation Launch Date	• 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**").	• 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. *See* 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	• 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	• 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.

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Summary of Sale Procedures Order and Bidding Procedures[1]		
Term / Provision	**Description**	**Primary Rationale and Considerations**
	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, 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.	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.

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Summary of Sale Procedures Order and Bidding Procedures[1]		
Term / Provision	**Description**	**Primary Rationale and Considerations**
Sale Process Phases	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: • **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), *provided* 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.	• 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

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Summary of Sale Procedures Order and Bidding Procedures[1]		
Term / Provision	**Description**	**Primary Rationale and Considerations**
Shares to be Sold	• 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.	• 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	• 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	• 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.

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Summary of Sale Procedures Order and Bidding Procedures[1]		
Term / Provision	**Description**	**Primary Rationale and Considerations**
	Horse Agreement in accordance with the terms of the Sale Procedures Order and Bidding Procedures. • 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	• 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.

CONTAINS REDACTIONS IN ACCORDANCE WITH D.I. 345

Summary of Sale Procedures Order and Bidding Procedures[1]		
Term / Provision	**Description**	**Primary Rationale and Considerations**
	is materially responsible for the events that give rise to a Termination Payment; • 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	

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	shall seek to transfer the PDVH Shares free and clear of any claims upon them.	

Credit Bidding	• Crystallex and any other party holding an attached judgment may submit a Credit Bid under the following conditions:
	  • 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.
		• The Court has authorized Crystallex to credit bid the D.C. Judgment. *See* 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	• 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	• 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

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	after taking into account the factors set forth in the Bidding Procedures. • 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.	participants, including Potential Bidders and the Sale Process Parties. • 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	• Following selection of the Successful Bid, the Special Master will submit the proposed Sale Transaction to the Court for approval.	• 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	• 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	• 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

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	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	• 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.	• 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	• 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: • 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;	• 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).

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	• 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	• 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	• 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 Exhibit 2 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

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	Party believes should be undertaken, subject to order of the Court or with the consent of the Special Master.	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).

Good Faith Deposit	• 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:
	  • 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; *provided* 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.
		• 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. (*See* ¶37 of the Hiltz Declaration).

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	• Consistent with the Court's mandate, my Advisors and I intend to consult with various parties in interest

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	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. • 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	throughout the sale process and balance competing interests. • 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.

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	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.	
Auction	• 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.	• 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	• As soon as reasonably practicable, the Special Master will provide each Potential Bidder access to the Data Room; provided that, such Data Room access and access to any other due diligence materials and information	• Consistent with the January 2021 Ruling, Potential Bidders will expect a robust data room to perform due diligence.

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	may be terminated by the Special Master in his sole discretion at any time for any reason whatsoever. • 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	• 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	• 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.

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	business days after the Special Master receives notice of satisfaction of all Attached Judgments.	
Attached Judgments	• 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.	• 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	• 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	• 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.

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	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	• 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; *provided*, that, if requested by the	• 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).

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	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.	
CITGO Management Team	• 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.	• As discussed above (*see supra* ¶¶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	• 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,	• 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

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	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.	Procedures Order and, ultimately, a value maximizing Sale Process.
Additional Provisions		
Rosneft Trading S.A.	• 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	• As discussed above (*see supra* ¶¶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.

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	well as copies of any documents evidencing any obligations whether now or previously owed. • 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	• 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; *provided*, 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; *provided* that nothing shall impede the Special Master's right to meet *in camera* or share information with the Court to provide updates on the process.	• 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.

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Dispute Resolution	• 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.	• 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	• 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.	• 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

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	• 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.	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.
Communication with Potential Bidders	• 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	• 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

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	Transaction; *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 Court to channel all communications with Potential Bidders through myself and my Advisors.
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 "highly confidential" pursuant to the *Special Master Confidentiality Order* [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; *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	• 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

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	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	• 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.	• 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	• 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.	• 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.

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Summary of Sale Procedures Order and Bidding Procedures[1]		
Term / Provision	**Description**	**Primary Rationale and Considerations**
	• 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.	

CONTAINS REDACTIONS IN ACCORDANCE WITH D.I. 345

Summary of Sale Procedures Order and Bidding Procedures[1]		
Term / Provision	**Description**	**Primary Rationale and Considerations**
	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.	
Payment of Transaction Expenses	• 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 (*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).	• 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.
Location of PDVH Shares	• 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	• 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

CONTAINS REDACTIONS IN ACCORDANCE WITH D.I. 345

Summary of Sale Procedures Order and Bidding Procedures[1]		
Term / Provision	**Description**	**Primary Rationale and Considerations**
	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. • 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.	have the appropriate information and can ensure that an appropriate procedure is put in place for issuing new PDVH Shares, if necessary.

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 "U2"
TO THE AFFIDAVIT OF SCOTT REID
SWORN BEFORE ME OVER VIDEOCONFERENCE
ON THE 26TH DAY OF MARCH, 2026.



A Commissioner for Taking Affidavits

Marketable Securities Proxy Portfolio - Valuation Date

Bond Prices as of:	March 20, 2026	
Face Value of Bonds in Portfolio	$1,347.20	Document 348, Crystallex Action, paragraph 49
Pricing Source	Bloomberg	
Pricing Basis	Bid	

Summary

Average Market Price by Issuer - % of Face Value	**Weighted Average (by Principal Outstanding)**
PDVSA Bonds	39.0755%
Venezuela Bonds	47.2043%
PDVSA and Venezuela Bonds	43.2545%

Market Value of Portfolio as of Valuation Date $582.72

Blomberg Market Price @ Valuation Date (March 20, 2026)

Market Prices of Publicly Trade PDVSA and Venezuela Bonds

Issuer	**Bloomberg Ticker**	**Principal Outstanding (USD)**	**PX_Bid**	**PX_Ask**
PDVSA				
9% of 11/17/2021	PDVSA 9 11/17/2021 REGS Corp	$2,394,239,600	40.250	40.250
6% of 05/16/2024	PDVSA 6 05/16/2024 REGS Corp	$5,000,000,000	36.684	36.900
6% of 11/15/2026	PDVSA 6 11/15/2026 REGS Corp	$4,500,000,000	36.642	36.799
5.375% of 04/12/2027	PDVSA 5.375 04/12/2027 REGS Corp	$3,000,000,000	35.451	35.717
9.75% of 05/17/2035	PDVSA 9.75 05/17/2035 REGS Corp	$3,000,000,000	42.592	42.982
12.75% of 02/17/2022	PDVSA 12.75 02/17/2022 REGS Corp	$3,000,000,000	46.723	47.166
5.50% of 04/12/2037	PDVSA 5.5 04/12/2037 REGS Corp	$1,500,000,000	35.396	35.659
6% of 10/28/2022	PDVSA 6 10/28/2022 REGS Corp	$3,000,000,000	32.427	32.742
12.75% of 02/17/2022	PDVSA 12.75 02/17/2022 REGS Corp	$3,000,000,000	46.723	47.166
Average			**39.210**	**39.487**
Weighted Average (by Principal Outstanding)			**39.076**	**39.349**
Venezuela				
11.75% of 10/21/2026	VENZ 11.75 10/21/2026 Corp	$3,000,000,000	51.601	52.237
9.25% of 09/15/2027	VENZ 9.25 09/15/2027 Corp	$4,000,000,000	49.567	50.366
9.25% of 05/07/2028	VENZ 9.25 05/07/2028 Corp	$2,000,000,000	46.860	47.282
11.95% of 08/05/2031	VENZ 11.95 08/05/2031 Corp	$4,200,000,000	51.936	52.384
9.375% of 01/13/2034	VENZ 9.375 01/13/2034 Corp	$1,500,000,000	48.494	48.956
9% of 5/07/2023	VENZ 9 05/07/2023 Corp	$2,000,000,000	45.664	46.364
7% of 12/01/2018	VENZ 7 12/01/2018 Corp	$1,000,000,000	39.057	39.628
7.75% of 10/13/2019	VENZ 7.75 10/13/2019 Corp	$2,495,963,000	42.033	42.818
8.25% of 10/13/2024	VENZ 8.25 10/13/2024 Corp	$2,495,963,000	43.940	44.401
6% of 12/09/2020	VENZ 6 12/09/20 Govt	$1,500,057,000	38.962	39.739
7% of 03/31/2038	VENZ 7 03/31/2038 Corp	$1,250,003,000	42.624	43.237
7.65% of 04/21/2025	VENZ 7.65 04/21/2025 Corp	$1,599,817,000	43.276	43.764
12.75% of 08/23/2022	VENZ 12.75 08/23/2022 Corp	$3,000,000,000	51.503	51.856
Average			**45.8090**	**46.3871**
Weighted Average (by Principal Outstanding)			**47.2043**	**47.7826**

THIS IS EXHIBIT "V"
TO THE AFFIDAVIT OF SCOTT REID
SWORN BEFORE ME OVER VIDEOCONFERENCE
ON THE 26TH DAY OF MARCH, 2026.



A Commissioner for Taking Affidavits

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'S
UPDATED FINAL RECOMMENDATION

1. Robert B. Pincus, in his capacity as special master (the "**Special Master**") for the United States District Court for the District of Delaware (the "**Court**") in the above-captioned case, submits this updated recommendation (this "**Recommendation**"). The Special Master recommends that the Court authorize and approve the sale of all of the shares of PDV Holding, Inc. ("**PDVH**" and the shares of which, the "**PDVH Shares**") to Amber Merger Sub LLC ("**Amber**"), a wholly-owned subsidiary of Amber Energy Inc., an affiliate of Elliott Investment Management L.P. ("**Elliott**"), for a purchase price of approximately $5.892 billion with associated consents from Additional Judgment Creditors, plus additional consideration proposing to discharge $500 million of Attached Judgments as described in further detail herein (the "**Amber Sale Transaction**"). This Recommendation replaces the Special Master's request to approve the sale of the PDVH Shares to Dalinar Energy Corp. ("**Dalinar**") submitted on July 2, 2025 (D.I. 1837) (the "**Dalinar Recommendation**"), but the Special Master incorporates by reference paragraphs 1-10, 12-66, 67-74, 86-109, 112-117 of the Dalinar Recommendation in support of the Amber Sale Transaction with necessary revisions outlined in this Recommendation.

2. Further, the Special Master respectfully requests the Court enter an order substantially in the form annexed hereto as **Exhibit A** (the "**Dalinar SPA Termination Order**") granting the Special Master the authority to terminate the Stock Purchase Agreement, dated June 25, 2025, by and between Dalinar and the Special Master (D.I. 1837, Ex. B) (the "**Dalinar SPA**") in order to execute the proposed stock purchase agreement (the "**Amber SPA**") attached hereto as **Exhibit B** on an expedited basis prior to the Sale Hearing.[1]

3. The Special Master also respectfully requests that the Court enter an Order substantially in the form annexed hereto as **Exhibit C** (the "**Sale Order**") approving the Amber Sale Transaction following the Sale Hearing. In support of this Recommendation, the Declaration of William O. Hiltz in Support of the Special Master's Updated Final Recommendation (the "**Fourth Hiltz Declaration**") is filed concurrently herewith.[2]

4. On July 2, 2025, the Special Master filed the Dalinar Recommendation recommending that the PDVH Shares be sold to Dalinar pursuant to the Dalinar SPA (the "**Dalinar June Sale Transaction**"). On August 8, 2025, the Special Master received an Unsolicited Competing Proposal (as defined in the Dalinar SPA) from Amber, and thereafter, the Court granted the Special Master authority to engage with Amber. On August 11, 2025, the Special Master issued a notice to Dalinar regarding his receipt of such Unsolicited Competing Proposal. On August 18, 2025, the Court held a hearing and ordered, among other things, that

[1] For the avoidance of doubt, notwithstanding the authorization by the Court, and the Special Master's subsequent execution, of the Amber SPA contemplated by the Dalinar SPA Termination Order, the Amber SPA shall not be enforceable against the Special Master until entry of the Sale Order.

[2] Filed concurrently herewith by the Special Master is the *Notice of Filing of Certain Bid Materials Received by Special Master* including the bid materials submitted by Dalinar on August 28, 2025, and Bidder C on August 22, 2025. Citations to this such notice herein are denoted as "Other Bid Materials Notice."

(i) the Sale Hearing be rescheduled to commence on September 15, 2025, and (ii) any further Unsolicited Competing Proposals to be considered by the Special Master, absent further order of the Court, must be submitted by August 22, 2025 (the "**August 22 Bid Deadline**"). *See* August 18, 2025 Hr'g Tr. 209:23-210:21, 212:8-16; D.I. 2110 at 3–4. On August 22, 2025, the Special Master received revised Unsolicited Competing Proposals from Amber and a proposed bid from an alternative bidder ("**Bidder C**" and such bid, "**Bid C**").

5. On August 25, 2025, the Special Master determined in good faith that the Amber Sale Transaction was a Superior Proposal pursuant to section 6.16(d) of the Dalinar SPA and provided notice of such determination to Dalinar. *See* D.I. 2113 at 2. The notice triggered a three-business-day period ending on August 28, 2025, for Dalinar to submit proposed changes to the Dalinar June Sale Transaction for Dalinar to match or exceed the Amber Sale Transaction. *See* Dalinar SPA § 6.16(d); D.I. 2110 at 3. Dalinar submitted a revised bid to the Special Master on August 28, 2025 (the transaction contemplated thereby, the "**Dalinar August Sale Transaction**"). An overview of the Amber Sale Transaction, and the Special Master's evaluation thereof, is included in this Recommendation.

6. For the reasons set forth herein, the Special Master has determined that the Dalinar August Sale Transaction did not match or exceed the Amber Sale Transaction, and therefore, the Amber Sale Transaction continues to constitute a Superior Proposal, provides adequate value to holders of Attached Judgments under Delaware law, and remains the best bid received in this sale process. Notably, the Special Master makes this Recommendation based on the information currently available to him, including with respect to the PDVSA 2020 Bondholder litigation, *Petróleos de Venezuela, S.A. et al. v. MUFG Union Bank, N.A. et al.*, No. 1:19-cv-10023 (S.D.N.Y.) (the "**SDNY Litigation**"). In the event the Court requests the Special

Master to indicate whether he affirms or otherwise wishes to revise his recommendation of the Amber Sale Transaction in the future based on intervening events, he will do so.

OVERVIEW OF THE AMBER SALE TRANSACTION

7. The Amber SPA provides that Amber will acquire 100% of the PDVH Shares in exchange for (i) distributable cash and non-cash proceeds discharging approximately $5.892 billion[3] of Attached Judgments (the "**Base Consideration**"), plus (ii) additional cash consideration offered to discharge $500 million of Attached Judgments (the "**Additional Consideration**")—together the Base Consideration and Additional Consideration account for a total potential purchase price of up to $6.392 billion.[4] The Base Consideration is comprised of (i) cash consideration of $3.853 billion payable to Attached Judgment Creditors through Red Tree and to ConocoPhillips Gulf of Parai B.V. for its Corocoro Judgment; (ii) a package of cash and non-cash consideration payable to Rusoro Mining Limited ("**Rusoro**") in exchange for which it has agreed to discharge the entirety of its Attached Judgment of approximately $1.569 billion; and (iii) non-cash consideration payable to Koch Minerals Sàrl and Koch Nitrogen International Sàrl (collectively, "**Koch**") in exchange for which they have agreed to discharge the entirety of their Attached Judgments of approximately $471 million.[5] The

[3] Amounts of Attached Judgments are estimated as of an assumed closing date of June 30, 2026, according to the claims calculations approved by the Court in its *Memorandum Order*, dated April 25, 2024. *See* D.I. 1136 at 3 (citing D.I. 969-1). Actual distributions to holders of Attached Judgments will be determined as of the date of the closing of the sale of the PDVH Shares. The Special Master notes that on August 28, 2025, he received correspondence from ConocoPhillips advising that it had recovered the sum of $869,955 on its Petrozuata/Hamaca Judgment against PDVSA and subsidiaries PDVSA Petróleo, S.A. and Corpoguanipa, S.A., rendered by the United States District Court for the Southern District of New York on August 22, 2018. Claim calculations have been updated accordingly.

[4] To the extent of any inconsistency between this Recommendation and the Amber SPA, the terms of the Amber SPA shall prevail.

[5] Agreements from Rusoro and Koch providing their respective consents to receive non-cash consideration as part of the Amber Sale Transaction are attached hereto as **Exhibit D**.

Additional Consideration is comprised entirely of cash, which Amber proposes to be offered to extinguish $500 million of Attached Judgments, with such Additional Consideration (i) first made available to Gold Reserve Ltd., f/k/a Gold Reserve Inc. ("**Gold Reserve**"), and (ii) if Gold Reserve declines such consideration, made available to other Additional Judgment Creditors as determined by the Special Master in consultation with Amber, or as otherwise directed by the Court.[6] As of the date of this Recommendation, Gold Reserve has not consented to receipt of such Additional Consideration; however, such Additional Consideration will be available for allocation (to Gold Reserve or other Additional Judgment Creditors) until the outside date under the Amber SPA (*i.e.*, at least 12 months and up to 18 months after signing of the Amber SPA). *See* Amber SPA § 8.1(b). The chart attached hereto as **Annex A** summarizes the Attached Judgments that would be satisfied at closing of the Amber Sale Transaction in accordance with the priority waterfall established in the *Final Priority Order* (D.I. 1102).

8. Amber proposes to finance the Proposed Sale Transaction with (i) up to $3.775 billion of committed, funded first lien debt financing from a consortium of lenders (the "**Initial First Lien Lenders**"); (ii) up to $500 million of a $2 billion committed asset-based revolving facility from Barclays Bank PLC and Citigroup Global Markets Inc. (the "**ABL Lenders**"); (iii) $2.850 billion of committed financing convertible notes initially issued to a

[6] For the reasons stated in the *Special Master's Determination of Superior Proposal* (D.I. 2113), the amount of the Additional Consideration is not provided in this Recommendation, but will be disclosed prior to the commencement of the Sale Hearing. Further, the Special Master believes it may ultimately be necessary to request the Court's authority to offer the Additional Consideration to Additional Judgment Creditors junior to Gold Reserve, notwithstanding Gold Reserve's rejection of the offer, because of what the Special Master understands has been Gold Reserve's unwillingness to take anything less than full recovery in cash on its $1.2 billion claim, *see Gold Reserve's Response to Notice of Filing of Unsolicited Bid* (D.I. 2014), even though Additional Judgment Creditors both ahead of and behind Gold Reserve have taken accepted material discounts to the par value of their claims. *See* Ex. D; *see also* D.I. 1837, Ex. F.

consortium of convertible note holders (the "**Convertible Noteholders**"), which includes a fully committed accordion feature of up to $570 million; and (iv) $25 million in equity financing from affiliates of Elliott (together with the Initial First Lien Lenders, the Convertible Note Holders, and ABL Lenders, the "**Financing Parties**"). The Financing Parties have each executed debt commitment letters, convertible notes commitment letters, and/or equity commitment letters, as applicable, which are attached hereto as **Exhibit E**.

9. Amber has also entered into a transaction support agreement (the "**TSA**"), with an ad hoc group (the "**2020 Bondholders AHG**") compromising over 75% of the holders of the 8.5% notes issued by PDVSA due in 2020 (the "**PDVSA 2020 Bonds**" and the holders of the PDSVA 2020 Bonds, the "**PDVSA 2020 Bondholders**"). The TSA is attached hereto as **Exhibit F**. Pursuant to the TSA, the 2020 Bondholders AHG has agreed to provide the requisite consents to cause the Amber Sale Transaction to be permitted under the indenture governing the PDVSA 2020 Bonds and to cause all of the purported security interests in the equity of CITGO Holding that secure the PDVSA 2020 Bonds to be released and terminated in full. The TSA further provides that Amber will acquire the PDVSA 2020 Bonds for cash consideration totaling approximately $2.125 billion. Amber has further represented that it intends to extinguish any PDVSA 2020 Bonds acquired pursuant to the TSA. *See* August 18, 2025 Hr'g Tr. 194:8-21, 195:23-196:5.

10. A copy of the bid letter dated August 8, 2025, and a copy of the updated bid letter dated August 22, 2025, with respect to the Amber Sale Transaction are attached hereto as **Exhibit G**.

EVALUATION OF THE SUPERIOR PROPOSAL

11. In evaluating the Amber Sale Transaction, the Special Master considered both price and certainty of closing in accordance with the Evaluation Criteria (D.I. 1545-4 at 8–9; D.I. 1554 (adopting the Evaluation Criteria)) and the Court's orders and other guidance, including the Court's April 21, 2025 *Order* (D.I. 1741) (the "**Stalking Horse Approval Order**"). *See* D.I. 1837 at ¶¶ 7-10, 38, 57, 59-62, 76-77, 82-83. The Court made clear in the Stalking Horse Approval Order that (i) "[a]ny prudent bidder, as well as the Special Master on behalf of the Court, must factor into its assessment of a transaction relating to the purchase of the PDVH Shares the risk to closing posed by the 2020 Bondholders being able to assert their rights (assuming they exist) in a manner that would interfere with closing"; and (ii) "any bid [the Court] is likely to approve at the conclusion of the Sale Process will need a balance that places much greater emphasis on price than Red Tree's Stalking Horse Bid." *See* D.I. 1741 at 3, 6. The Special Master believes that the Amber Sale Transaction places an appropriate emphasis on both price and certainty of closing, and as described below, potentially offers flexibility that could lead to additional upside for judgment creditors depending on the outcome of the SDNY Litigation, such that it constitutes a Superior Proposal according to the Dalinar SPA, provides adequate value to holders of Attached Judgments under Delaware law, and is the best bid for the PDVH Shares received to date in this sale process.

12. ***Purchase Price.*** At the conclusion of the solicitation of bids to top the stalking horse (the "**Topping Period**"), the Special Master was faced with a decision between: (i) the Dalinar June Sale Transaction, which offered $7.380 billion in value to holders of Attached Judgments, but with the risk the value would not be realized at all if the transaction could not close due to the claims of the PDVSA 2020 Bondholders; and (ii) Red Tree's Revised

Stalking Horse Bid, which offered $3.804 billion to holders of Attached Judgments, a price that the Stalking Horse Approval Order indicated was insufficient. *See generally* D.I. 1837. The Amber Sale Transaction offers a purchase price that is approximately $2.088 billion (or $2.588 billion, when including the Additional Consideration) more than Red Tree's Stalking Horse Bid. Accordingly, the circumstances the Special Master now faces in comparing available bids are materially different from the circumstances at the conclusion of the Topping Period. The Special Master has now received Amber's bid, which satisfies $5.892 billion of Attached Judgments (and up to $6.392 billion with the Additional Consideration) and addresses the risks associated with the PDVSA 2020 Bondholders. [7]

13. At the same time, the Dalinar August Sale Transaction claims to have increased its purchase price by approximately $518 million, comprised of (i) the addition of approximately $718 million attributable to the extinguishment of the Attached Judgment of Consorcio Andino, S.L., Valores Mundiales, S.L. ("**Valores**"), *minus* (ii) $200 million of Gold Reserve's own claim, which it previously agreed to extinguish, but now intends to retain as "compensation for the substantial fees and expenses required to purchase" the Valores claim. *Other Bid Materials Notice*, Ex. A-1 at 2.[8] The Special Master is unaware of the specific terms of the arrangement between Gold Reserve and Valores, other than the fact that Gold Reserve purportedly purchased, and presumably now controls, the Valores claim and "intends to include

[7] On August 22, 2025, the Special Master also received a bid from Bidder C. Bidder C proposed a package of consideration payable to Rusoro and creditors junior to Rusoro that required consent from Rusoro and the other creditors—consents which, to the Special Master's knowledge, have yet to be received. Accordingly, the Special Master determined that Bid C was non-conforming and, in any event, inferior to the Amber Sale Transaction. The bid materials submitted by Bidder C in connection with Bid C are filed concurrently herewith.

[8] The Special Master notes that the only compensation a bidder is entitled to for reimbursement of it expenses are those approved by the Court pursuant to the Bidding Procedures Order. D.I. 480.

the value" of the claim in its credit bid. *Other Bid Materials Notice*, Ex. A-1 at 2; Ex. A-2 at 1. For example, it is unclear what if any consideration Valores is actually receiving as part of the Dalinar August Sale Transaction. *Other Bid Materials Notice*, Ex. A-2; *cf.* D.I. 1837, Ex. F (each of Gold Reserve, Rusoro and Koch "agrees and acknowledges that they will accept specified non-cash consideration, including in the form of preferred and common equity of Dalinar Energy[.]") Further, Gold Reserve informed the Special Master that, pursuant to its consortium agreement, each of Rusoro and Koch have consent rights in certain circumstances where Dalinar changes the terms of its bid. Without knowing the specific terms of that consortium agreement, or the agreement with Valores, the Special Master likewise does not know if the consent of Rusoro and Koch is now required or, if it is required, whether either party would be willing to tender such consent (though, the Special Master notes the bid letter accompanying the August Dalinar Sale Transaction does not make reference to support from Rusoro and Koch as the June 25, 2025 topping bid letter does. *See* D.I. 1837, Ex. G.)

14. If Dalinar is given full credit for its purchase of the Valores claim, then its purchase price would increase to approximately $7.9 billion. Dalinar has further offered a combination of $10 million of cash plus warrants allegedly valued at $10 million, in exchange for the extinguishment of the $396 million Attached Judgment held by Contrarian Capital Management, L.L.C. ("**Contrarian**"); however, that offer expires at 11:59 pm ET today, August 29, 2025. The Special Master has not been provided with any evidence that Contrarian either has or even intends to accept that offer and, therefore, does not believe it should be taken into account as part of the purchase price associated with the Dalinar August Sale Transaction given its imminent expiration. *See Other Bid Materials Notice*, Ex. A-3.

15. Accordingly, the difference between the amount of Attached Judgments satisfied by the Amber Sale Transaction and the Dalinar August Sale Transaction is somewhere between $988 million and $2.006 billion.[9] However, because of the substantial outstanding delta on certainty, the Special Master believes that regardless of where on that spectrum the true difference lies, the Amber Sale Transaction continues to constitute a Superior Proposal, provides adequate value to holders of Attached Judgments under Delaware law, and remains the best bid received in this sale process.

16. ***Certainty***. Most significantly, the Amber Sale Transaction virtually eliminates any closing risks associated with the SDNY Litigation, by delivering a settlement with the PDVSA 2020 Bondholders. The Amber Sale Transaction can close regardless of the outcome of the 2020 Bondholders litigation, and it secures an approximately $895 million discount on the PDVSA 2020 Bondholders' claims. Specifically, Amber's settlement proposes to pay $2.125 billion of cash consideration on account of $3.02 billion of asserted PDVSA 2020 Bondholder claims.[10]

17. Dalinar contends in its August 28, 2025 bid letter that it has increased its own certainty with respect to the SDNY Litigation, by upsizing its financing support to fund any

[9] On the low side, (i) Amber's Additional Consideration is included and discharges an additional $500 million of Attached Judgments and (ii) Dalinar does not receive credit for the $718 million Valores claim as discussed above (*i.e.*, $7.380 billion *minus* $6.392 billion *equals* $989 million). On the high side, (i) Amber's Additional Consideration is not accepted and (ii) Dalinar receives credit for the Valores claim (*i.e.*, $7.899 billion *minus* $5.892 billion *equals* $2.006 billion). No matter the scenario, the difference in "purchase price" reflects the gap between the Attached Judgments satisfied by each bid and does not, for the avoidance of doubt, reflect the difference between actual consideration provided to creditors.

[10] The PDVSA 2020 Bondholders estimate the amount of the PDVSA 2020 Bonds claims at $3.02 billion by calculating interest accrual based on the contractual default interest rate in the PDVSA 2020 indenture and assuming a June 30, 2026 closing of the sale of the PDVH Shares. The Special Master acknowledges that the applicable interest rate and claim calculation may be subject to dispute in the SDNY Litigation.

required payment to the PDVSA 2020 Bondholders by obtaining an accordion increase of its ABL by $500 million. *See Other Bid Materials Notice*, Ex. A-1at 3.[11] According to Dalinar, its $1 billion ABL, combined with the $1.8 billion in preferred equity financing covered by its existing Highly Confident Letter, *see* D.I. 1837, Ex. E-5, provides $2.8 billion in potential financing to resolve any potential claims asserted by the PDVSA 2020 Bondholders in the event that they succeed in the SDNY Litigation. However, the Special Master has material reservations with Dalinar's plan for addressing this risk and cautions the Court against relying on Dalinar's uncertain financing. First, $1.8 billion of the solution (*i.e.*, the preferred equity financing) remains uncommitted and does not meet the Bid Requirements for bidders to have committed financing. Therefore, if the PDVSA 2020 Bondholders were successful, Dalinar has only $1 billion of committed financing available via its ABL to address up to $3.02 billion of claims, a significant shortfall. The Special Master raised this issue with Gold Reserve dating back to the early stages of the Topping Period and has continually reiterated it in the months since, but the issue has yet to be addressed.[12] Even if, the preferred equity financing were committed, the total amount of financing available to Dalinar to address the PDVSA 2020 Bonds issue would be $2.8 billion, which may or may not be sufficient to resolve the asserted $3.02 billion of claims. Likewise, notwithstanding the existence of ABL commitments generally, the actual availability of a specific amount of ABL proceeds at closing—both for general working capital purposes and

[11] Similar to the Valores arrangement, because the Special Master has not been provided with the Dalinar consortium agreement, it is unclear whether consent of Rusoro or Koch is required to approve an increase in the ABL commitment.

[12] In the same vein, the Special Master requested changes to Dalinar's financing commitment letters to reflect a requirement that its lenders be required to fund at closing notwithstanding a successful exercise of the CITGO Holding Pledge by the PDVSA 2020 Bondholders resulting in 50.1% of the CITGO Holding equity being owned or controlled by parties other than Dalinar. But that request, too, was not fulfilled.

to satisfy any obligation to the PDVSA 2020 Bondholders—is yet to be determined. The ability to draw on asset-based loan facilities, including Dalinar's proposed ABL, is calculated at the time of the requested draw and predicated on the borrower's then-existing liquidity and asset borrowing base. Neither of those numbers, as they apply to CITGO's business at the time of closing of the proposed Dalinar transaction, can be forecasted today with sufficient specificity for purposes of ensuring Dalinar's ability to satisfy the PDVSA 2020 Bonds in the event the bonds are deemed valid. As a result, the Special Master continues to not afford Dalinar's purported "certainty" any material weight when assessing its ability to address the closing risks associated with the PDVSA 2020 Bondholders. See D.I. 1837 n 15.

18. Amber's settlement with the PDVSA 2020 Bondholders also provides the Court with additional flexibility in light of where the sale process currently stands vis-à-vis the SDNY Litigation. The submission of this Recommendation triggers the "Successful Bid Date" under Amber's TSA and the PDVSA 2020 Bondholders obligations thereunder, including to cooperate in good faith and negotiate definitive documentation (TSA §§ 1.1 ("Successful Bid Date"), 3.2(b)) and also locks-in the commitment of the PDVSA 2020 Bondholders and Amber to the terms of the settlement agreement regardless of the outcome of the SDNY Litigation. *Id.* §§ 3.1(a)(viii), 3.2(a)(vii), 8.15. With the PDVSA 2020 Bondholders now committed to their settlement, and the Sale Hearing set for September 15, 2025, with a Sale Order to follow at some point after the presumptive outside date for a ruling in the SDNY Litigation (*see* D.I. 2056 ¶ 3; *see also* August 18 2025 Hr'g Tr 203:7-205:20), the Court will have the benefit of 20/20 hindsight in deciding whether the settlement embedded in the Amber Sale Transaction is value accretive to the holders of Attached Judgments or if it instead unnecessarily overpays the PDVSA 2020 Bondholders.

19. Fundamentally, the Special Master believes this Recommendation of the Amber Sale Transaction secures a one-way option for the benefit of the sale process that protects against a significant downside of the PDVSA 2020 Bondholders' potentially frustrating Dalinar's bid if the PDVSA 2020 Bonds were valid, while creating the possibility of a scenario in which additional value could become available to Additional Judgment Creditors in the event the PDVSA Bonds are found to be invalid.

20. For instance, if the Special Master were to have recommended the Dalinar August Sale Transaction instead of the Amber Sale Transaction, and then the PDVSA 2020 Bondholders were successful in the SDNY Litigation (whether before or after entry of the Sale Order), the $895 million discount secured by the TSA would be lost. In the ensuing re-solicitation of bids, assuming the PDVSA 2020 Bondholders demand something at or near their asserted $3.02 billion of claims, and also assuming the total enterprise value of the CITGO business remains in the same range as the value implied by Amber Sale Transaction, the Additional Judgment Creditors would bear the brunt of the resulting reallocation of value—specifically, Rusoro, ConocoPhillips (on its ConocoPhillips Gulf of Paria B.V. Corocoro Judgment) and Koch would not likely recover anything of material value for their Attached Judgments which are immediately senior to Gold Reserve. *See* Fourth Hiltz Decl. ¶ 37.

21. On the other hand, if, at some point between this Recommendation of the Amber Sale Transaction and entry of the Sale Order, the PDVSA 2020 Bonds and the related CITGO Holding Pledge are determined to be invalid,[13] the Court may consider whether it views

[13] Such circumstances may or may not occur. Pursuant to the TSA, the PDVSA 2020 Bondholders have agreed to seek a stay of the SDNY Litigation. If that application is granted, then a decision on the merits of the PDVSA 2020 Bondholders' claims may not be issued prior to closing of the Amber Sale Transaction and the settlement would stand.

the $2.125 billion settlement as an over-valuation of the PDVSA 2020 Bondholders' claims and a diversion of value from Attached Judgment Creditors. *See* D.I. 1741 at 7. If this scenario arises, this Court will have the discretion to not approve the Amber Sale Transaction and to order the Special Master to resolicit bids. In this scenario, the Special Master believes that the universe of bids for the PDVH Shares would provide materially higher consideration to holders of Attached Judgments. *See* Fourth Hiltz Decl. ¶ 38. Bidders may submit higher bids or may allocate to the holders of Attached Judgments a significant portion of the total consideration they are currently willing to pay to address the 2020 Bondholders litigation risk.

22. ***Other Evaluation Criteria***. In reaching his recommendation, the Special Master also considered the following non-exhaustive considerations, as set forth in the Evaluation Criteria, bearing on certainty of closing:

(a) **Likelihood of Regulatory Approval**: The Special Master is reasonably satisfied that Amber is likely to obtain the requisite regulatory approvals. Amber has represented that it will make, in a timely manner, (i) all filings and disclosures necessary to comply with the regulations of OFAC, (ii) all necessary filings under the Hart-Scott Rodino Antitrust Improvements Act of 1976, as amended (the "**HSR Act**"), and (iii) all other necessary filings and submissions required under any relevant antitrust laws, which include filings in Mexico, Morocco, and the Netherlands. Amber will be ultimately indirectly owned by Elliott. In the SPA, Amber has committed to (and to cause its affiliates to, in certain circumstances) take all actions necessary, proper, or advisable to obtain approval for the Amber Sale Transaction under antitrust laws. The Special Master, upon the advice of his Advisors, determined that the Amber Sale Transaction does not pose a significant risk from a regulatory approval perspective.

(b) **Conditionality Related to Pending or Future Litigation**: The Amber Sale Transaction does not include any additional conditionality relating to pending or future litigation as compared to the Bid Draft SPA.

(c) **Conditionality Related to Appeals of the Sale Order**: The Amber Sale Transaction does not include any additional conditionality relating to an appeal of the Sale Order as compared to the Bid Draft SPA or the Dalinar August Sale Transaction.

(d) **Bidder's Financial Wherewithal and Certainty of Financing**: The Special Master is satisfied with respect to Amber's financial wherewithal and certainty of financing. Amber is an affiliate of Elliott, an established and respected fund manager that manages $76.1 billion in assets.[14] As set forth above, Amber has secured financing from the Financing Parties, all of whom are established and respected participants in the financial system. The financing for the Amber Sale Transaction contains closing conditions that either are customary or otherwise viewed as reasonable under the circumstances.

(e) **Conditionality Related to Other Terms Proposed by the Recommended Bidder**: The SPA has no material additional conditionality with respect to its other terms compared to the Dalinar August Sale Transaction or the Bid Draft SPA. The Amber SPA contains customary conditionality, such as receipt of HSR clearance and OFAC approval, accuracy of certain limited fundamental representations and warranties in all material respects, and compliance with covenants in all material respects, and the absence of an occurrence of a "Company Material Adverse Effect." The financing documents proposed by Amber otherwise contain closing conditions that either are customary or otherwise viewed as reasonable under the circumstances.

23. ***Good Faith***. The Amber Sale Transaction is the product of arm's-length, good-faith negotiations, which comply with the Sale Procedures Order and applicable law. There has been no fraud, unfairness, surprise, or mistake, and the sale price is not so low as to shock the conscience. The Special Master and his Advisors are aware of no misconduct by Amber. Amber has proceeded in good faith in all respects in that, among other things, (i) Amber complied with the provisions of the Sale Procedures Order, Bidding Procedures, December 31 Order, and the Court's other sale process orders, including compliance with confidentiality obligations and restrictions under the Sale Procedures Order and the Bidding Procedures and any applicable non-disclosure or confidentiality agreement; (ii) all consideration to be provided by Amber and all other material agreements or arrangements entered into by Amber and the Special Master in connection with the Amber Sale Transaction have been disclosed and are appropriate

[14] *See About Elliott*, Elliot, https://www.elliottmgmt.com/about-elliott/ (last visited Aug. 28, 2025).

in the circumstances; and (iii) the negotiation and execution of transaction documents were at arm's-length and in good faith. Accordingly, Amber has acted in good faith throughout the bidding and sale process

24. In summary, the Special Master is faced with a Dalinar bid that may not be able to close and may require re-solicitation of bids at a significantly depressed level, or an Amber bid that discharges $5.892 billion (and potentially up to $6.392 billion) of Attached Judgments, has a high degree of closing certainty, and secures an $895 million discount on the PDVSA 2020 Bondholders' claims with the possible flexibility for the Court to reject the transaction if circumstances arise where it considers the TSA results in a fundamental injustice. *See* D.I. 1741 at 7–8. Faced with these choices, the Special Master concludes that the Amber Sale Transaction is the best bid for the PDVH Shares, provides adequate value to holders of Attached Judgments under Delaware law, and is a Superior Proposal to the Dalinar August Sale Transaction.

TERMINATION OF THE DALINAR SPA

25. The Special Master also seeks the Court's authority on an expedited basis to terminate the Dalinar SPA in order to enter into the Amber SPA prior to the Sale Hearing. Section 8.1(d) of the Dalinar SPA provides that the Special Master may terminate the Dalinar SPA, with the Court's approval, in order to enter into an agreement for a Superior Proposal. The Special Master believes it is necessary to terminate the Dalinar SPA as soon as possible in order to execute the Amber SPA and ensure that Amber is contractually bound to this transaction prior to the Sale Hearing.

CONCLUSION

26. For the reasons set forth herein, the Special Master believes the Amber Sale Transaction is the best bid for the PDVH Shares received to date, provides adequate value to holders of Attached Judgments under Delaware law, and is a Superior Proposal under the Dalinar SPA and the Court's prior orders. The Special Master recommends that the Court approve the sale of the PDVH Shares to Amber and enter an order substantially in the form of the Sale Order. The Special Master also seeks authority from the Court—on an expedited basis—to execute the proposed Amber SPA.

Respectfully submitted,

POTTER ANDERSON & CORROON LLP

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Dated: August 29, 2025
12444879 / 21202.00001

Annex A

Proceeds to Attached Judgment Creditors

Priority	Attached Judgment Holder (Applicable Judgment(s))	Cash Consideration or Non-Cash Consideration	Amount of Satisfied Attached Judgment as of August 29, 2025	Amount of Satisfied Attached Judgment as of June 30, 2026
1	Crystallex Corporation	Cash consideration	$1,011,018,992.13	$1,019,679,606.70
2	Tidewater Caribe S.A., Tidewater Investment SRL	Cash consideration	$78,367,516.55	$81,306,469.53
3	Phillips Petroleum Company Venezuela Limited and ConocoPhillips Petrozuata B.V. (Petrozuata/Hamaca Judgment)	Cash consideration	$1,382,827,041.91	$1,410,946,090.03
4	OI European Group B.V.	Cash consideration	$673,880,564.08	$686,901,600.91
5	Huntington Ingalls Incorporated	Cash consideration	$139,252,318.14	$139,450,093.97
6	ACL1 Investments Ltd., ACL2 Investments Ltd., LDO (Cayman) XVIII Ltd.	Cash consideration	$118,798,982.45	$118,908,075.68

Priority	Attached Judgment Holder (Applicable Judgment(s))	Cash Consideration or Non-Cash Consideration	Amount of Satisfied Attached Judgment as of August 29, 2025	Amount of Satisfied Attached Judgment as of June 30, 2026
7	Red Tree Investments, LLC (19-cv-2519 (S.D.N.Y.); 19-cv-2523 (S.D.N.Y.); Fee Judgment in cases 22-mc-00068 and 22-mc-00069)	Cash consideration	$328,744,433.06	$347,095,930.57
8	Rusoro	Non-cash consideration	$1,542,598,861.95	$1,568,585,159.10
9	ConocoPhillips Gulf of Paria B.V. Corocoro Judgment	Cash consideration	$48,253,645.22	$48,296,957.36
10	Koch	Non-cash consideration	$466,674,070.75	$470,881,329.32
11	Gold Reserve	Cash consideration	$500,000,000.00 (if the Additional Consideration is accepted by Gold Reserve)	$500,000,000.00 (if the Additional Consideration is accepted by Gold Reserve)

THIS IS EXHIBIT "W"
TO THE AFFIDAVIT OF SCOTT REID
SWORN BEFORE ME OVER VIDEOCONFERENCE
ON THE 26TH DAY OF MARCH, 2026.



A Commissioner for Taking Affidavits

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

At Wilmington this **25th** day of **November, 2025**, for the reasons set out in the Opinion issued this same date (D.I. 2552) ("Opinion"),

IT IS HEREBY ORDERED that:

1. The Special Master's Updated Final Recommendation that the Court approve the Amber Energy Bid (D.I. 2123) ("Amber Recommendation") is **ADOPTED**.

2. The Venezuela Parties' Objections to the Amber Recommendation (D.I. 2180) are **OVERRULED**, except with respect to two provisions of the Proposed Sale Order (D.I. 2543) as described in the Opinion (*see* Law Section J).

3. Gold Reserve's Objections to the Amber Recommendation (D.I. 2183), joined by Siemens Energy, Inc. (D.I. 2186) and Valores Mundiales, S.L. and Consorcio Andino, S.L. (D.I. 2184), are **OVERRULED**.

4. The Venezuela Parties' Motion to Stay Pending Appeal (D.I. 2539) is **DENIED**.

5. The Supplemental Motion for QSF Approval and Recusal of Judge Stark, filed by Dr. Leroy A. Garrett (D.I. 2532), is **DENIED**.

6. Gold Reserve's letter request that the Court order Amber "to file a notice on the public docket informing the Court and parties of any approval or denial of any regulatory applications upon which the bid is based" (D.I. 2547) is **DENIED** without prejudice to renew in conjunction with or after the filing of the joint status report due on **December 5** (see below), should Gold Reserve have good cause not to accept Amber Energy's proposal to provide such information within one day of receipt (*see* D.I. 2550).

7. The Special Master shall, after meeting and conferring with the Sale Process Parties, Additional Judgment Creditors, Elliott, Amber, Gold Reserve, Dalinar, and other interested entities:

a. File, **no later than Friday, November 28 at 5:00 p.m.**, a joint status report, advising the Court if there is any issue material to the Amber Recommendation or the Objections to it that the Court has overlooked and must rule on prior to entry of a final Sale Order and/or prior to closing this case (the Court is **NOT** inviting requests for reconsideration or reargument, simply looking for input on whether it has inadvertently overlooked a materially disputed issue);

b. File a form of the Proposed Sale Order, consistent with this Order and the Opinion, in sufficient time that the Court may sign and docket a final Sale Order **on or before Monday, December 1, 2025**;

c. File, **no later than Friday, December 5**, another joint status report addressing, in addition to any other issue the Special Master or any entity with whom he meets and confers wishes to raise:

i. Whether the Court should docket this Order, the final Sale Order, and/or the Opinion in any of the other related cases assigned to the undersigned Judge that also involve judgment debts of any of the Venezuela Parties;

ii. Whether the related cases referred to above may be closed;

iii. Whether this *Crystallex* action may now be closed; and

iv. Whether the Venezuela Parties wish to be heard on their objections to the Special Master's and Advisors' fee request for $6.9 million (D.I. 2462) and, if so, what schedule the Court should impose for limited briefing of those objections.

November 25, 2025
Wilmington, Delaware

HONORABLE LEONARD P. STARK
UNITED STATES DISTRICT COURT

THIS IS EXHIBIT "X"
TO THE AFFIDAVIT OF SCOTT REID
SWORN BEFORE ME OVER VIDEOCONFERENCE
ON THE 26TH DAY OF MARCH, 2026.



A Commissioner for Taking Affidavits

News

November 25, 2025

Amber Energy Approved as Acquirer of CITGO by U.S. District Court for the District of Delaware

Amber Energy reaffirms commitment to enhancing the world-class assets of CITGO and continuing to deliver vital products to help power the U.S. economy

Transaction will provide growth opportunities for CITGO employees, customers, and local communities

HOUSTON, November 25, 2025 — Amber Energy Inc. ("Amber Energy") announced today that it has been approved as the acquirer of PDV Holding, Inc. ("PDVH"), the parent of CITGO Petroleum Corporation ("CITGO" or "the Company"), through a sale of shares, by Judge Leonard P. Stark of the United States District Court for the District of Delaware.

Amber Energy – led by Chief Executive Officer Gregory Goff – is committed to partnering with CITGO team members to build on its historic foundation and further strengthen CITGO as a leader in the refining, transportation, and marketing of products vital to the U.S. economy.

Amber Energy's strategy for growth includes reinvestment in the business and operational enhancements, as well as strategic investments to improve CITGO's profitability. In addition, Amber Energy is focused on supporting the people running CITGO's operations, maintaining strong relationships with communities across its network, and driving projects that improve reliability and performance.

The transaction is expected to close in 2026, pending regulatory approvals and the satisfaction of other closing conditions. Upon closing, the Company will continue to operate as CITGO, and Mr. Goff will assume the role of Chief Executive Officer.

"We look forward to working with the talented CITGO team to strengthen the business through capital investment and operational excellence," said Mr. Goff. "I am confident that together we will help enhance America's energy leadership position."

Mr. Goff has more than 40 years of experience managing and improving the financial and operational performance of energy and energy-related businesses while accelerating their growth. Mr. Goff previously served as Chairman, President, and Chief Executive Officer of Andeavor, where he spearheaded a successful financial transformation. Prior to joining Andeavor, Mr. Goff spent nearly 30 years at ConocoPhillips, where he held various leadership positions in the company's Exploration & Production, Downstream, and Commercial segments. Mr. Goff currently serves as Chief Executive Officer of Claire Technologies, Inc., a technology company providing low-carbon solutions to decarbonize the energy and transportation sectors.

Advisors

Barclays is acting as lead financial advisor to Amber Energy. Citi and Perella Weinberg Partners are also acting as financial advisors to Amber Energy. Akin Gump Strauss Hauer & Feld LLP and Quinn Emanuel Urquhart & Sullivan LLP are acting as primary legal advisors to Amber Energy.

About Amber Energy

Led by accomplished energy executives, Amber Energy is focused on strengthening the world-class assets of CITGO to continue to deliver vital products for the benefit of its customers and communities and to enhance America's energy advantage. The Amber Energy management team has a track record of improving financial and operational performance, as well as accelerating growth, at companies across the energy industry. Amber Energy is backed by a group of strategic U.S. energy investors and is committed to fueling American growth, innovation, and competitiveness in the energy sector.

For more information, visit AmberEnergy.com.

Media Contact
Braden Reddall
Media@AmberEnergy.com

THIS IS EXHIBIT "Y"
TO THE AFFIDAVIT OF SCOTT REID
SWORN BEFORE ME OVER VIDEOCONFERENCE
ON THE 26TH DAY OF MARCH, 2026.



A Commissioner for Taking Affidavits

U.S. Department of Justice

Civil Division
Federal Programs Branch

April 7, 2023

Robert B. Pincus
Special Master
U.S. District Court for the District of Delaware

Re: *Crystallex International Corp. v. Bolivarian Republic of Venezuela*, No. 17-151-LPS (D. Del.)

Dear Special Master Pincus:

This letter is in response to your inquiries in furtherance of the United States District Court for the District of Delaware's order that you "solicit and attempt to gain clarity or guidance from the United States Department of the Treasury's Office of Foreign Asset Control ('OFAC') of its support for (or non-opposition to), the launch of the Marketing Process by the Special Master, the viability of the Marketing Process, and any additional feedback that the Special Master believes will more likely result in a value-maximizing Sale Transaction." Sales Order, ECF No. 481, at 11.[1] On behalf of the United States Government, I am authorized to convey the following:

First, the United States Government acknowledges that there are a number of necessary steps prefatory and antecedent to the consummation of the Sales Transaction, including but not limited to the Marketing and Bidding Processes established in the Sales Order [hereinafter "Prefatory Steps"]. *See, e.g.*, Sales Order, ECF No. 481, at 6-9, 15-19, 20-24. The United States Government further understands that this Court has already decided that the existing OFAC "sanctions regime does not require a specific license from OFAC before the Court may adopt a Sales Procedure Order," and that "the current sanctions regime does not prohibit the sales process." *See Crystallex Int'l Corp. v. Bolivarian Republic of Venezuela*, No. MC 17-151-LPS, 2022 WL 611586, at *11, *16 (D. Del. Mar. 2, 2022), certification granted, judgment modified, No. MC 17-151-LPS, 2022 WL 1404702 (D. Del. May 4, 2022).

Under the Court's ruling, the United States Government understands that the Court has held that a specific license is not necessary for, and that the current Venezuela sanctions regime does not prohibit, the Prefatory Steps antecedent to the consummation of the Sales Transaction to occur. While the United States Government does not necessarily agree with the Court's construction of OFAC's regulations and authorities with respect to Prefatory Steps, nevertheless the United States Government is not seeking to contest that construction in this case and considers the Court to have resolved this issue as to the parties' claims. The United States Government will accordingly issue public guidance that, under these circumstances, OFAC will not take enforcement action against individuals or entities for participating in or complying with the

[1] Capitalized terms used in this letter have the meaning set out in the Court's Sales Order, ECF No. 481, unless otherwise defined.

Prefatory Steps set out in the Sales Order, as well as those who engage in transactions that are ordinarily incident and necessary to participation in and compliance with such steps, *e.g.*, potential or actual credit counterparties. The United States Government anticipates publishing guidance affirming this posture at a later date. The United States Government's view regarding its nonenforcement policy expressed above is limited to the facts and circumstances of this case.

Second, the United States Government notes that the Court accurately has "recogni[zed] that a specific license will be required to execute a sale." *Crystallex*, 2022 WL 611586, at *15. As is standard for OFAC's process before providing a license for the disposition of blocked property, the United States Government will require due diligence about the identity of a potential purchaser and will consider relevant details of the proposed transaction, as will any other United States Government departments or agencies, as warranted by their procedures. Before a potential purchaser has been identified, it would be premature to issue any such license or express a definitive view on the issuance of a specific license in a future scenario.

The United States Government nevertheless wishes to convey that OFAC intends to implement a favorable licensing policy for license applications in connection with the execution of a sale as contemplated in the Sales Order or, as applicable, the negotiation of a settlement agreement among the relevant parties. As with all OFAC licenses and statements of licensing policy, this licensing policy would be without prejudice to reconsideration if U.S. foreign policy and national security interests materially change and may be revoked or modified at any time.

The United States Government anticipates formalizing a public notification of a favorable licensing policy at a later date. To be clear, any such public notification of a favorable licensing policy will be limited to a license authorizing transactions otherwise prohibited by OFAC sanctions; this does not reflect any United State Government opinion on any other regulatory requirements, reviews, or approvals that may be required or warranted to finalize any sale.

We appreciate your consideration.

Sincerely,

/s/ Joseph E. Borson
Joseph E. Borson, Trial Attorney
Alexander K. Haas, Director
Diane Kelleher, Assistant Director

Civil Division, Federal Programs Branch
U.S. Department of Justice

THIS IS EXHIBIT "Z"
TO THE AFFIDAVIT OF SCOTT REID
SWORN BEFORE ME OVER VIDEOCONFERENCE
ON THE 26TH DAY OF MARCH, 2026.



A Commissioner for Taking Affidavits

Projected Collection Date of U.S. Judgment	3/31/2027
Projected Distribution Date to Stakeholders	6/30/2027

CRYSTALLEX - PROJECTED DISTRIBUTION WATERFALL June 30, 2027

** All amounts in U.S. dollars, in millions*

1. Arbitration Proceeds	
Cash	$20.1
Marketable Securities	$582.70
U.S. Judgment	$1,027.50
ICSID Award Deficiency Claim	$95.39
(A) TOTAL	$1,725.69
2. Waterfall Amounts	
(a) Post-Filing Expenses	$11.40
(b) Tax	$0.00
(c) DIP Principal	$75.70
(d) DIP Interest	$212.40
(e) Proven Creditor Claims	$581.90
Proven Noteholder Claim	$553.30
Other Creditor Claims	$28.60
(B) TOTAL	$881.40
NET ARBITRATION PROCEEDS ((A) - (B))	$844.29
(f) DIP Lender Additional Compensation	$763.57
(g) MIP	$25.44
(h) Retained by Crystallex	$55.28
Trustee Pre-Filing Fees and Expenses Claim	$5.17
Residual balance payable to the Applicant	$50.12

Notes:

(1) Cash represents Crystallex's projected cash balance after giving effect to projected cash expenditures consistent with management forecasts.
(2) Marketable Securities have been valued using market prices as at March 20/26 based on a representative basket of publicly traded Venezeula and PDVSA bonds.
(3) U.S. Judgment represents projected amounts to be received from the CITGO Sale Process by March 31, 2027.
(4) ICSID Award Deficiency Claim represents the projected value of residual amounts owing to Crystallex after giving effect to the projected collection of the U.S. Judgment.
(5) All Waterfall Amounts are assumed to be distributed on June 30, 2027.
(6) Crystallex is assumed to have paid all outstanding Post-Filing Expenses from cash on hand, and distributable cash has been reduced accordingly.
(7) Taxes owed are projected based on publicly available information.
(8) Other Creditor Claims are estimated based on disclosures in Monitor reports.
(9) Amounts payable on account of DIP Lender Additional Compensation, the MIP, and amounts retained by Crystallex reflect the effect of the Override
(10) Proven Creditor Claims does not include Trustee Post-Standstill Order Fees and Expenses Claim

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

AFFIDAVIT OF SCOTT REID
(Sworn March 26, 2026)

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Tel: (416) 979-2211
Fax: (416) 979-1234

Lawyers for Computershare Trust Company in its capacity as Trustee for the holders of Crystallex senior 9.375% notes due December 23, 2011, and the Ad Hoc Noteholder Committee

3

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

AFFIDAVIT OF JOSH SLOAN

(sworn March 25, 2026)

I, Josh Sloan, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY**:

1. I am a lawyer with the law firm of Goodmans LLP, which is counsel to Computershare Trust Company in its capacity as replacement trustee for the holders of Crystallex senior 9.375% notes due December 23, 2011 and an *ad hoc* committee of beneficial holders of the U.S.$100,000,000 (principal amount) of senior 9.375% notes due December 2011 issued by Crystallex International Corporation in the within proceedings. As such, I have knowledge of the matters hereinafter deposed to.

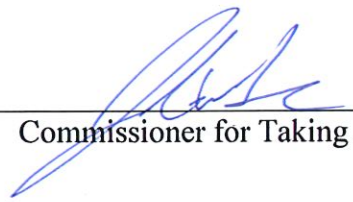
2. Attached as **Exhibit "A"** to this affidavit is a copy of the Supplementary Confidential Responding Factum of Crystallex International Corporation dated May 8, 2012 (Court of Appeal File No. C55434/Motion for Leave to Appeal File No. M41032 and Court of Appeal File No. C55435/Motion for Leave to Appeal File No. M41270).

SWORN BEFORE ME at the City of Toronto in the Province of Ontario, on March 25, 2026.

A Commissioner for taking affidavits
Name: Jennifer Linde
LSO#: 86996A

JOSH SLOAN

THIS IS EXHIBIT "A"
TO THE AFFIDAVIT OF JOSH SLOAN
SWORN BEFORE ME THIS 25th DAY OF MARCH, 2026



Commissioner for Taking Affidavits

RBS

CONFIDENTIAL

Court of Appeal File No. C55434
Motion for Leave to Appeal File No. M41032
and
Court of Appeal File. No. C55435
Motion for Leave to Appeal File No. M41270

COURT OF APPEAL FOR ONTARIO

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

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

(the "Applicant")

SUPPLEMENTARY CONFIDENTIAL RESPONDING FACTUM OF CRYSTALLEX INTERNATIONAL CORPORATION

(Appeal to be heard May 11, 2012)

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In the Matter of a Plan of Compromise or Arrangement
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PART I - THE APPEAL

1. This is an expedited appeal from a discretionary order of Newbould J., pursuant to which he approved a DIP loan in favour of Tenor Special Situations Fund LLC ("Tenor") and extended the stay of proceedings against the debtor Crystallex International Corporation ("Crystallex") to July 30, 2012.

2. Pursuant to the directions of this Court, the facta on the Motion for Leave to Appeal serve as facta on the appeal. This supplementary factum is filed pursuant to leave granted by Blair J.A. and raises points in addition to those or expands on those raised in Crystallex's factum on the leave motion.

PART II - OVERVIEW

3. Newbould J. exercised his discretion to approve the Tenor DIP against the background of the following key contextual elements on which Crystallex and the Noteholders agree:

(a) Crystallex should be subject to CCAA proceedings. No one has objected to the continuation of those proceedings to July 30, 2012.

(b) The only viable business plan for Crystallex is to pursue the arbitration claim against Venezuela.

(c) Crystallex needs DIP financing to fund the arbitration.

(d) Crystallex requires $36 million to pursue the arbitration to its conclusion.

(e) The terms of the Tenor DIP loan reflect fair market terms. The Noteholders claim to be prepared to match those terms if required to do so by the Court, but not to better them.

(f) Management's active participation is necessary to pursue the arbitration. Compensation arrangements have to be made for them.

(g) The likely award will far exceed what Crystallex owes creditors.

(h) Crystallex is not asking the Noteholders to compromise their claims. Crystallex wants to pay their claims in full with interest and a premium. The dispute between Crystallex and the Noteholders is about the size of the premium.

4. The Noteholders are better off under the Tenor loan without any premium than they are under their own current proposed plan if the award is less than $250 million. The Noteholders plan only make sense if they expect the arbitral award to exceed $250 million. As the size of the award climbs, the Noteholders get an ever larger premium over their principal and interest. The Noteholders expert expects Crystallex to recover $300 - $400 million. Crystallex expects to recover more.[1]

5. Crystallex believes that it should negotiate the premium with the Noteholders between now and July 30, 2012.

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[1] Confidential Transcript from Cross-Examination of Glenn Saultry held April 2, 2012 ("Saultry Confidential Cross-Examination"), p. 61, Q. 258 (Noteholders Confidential Motion Record, Vol. 8, Tab 37, p. 2552)

6. Financing Crystallex under the Tenor DIP will allow Crystallex to negotiate the premium with the Noteholders without the threat of imminent financial collapse hanging over the negotiations. The Noteholders would like to use this appeal to dictate the premium by threatening Crystallex with financial collapse. Although the Noteholders propose their own DIP of $10 million, that will not be adequate to both repay the initial Tenor advance and fund the Company's obligations beyond the third week of May.[2] As a result, if the appeal is allowed, the company will be rendered administratively insolvent immediately.

7. It is in this context that the Noteholders claim that Newbould J. erred in exercising his discretion. The Noteholders complain that the DIP awards Tenor a bonus equal to 35% of the net arbitration proceeds. The Noteholders assert that the 35% should be available to them in a plan. As it stands, the Tenor DIP and the MIP leave 55% of the net arbitration proceeds to share between shareholders and creditors in a plan. That, say the Noteholders, does not leave enough room for a satisfactory premium. In this regard, it is worth noting that the Noteholders are hedgefunds who purchased their notes after Venezuela announced its intention to expropriate Las Cristinas. They purchased at prices as low as 25 cents on the dollar.[3]

8. Dismissing this appeal and allowing negotiations for a plan to continue until July 30, 2012 is likely to encourage the parties to compromise their positions. The incremental approach taken by Newbould J. has already had that effect. On the initial CCAA

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[2] Cash Flow Statements, Appendix B to Third Monitors Report (Noteholders Confidential Motion Record, Vol. 7, Tab 30, p. 2004)

[3] *Computershare Trust Company of Canada v. Crystallex International Corporation*, 2009 CanLII 71007 (ONSC) at paras. 16 and 85 (Brief of Authorities of Computershare on Motion for Leave to Appeal ("Noteholders BOA"), Tab 2)

hearing, the Noteholders proposed a plan that would give them 100% of Crystallex's shares if Crystallex was not able to raise enough money to pay out the Noteholders in short order.[4]

9. By April, the plan the Noteholders put before the Court had reduced their request to 81% of the shares of Crystallex in exchange for the surrender of their $100 million debt and a new advance of $35 million. Given that the Tenor DIP contemplates repayment of $100 million to the Noteholders and does not require them to advance any funds, 55% of the net arbitration proceeds should provide ample room for negotiation of a premium for the Noteholders.

10. Continued negotiation between now and the end of July with the help of the Court and the Monitor will likely result in further movement.

PART III - THE ISSUES AND THE LAW

11. The Noteholders allege Newbould J. erred in approving the Tenor DIP for three reasons:

(a) The terms of the Tenor DIP allegedly prevent the implementation of a plan.

(b) The terms of the Tenor DIP allegedly interfere with Noteholder rights.

(c) The terms of the Tenor DIP allegedly breach principles applicable to DIP financing.

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[4] *Re Crystallex International Corporation*, 2011 ONSC 7701 at para. 6 (Noteholders Confidential Motion Record, Vol. 1, Tab 3, p. 26-27)

None of these assertions has merit. The Tenor DIP in fact enhances the prospect of a successful plan, protects the Noteholders' legal rights and is consistent with well-established principles applicable to DIP financing.

A. Terms of Tenor DIP Enhance Prospects of a Plan

12. The DIP does not require Tenor's consent to a plan.

13. The DIP calls for a new five-person Board with two nominees from Tenor, two nominees from Crystallex management, and a fifth independent director.

14. The fifth independent director has exclusive authority to conduct the CCAA proceeding and negotiate a plan with the Noteholders.[5] While the independent fifth director may consult with the existing independent directors of Crystallex (who will not remain as directors but will form an advisory board), the fifth director will have sole authority to determine what is fair and reasonable for Crystallex.

15. The Tenor DIP leaves at least 55% of the net arbitration proceeds available to share between shareholders and creditors.

16. The Tenor DIP can also be automatically rolled into an exit facility, as a result of which Crystallex avoids the risk of not receiving a second round of financing when it emerges from CCAA protection, avoids the transaction costs of a second round financing and allows Crystallex to approach creditors with a plan that is already fully financed.

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[5] Tenor DIP, s. 6.15(a) (Exhibit "2" to Second Confidential Affidavit of Robert Fung sworn March 20, 2012 ("Fung Second Confidential Affidavit"), Noteholders Confidential Motion Record, Vol. 5, Tab 23(2), p. 1234)

17. If the negotiations for a plan fail, it will be open to the Noteholders to:

(a) object to the continuation of the CCAA stay and ask for a bankruptcy order against Crystallex; or

(b) ask the Court to replace the fifth director if she or he is behaving unreasonably in refusing to agree with the Noteholders on their then current plan proposal.[6]

18. While the refusal of a stay or the replacement of the fifth independent director constitutes a default under the Tenor DIP, the Tenor transaction has been carefully structured to protect the estate and the creditors against such defaults. Tenor's remedy with respect to the arbitration on a default is to have the Court direct the Monitor or a receiver/manager to take control of the arbitration.[7] Tenor cannot seize, sell, foreclose or settle the arbitration claim. Tenor's remedies are severely and unusually limited and cannot be used to take value away from the creditors or the estate. As a practical matter, Tenor cannot recover even the principal amount of its loan unless the arbitration proceeds to conclusion, as a result it will be highly motivated to waive any default and continue to fund the arbitration.

B. Tenor DIP Protects Noteholders' Legal Rights

19. Giving Tenor the right to a bonus equal to 35% of the net arbitration proceeds as the DIP provides does not in any way prejudice the Noteholders' legal rights. The Tenor DIP in fact protects the Noteholders' rights as creditors.

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[6] CCAA s. 11.5(1)

[7] Tenor DIP, s. 9.3(c) (Exhibit "2" to Fung Second Confidential Affidavit, Noteholders Confidential Motion Record, Vol. 5, Tab 23(2), p. 1248)

20. The only priority Tenor has over the Noteholders is a priority for that portion of the $36 million facility that is actually advanced, plus PIK interest at 10%. The first tranche of $9 million has already been advanced. A second tranche of $12 million will be advanced if this court upholds Newbould J.'s decision. The third and fourth tranches aggregating $15 million cannot be advanced unless Crystallex shows that it has less than $2 million cash available to it.[8]

21. Tenor cannot receive its 35% bonus until after the Noteholders have been fully paid their principal and interest.[9]

22. The Noteholders' complaint that Tenor's right to the 35% bonus affects their legal rights is founded on the mistaken assumption that the Noteholders have a right to the 35% of the arbitration proceeds or a right to a percentage of the equity of the Company. The Noteholders have no such right. Notes often provide for a conversion feature that allow noteholders to convert to equity. The Crystallex notes contain no such feature.

23. The Noteholders are unsecured creditors. Their only legal right is to have been paid principal and interest on December 23, 2011. While a secured creditor has rights to the debtor's assets and can foreclose on those assets to satisfy its debt, unsecured creditors like the Noteholders have no such rights. That is the very definition of being an unsecured creditor.[10] As a result, the Noteholders have no right to the arbitration, its proceeds or shares

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[8] Tenor DIP, s. 2.2 (Exhibit "2" to Fung Second Confidential Affidavit, Noteholders Confidential Motion Record, Vol. 5, Tab 23(2), p. 1214)

[9] Exhibit F to Tenor DIP (Exhibit "2" to Fung Second Confidential Affidavit, Noteholders Confidential Motion Record, Vol. 5, Tab 23(2), p. 1273)

[10] *Re PSINet Ltd.*, 2002 CanLII 49572 (ON SC) at para. 4 (Brief of Authorities of Crystallex ("Crystallex BOA, Tab 3)

of Crystallex. The only way for the Noteholders to obtain such a benefit is through a negotiated plan.

24. The Noteholders suggest there is additional prejudice because the Tenor loan extends to 2016 and cannot be pre-paid. The suggestion appears to be that interest would continue to accrue on the loan and thereby prejudice Noteholder recovery.

25. This is simply incorrect. The maturity date of the loan does not prejudice creditors. The loan provides for 10% PIK interest only on amounts actually advanced, to a maximum of $36 million. Any proceeds of an arbitration award or settlement must be deposited into a cash collateral account. Once deposited, Crystallex stops incurring interest charges and Tenor is limited to the interest actually earned in the cash collateral account.[11]

26. The loan extends to 2016, or such later time as Tenor may agree, in order to avoid a criminal rate of interest issue. Section 347 of the Criminal Code of Canada prohibits the receipt of interest greater than 60% per annum. It defines interest broadly and could potentially capture the 35% bonus on the loan. A large bonus payable to Tenor within a relatively short period of time could create issues for Tenor under section 347. By cash-collateralizing the bonus obligation and extending its payment over a longer period of time, Tenor avoids any potential issue under section 347.[12]

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[11] Tenor Loan, s. 3.7 (Exhibit "2" to Fung Second Confidential Affidavit, Noteholders Confidential Motion Record, Vol. 5, Tab 23(2), p. 1216)

[12] By way of example, s. 347 allows interest of $21.6 million per year on the $36 million advance. If, at the end of 2013, Crystallex received proceeds of an award that allowed Tenor a bonus of $100 million, s. 347 would cap interest at $43.2 million. By extending the loan to 2016, Tenor can receive additional bonus payments of $64.8 million without raising any issues under s. 347. If the bonus amount to which Tenor were entitled were larger than the $100 million, Tenor could extend the loan beyond 2016 to address that issue.

27. Neither the term of the loan nor its possible extension prejudices the Noteholders because Tenor cannot be paid a penny of its bonus until all creditors have been fully paid.

28. As unsecured creditors, the Noteholders would also have standing to apply for an order placing Crystallex into bankruptcy under the *Bankruptcy and Insolvency Act* (the "**BIA**").

29. The only way in which Newbould J.'s order prejudices the Noteholders' rights in this regard is to prevent them from trying to obtain a bankruptcy order before July 30, 2012.

30. Bankruptcy would not, however, assist the Noteholders. The arbitration claim cannot be liquidated. The Noteholders' expert admits that the arbitration claim cannot be sold or assigned.[13] A sale of the arbitration to another party may well deprive the arbitral tribunal of jurisdiction and render the claim valueless.[14] Investment treaty arbitrations involve a concept known as continuity of investor. The Treaty limits claims to "an investor" of a signatory state.[15] A purchaser of an arbitration claim is not "an investor" in Venezuela nor has that purchaser suffered loss by reason of Venezuela's conduct.

31. To pay the Noteholders, the Trustee would have to prosecute the arbitration himself. The only change that bankruptcy brings is to put the arbitration into the hands of a trustee who knows nothing about it or the events on which it is based.

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[13] Sauntry Confidential Cross-Examination, p. 91, Q. 383 (Noteholders Confidential Motion Record, Vol. 8, Tab 37, p. 2582)

[14] Freshfields Memo to Crystallex dated February 16, 2012 at para. 27 (Exhibit "I" to Tung Second Confidential Affidavit, Noteholders Confidential Motion Record, Vol. 5, Tab 23, p. 1193)

[15] Freshfields Memo to Crystallex dated February 16, 2012 at para. 11 (Exhibit "I" to Tung Second Confidential Affidavit, Noteholders Confidential Motion Record, Vol. 5, Tab 23, p. 1190); Confidential Affidavit of Johan van't Hof sworn March 31, 2012 ("van't Hof Confidential Reply Affidavit") at para. 21 (Noteholders Confidential Motion Record, Vol. 6, Tab 27, p. 1935)

32. As noted in paragraph 23 of Crystallex's factum on the Motion for Leave to Appeal, in any bankruptcy the Noteholders would be limited to recovering the principal amount of their claims and statutory interest of 5%.[16] Any surplus remaining after the creditors have been paid those amounts belongs to the debtor.[17] The Tenor DIP allows for interest well above the statutory rate and permits Crystallex to increase the interest payable to the Noteholders from 9 3/8% to 15% without Tenor's consent.

33. The Noteholders make vague references to a proposal under the BIA pursuant to which they would convert their debt to equity. While the Noteholders have not disclosed particulars of any such proposal, it presumably involves a transaction that gives the Noteholders the benefit of the arbitration or its proceeds.

34. Assuming there is even the power to issue shares to the Noteholders without the consent of the Crystallex Board, any such proposal involves a request by the Noteholders that the Court exercise its discretion to approve a proposal that violates the core principle underlying the BIA, namely that unsecured creditors are entitled only to their principal and interest and that any surplus belongs to the debtor.

35. A proposal is a consensual arrangement that must be overseen by the Trustee in bankruptcy and must be approved by the court.[18] A Trustee is a court appointed officer who has fiduciary duties similar to those of the directors of Crystallex. A Trustee has an obligation

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[16] *Bankruptcy and Insolvency Act*, R.S.C. 1985 c.B-3, ("BIA"), s. 143

[17] BIA, s. 144

[18] BIA, ss. 50(5) and (10)

to be neutral and even handed in its dealings with creditors and the bankrupt.[19] Giving the Noteholders materially more than they are owed is hardly even-handed.

36. It is also unlikely that a Court would approve such a proposal. "The law is clear that the court must look beyond the wishes of creditors when considering a proposal."[20] As Houlden and Morawetz point out: "In determining whether or not to approve the proposal, the court must consider not only the wishes and interests of creditors but the conduct of the debtor and the interest of the public and future creditors and the requirements of commercial morality."[21] The court may not approve a proposal unless it is reasonable.[22] It is difficult to see how a proposal that gives the Noteholders more than they are entitled to under the BIA is reasonable.

37. It is also important to note that a bankruptcy order is a discretionary remedy. Creditors have no right to it.[23] Houlden & Morawetz set out a variety of circumstances in which a court will exercise its discretion to refuse a bankruptcy order, including where:

(a) The debtor continues to carry on business and the court believes that, given a fair chance, the debtor will be able to meet its obligations to creditors.[24] Here, Crystallex continues to carry on business by prosecuting the arbitration and will be able to meet its obligation to creditors if given a fair chance to conclude the arbitration.

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[19] *Re Beetown Honey Products Inc.* (2003), 67 O.R. (3d) 511 (Ont. S.C.J.) at para. 22, aff'd (2004), 3 C.B.R. (5th) 2004 (Ont. C.A.) (Supplementary Brief of Authorities of Crystallex ("Crystallex SBOA"), Tab 2);

[20] *Sumner Company (1984) Limited* (1987), 64 C.B.R. (N.S.) 218 (N.B.Q.B.) at paras. 37 (Crystallex SBOA, Tab 3)

[21] Houlden and Morawetz on Bankruptcy Law of Canada p. E§51 quoted in *Sumner Company (1984) Limited* (1987), 64 C.B.R. (N.S.) 218 (N.B.Q.B.) at paras. 37-39 and 42 (Crystallex BOA, Tab 4)

[22] BIA, s. 59(2)

[23] BIA, s. 43(1)

[24] Houlden and Morawetz, *Bankruptcy and Insolvency Law of Canada*, D§38 (Crystallex SBOA, Tab 5)

(b) Nothing is to be gained by bankruptcy, assets are not being dissipated, and the bankruptcy would only mean incurring additional costs.[25] In *Poulin v. 160401 Canada Inc.*[26] for example, the court dealt with a debtor company whose principal asset was land in Venezuela. The court found that the directors of the company were in a better position than the proposed trustee to find a buyer for the property. The court found that making a receiving order would not confer any benefit on stakeholders but would only give rise to administrative costs.[27]

(c) The bankruptcy is motivated by an ulterior purpose.[28] The use of bankruptcy proceedings to pay creditors more than they are owed subverts the fundamental purpose of the BIA, which is to provide for "the orderly and fair distribution of the property of a bankrupt among its creditors on a *pari passu* basis.[29]

C. Tenor Loan is Consistent with DIP Financing Principles

38. In their principal and reply facta on the Motion for Leave to Appeal, the Noteholders pose a number of questions for appeal about the "extent to which" a Judge can approve a DIP with certain types of provisions. In doing so the Noteholders would narrowly fetter the Court's discretion to approve DIP financing in a way that Parliament has expressly rejected.

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[25] Houlden and Morawetz, *Bankruptcy and Insolvency Law of Canada*, D§38 (Crystallex SBOA, Tab 5)

[26] 1989 CarswellQue 43 (Crystallex SBOA, Tab 6)

[27] *Poulin v. 160401 Canada Inc.*, 1989 CarswellQue 43 (Crystallex SBOA, Tab 6)

[28] See: *Re Ivaco Inc.*, 2005 CarswellOnt 3445 (SCJ) (Crystallex SBOA, Tab 7) and Houlden and Morawetz, *Bankruptcy and Insolvency Law of Canada*, D§38 (Crystallex SBOA, Tab 6)

[29] *Dimples Diapers Inc. v. Paper Board Industries Corp.*, 1992 CarswellOnt 192 at paras. 34-37 (Crystallex SBOA, Tab 8); *Re Rizzo & Rizzo Shoes Ltd.*, 1998 CarswellOnt 528 (CA) at paras. 28-33 (Crystallex SBOA, Tab 9); *Re Lambert*, 2002 CarswellOnt 2659 (CA) at para. 40 (Crystallex SBOA, Tab 10)

39. When enacting s.11.2(4), Parliament took a deliberately flexible approach to all of "the extent to which" questions the Noteholders pose. While section 11.2(4) of the CCAA provides the Court with some factors to consider when exercising that discretion, it leaves the discretion completely unfettered.

40. This stands in marked contrast to the U.S. Bankruptcy Code which requires a debtor to give "adequate protection" to secured creditors who are being primed by DIP financing, usually by providing replacement value that is the "indubitable equivalent" of the security being subordinated.[30]

41. The CCAA takes a fundamentally different approach. It requires courts to balance the interests of all stakeholders and permits DIP financing that primes secured creditors if the benefit of the DIP financing to *all* stakeholders outweighs the potential prejudice to the creditor being subordinated.[31]

42. Although section 11.2(4)(f) of the CCAA asks the court to consider whether a creditor would be materially prejudiced as a result of the DIP, that factor is not determinative.[32] The Court must balance all considerations and come to a "fair and reasonable" result.[33]

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[30] C. Atlas and K. Andersen, "DIP Super Priorities and the Secured Creditor's Dilemma", Annual Review of Insolvency Law, 2009 ANNREVINSOLV 6 at p. 5 (Crystallex SBOA, Tab 11)

[31] *United Used Auto Truck Parts Ltd. (Re)*, 1999 CarswellBC 2673 at para. 28 (Crystallex SBOA, Tab 12); Rotsztain, Michael B., *Debtor-In-Possession Financing in Canada: Current Law and a Preferred Approach*, (2000) 33 Can. bus. L.J. 283 at 286 and 287, quoting from Blair J. in *Re Skydome Corp.* unreported Endorsement, November 27, 1998, Ontario Court, General Division, Court File No. 98-CL-3179 (Crystallex SBOA, Tab 13)

[32] *Pacific Shores Resort & Spa Ltd. (Re)*, 2011 CarswellBC 3500 at para. 49 (Crystallex SBOA, Tab 14); Rotsztain, Michael B., *Debtor-In-Possession Financing in Canada: Current Law and a Preferred Approach*, (2000) 33 Can. bus. L.J. 283 at 287 quoting from Blair J. in *Re Skydome Corp.* unreported Endorsement, November 27, 1998, Ontario Court, General Division, Court File No. 98-CL-3179 (Crystallex SBOA, Tab 13)

[33] *Canadian Airlines Corp. (Re)*, [2000] A.J. No. 771 at para. 94 (Crystallex SBOA, Tab 15) quoting Blair J. in *Olympia & York Development Ltd. v. Royal Trust Co.*, (2003) O.R. (3d) 500 (Ont. Ct.) at p. 2 (Crystallex SBOA, Tab 16)

43. Although section 11.2(4) leaves the Judge's discretion unfettered, that discretion must be exercised judicially. In weighing the factors relevant to an individual case, the court may answer the Noteholders "extent to which questions" in the restrictive way the Noteholders urge or in a more liberal way as circumstances warrant.

44. In addition to the factors discussed at paragraphs 41-46 and 59-62 of Crystallex's factum on the leave to appeal motion, jurisprudence has established a number of other factors as set out below that guide the exercise of judicial discretion.

45. **The Prejudice to creditors.**[34] Less prejudice to creditors may justify a more liberal approach to the loan. Here, the DIP causes little if any prejudice to creditors. The result of the arbitration will likely be binary. Either Crystallex will fail and get nothing or it will succeed and obtain a recovery significantly in excess of that required to pay creditors. The former scenario, does not prejudice the Noteholders because the priority of the Tenor DIP in the absence of proceeds is irrelevant. In the latter scenario, Tenor's priority over $36 million plus 10% interest does not prejudice the Noteholders when they estimate an award of between $300 and $400 million.[35] Moreover, since the Tenor DIP reflects market rates it will not reduce the amount available to pay creditors their claims more than any other arm's length loan would.

46. **How the company's business and financial affairs are to be managed.**[36] Where the debtor has acted questionably, the court may take a more restrictive approach because the

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[34] CCAA, s. 11.2(4)(f)

[35] Expert Report of Glenn Saunby dated March 29, 2012 ("Saunby Report") at paras. 93 and 94 (Noteholders Confidential Motion Record, Vol. 6, Tab 26A, p. 1873-1875)

[36] CCAA, s. 11.2(4)(f)

prejudice to creditors may be greater in those circumstances. Here, there is no such allegation. On the contrary, the Noteholders' plan would retain at least two of the existing Board members,[37] the Noteholders admit they need management to prosecute the arbitration,[38] the Noteholders admit that the arbitration is largely in the hands of Freshfields,[39] the Tenor loan provides that Freshfields cannot be removed and that Crystallex cannot refuse to follow Freshfields' advice unless four out of five directors agree.[40]

47. **The nature and value of the company's property.**[41] Rapidly depreciating property may lead the court to adopt a more restrictive approach to DIP financing if the DIP encourages the debtor to retain the property. Similarly, assets that can be easily liquidated may also lead to a more restrictive approach because a larger, longer term DIP secured against such assets may effectively remove a creditor's choice of continuing in a CCAA or liquidating assets in a bankruptcy. Here, the arbitration claim cannot be liquidated. The only way to monetize it is through its long term prosecution.

48. **The degree of viability of the restructuring.**[42] Where a successful business outcome is highly likely, a more liberal approach to DIP financing may be warranted. Where success

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[37] Affidavit of Carol Mattoni sworn March 27, 2012 ("Mattoni Confidential March Affidavit"), Exhibit "P", p. 2 (Noteholders Confidential Motion Record, Vol. 6, Tab 25P, p. 1813). See also *Patient Care Automation Services Inc.* (Re), 2012 CarswellOnt 4733 (Ont. S.C.J.) at para. 4 (Crystallex SBOA, Tab 17); *Scanwood Canada Ltd. (Re)*, 2011 CarswellNS 563 (N.B.S.C.) (Crystallex SBOA, Tab 18) taking into account the good faith behaviour of management.

[38] Indeed, the Noteholders' plan contains its own MIP to incentivize management to remain with the Company and prosecute the arbitration.

[39] Mattoni Confidential March Affidavit at para. 25 (Noteholders Confidential Motion Record, Vol. 5, Tab 25, p. 1340)

[40] Tenor DIP, s. 6.16(b)(iii) and (v)(Noteholders Confidential Motion Record, Vol. 5, Tab 23(2), p. 1235-1236)

[41] CCAA, s. 11.2(4)(e)

[42] *Re Westar Mining Ltd.* (1992), 14 C.B.R. (3d) 88 (Crystallex SBOA, Tab 19); *Re T. Eaton Co.* (1997), 46 C.B.R. (3d) 293 (Ont. Ct.) (Crystallex SBOA, Tab 20)

is less likely, a more restrictive approach may be appropriate. Here, everyone agrees the arbitration must be pursued and is likely to succeed.

49. **The extent to which a going-concern operation is preferable to a liquidation.**[43] There can be no doubt that a going concern operation that allows Crystallex to prosecute the arbitration is preferable to a liquidation. Since the arbitration claim cannot be sold, a liquidation will result in nothing. If, as they claim, the Noteholders merely want to be paid the principal and interest owing on the notes, the only way of doing so is to prosecute the arbitration.

50. **Use of the DIP proceeds.** Where the proceeds of the DIP are being used merely to "keep the lights on" a more restrictive approach may be appropriate. Where the proceeds are used to generate revenue, a more liberal approach may be appropriate because creditors will benefit from the generation of revenue.[44] The sole purpose of the Tenor DIP is to let Crystallex generate revenue by prosecuting the arbitration.

51. **Beneficiaries of the DIP.**[45] If the DIP benefits a smaller group of stakeholders, a more restrictive approach may be appropriate. If it benefits all stakeholders, a more liberal approach may be appropriate. Here the Tenor DIP benefits all stakeholders equally.

52. **The size of DIP in relation to the overall numbers.**[46] Where the DIP is large in relation to overall numbers, a more restrictive approach may be appropriate. Where it is

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[43] *Re Intertan Canada Limited,* 49 C.B.R. (5th) 248, 2008 CarswellOnt 8040 (SCJ) at paras. 56 and 69 (Crystallex SBOA, Tab 21)

[44] Rotsztain, Michael B., *Debtor-In-Possession Financing in Canada: Current Law and a Preferred Approach,* (2000) 33 Can. Bus. L.J. 283 at 285, 292. Previous two principles also come from Rotsztain. (Crystallex SBOA, Tab 13)

[45] Rotsztain, Michael B., *Debtor-In-Possession Financing in Canada: Current Law and a Preferred Approach,* (2000) 33 Can. bus. L.J. 283 at 292 (Crystallex SBOA, Tab 13)

smaller, a more liberal approach may be more appropriate. Here the a DIP of $36 million is very small in relation to Crystallex's $3.4 billion claim and still relatively small in relation to the Noteholders' estimated arbitral recovery of $300-$400 million.

53. **The Degree of Financial Need.**[47] The greater the degree of need the more liberal an approach may be appropriate. There is no dispute that Crystallex needs money to fund the arbitration. The Tenor DIP provides liquidity as required by the cash flow statements. The Noteholders' DIP of $10 million would, however, be exhausted before the end of May.[48]

54. **Reaction of Others:**[49] If the DIP helps retain the confidence of other parties, most commonly trade creditors and suppliers, it may also warrant a more liberal approach. Here, a DIP of $36 million sends a message to the Venezuelan government that Crystallex has the wherewithal to prosecute the arbitration vigorously; a factor that will assist settlement. The Noteholders' DIP of $10 million would only encourage Venezuela to delay and obstruct in the hopes of forcing Crystallex to abandon the arbitration.[50]

55. **The reasonableness of the financing terms.**[51] Unreasonable terms may lead the court to limit or reject a DIP. Here, the terms are the product of an independent market auction. The Noteholders do not dispute the fact that the terms reflect market demands. As

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[46] Rotsztain, Michael B., *Debtor-In-Possession Financing in Canada: Current Law and a Preferred Approach*, (2000) 33 Can. bus. L.J. 283 at 285 (Crystallex SBOA, Tab 13)

[47] *Timminico Ltd. (Re)*, 2012 CarswellOnt 1466 at para. 43-44 (Crystallex SBOA, Tab 23); *Re Canwest Global Communications Corp.* (2009), 59 C.B.R. (5th) 72 (Ont. S.C.J.) at para. 33 (Crystallex SBOA, Tab 23)

[48] Cash Flow Statements, Appendix B to Third Monitors Report (Noteholders Confidential Motion Record, Vol. 7, Tab 30, p. 2004)

[49] *Canwest Publications*, 2010 CarswellOnt 212 at para. 43 (Crystallex SBOA, Tab 24)

[50] Confidential Affidavit of Robert Fung sworn March 20, 2012 ("Fung Confidential Affidavit") at para. 59(e) (Noteholders Confidential Motion Record, Vol. 4, Tab 20, p. 842)

[51] *Canwest Publications*, 2010 CarswellOnt 212 at para. 45 (Crystallex SBOA, Tab 24)

noted earlier, the Tenor loan allows it to convert into exit financing when Crystallex emerges from CCAA protection, thereby eliminating the risk and cost of a second round of financing and allowing Crystallex to approach creditors with a plan that is already fully financed. While obtaining the right to nominate two directors is a less common provision in DIP loans, it is the by-product of Tenor's very restricted ability to enforce its rights on any default. Since Tenor cannot seize, sell or settle the arbitration, the presence of two directors at least give it a window into how it's funds are being used to advance the arbitration.

56. **Broader social concerns.** More wide-ranging social and economic consequences of a liquidation or a public interest in maintaining the enterprise, may warrant a more liberal approach to DIP financing.[52] Here, Canada has decided as a matter of public policy to enter into a bilateral investment treaty with Venezuela. The treaty directly protects Canadian companies that invest in Venezuela and indirectly protects those who invest in such companies. Depriving Crystallex of the Tenor DIP makes those protections subject to the compulsion the Noteholders can impose by forcing Crystallex to negotiate a premium with them under a damoclean sword of imminent financial collapse.

D. The Standard of Review

57. As with any discretionary decision, it is impossible to determine in advance how the factors set out above are to be weighed in any particular case. In many cases, a number of the factors may be irrelevant. In other cases, a single factor may have such an overwhelming impact that it alone drives the exercise of judicial discretion. This is precisely why appellate courts are so reluctant to interfere with a lower court's exercise of discretion. The proper

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[52] Rotsztain, Michael B., *Debtor-In-Possession Financing in Canada: Current Law and a Preferred Approach*, (2000) 33 Can. bus. L.J. 283 292 (Crystallex SBOA, Tab 13)

exercise of discretion requires intimate familiarity with the entire record and the history of the case. The manner in which the issue comes to an appellate court deprives the court of that narrative history and factual detail. The lower court also has a more immediate and detailed sense of how to calibrate the various "carrots and sticks" available under the CCAA to guide parties towards the completion of a successful plan.

58. In addition to the standard of review set out in paragraphs 31-34 of its factum on the leave to appeal motion, Courts have long stated that the exercise of discretion by a supervising judge is not a matter for interference by an appellate court even if the appellate court were inclined to decide the matter another way.[53]

59. Newbould J. based the exercise of his discretion to approve the Tenor DIP on a wide variety of findings of fact, all capable of evidentiary support in the record. Even if the Noteholders were able to identify an error in those findings, the error must be palpable and overriding for them to succeed on appeal. Where, as here, Newbould J.'s fundamental findings of fact are themselves based on a constellation of individual findings, the fact that the Noteholders might be able to establish that one or more of the individual findings is based on a "palpable" error does not automatically mean that the error is also "overriding." To succeed on appeal the Noteholders must demonstrate that the error goes to the root of the challenged finding of fact such that the fact cannot safely stand in the face of the error.[54]

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[53] *Resurgence Asset Management LLC v. Canadian Airlines Corporation*, 2000 CarswellAlta 503 (CanLII) at para. 35 (Crystallex BOA, Tab 11)

[54] *Waxman v. Waxman*, 2004 CanLII 39040(ON CA) para. 297 (Crystallex SBOA, Tab 25)

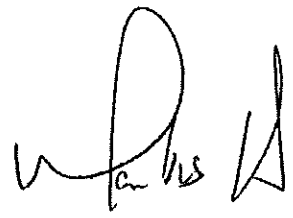
PART IV - ORDER REQUESTED

60. Crystallex requests that this appeal be dismissed with costs.

RESPONDENT'S CERTIFICATE

61. Crystallex estimates that it will require 2 hours for oral argument. Crystallex certifies that an order under Rule 61.09(2) is not required.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of May, 2012.



Andrew J.F. Kent
Markus Koehnen
Jeffrey Levine
McMILLAN LLP

Lawyers for Crystallex International Corporation

SCHEDULE "A" -
LIST OF AUTHORITIES

1. *Re Beetown Honey Products Inc.* (2003), 67 O.R. (3d) 511 (Ont. S.C.J.)
2. *Re Beetown Honey Products Inc.* (2004), 3 C.B.R. (5th) 204 (Ont. C.A.)
3. *Sumner Company (1984) Limited* (1987), 64 C.B.R. (N.S.) 218 (N.B.Q.B.)
4. Houlden and Morawetz "*Bankruptcy and Insolvency Law of Canada*", E§51
5. Houlden and Morawetz "*Bankruptcy and Insolvency Law of Canada*", D§38
6. *Poulin v. 160401 Canada Inc.*, 1989 CarswellQue 43 (Que. Sup. Ct.)
7. *Re Ivaco Inc.*, 2005 CarswellOnt 3445 (Ont. S.C.J.)
8. *Dimples Diapers Inc. v. Paper Board Industries Corp.*, 1992 CarswellOnt 192 (Ont. Ct.)
9. *Re Rizzo & Rizzo Shoes Ltd.*, 1998 CarswellOnt 528 (Ont. C.A.)
10. *Re Lambert*, 2002 CarswellOnt 2659 (Ont. C.A.)
11. C. Atlas and K. Andersen, "DIP Super Priorities and the Secured Creditor's Dilemma", *Annual Review of Insolvency Law*, 2009 ANNREVINSOLV 6
12. *United Used Auto Truck Parts Ltd. (Re)*, 1999 CarswellBC 2673 (B.C.S.C.)
13. M.B. Rotsztain, *Debtor-In-Possession Financing in Canada: Current Law and a Preferred Approach*, (2000) 33 Can. bus. L.J. 283
14. *Pacific Shores Resort & Spa Ltd. (Re)*, 2011 CarswellBC 3500 (B.C.S.C.)
15. *Canadian Airlines Corp. (Re)*, [2000] A.J. No. 771 (Alta. Q.B.)
16. *Olympia & York Development Ltd. v. Royal Trust Co.*, (2003) O.R. (3d) 500 (Ont. Ct.)
17. *Re Patient Care Automation Services Inc.*, 2012 CarswellOnt 4733 (Ont. S.C.J.)
18. *Re Scanwood Canada Ltd.*, 2012 CarswellNS 563 (N.B.S.C.)
19. *Re Westar Mining Ltd.* (1992), 14 C.B.R. (3d) 88 (B.C.S.C.)
20. *Re T. Eaton Co.* (1997), 46 C.B.R. (3d) 293 (Ont. Ct.)
21. *Re Intertan Canada Limited,* 49 C.B.R. (5th) 248 (Ont. S.C.J.)

22. *Timminico Ltd. (Re)*, 2012 CarswellOnt 1466 (Ont. S.C.J.)

23. *Re Canwest Global Communications Corp.* (2009), 59 C.B.R. (5th) 72 (Ont. S.C.J.)

24. *Canwest Publications*, 2010 CarswellOnt 212 (Ont. S.C.J.)

SCHEDULE "B" -
RELEVANT STATUTES

***Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36**

Marginal note: Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Marginal note: Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Marginal note: Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Marginal note: Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

Removal of directors

11.5 (1) The court may, on the application of any person interested in the matter, make an order removing from office any director of a debtor company in respect of which an order has been made under this Act if the court is satisfied that the director is unreasonably impairing or is likely to unreasonably impair the possibility of a viable compromise or arrangement being made in respect of the company or is acting or is likely to act inappropriately as a director in the circumstances.

Bankruptcy and Insolvency Act R.S.C., 1985, c. B-3

Right of bankrupt to surplus

144. The bankrupt, or the legal personal representative or heirs of a deceased bankrupt, is entitled to any surplus remaining after payment in full of the bankrupt's creditors with interest as provided by this Act and of the costs, charges and expenses of the bankruptcy proceedings.

R.S., 1985, c. B-3, s. 144;

2004, c. 25, s. 71.

Bankruptcy application

43. (1) Subject to this section, one or more creditors may file in court an application for a bankruptcy order against a debtor if it is alleged in the application that

- (*a*) the debt or debts owing to the applicant creditor or creditors amount to one thousand dollars; and
- (*b*) the debtor has committed an act of bankruptcy within the six months preceding the filing of the application.

CONFIDENTIAL

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

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

(the "Applicant")

Court of Appeal File No. C55434
Motion for Leave to Appeal File No. M41032
and
Court of Appeal File. No. C55435
Motion for Leave to Appeal File No. M41270

COURT OF APPEAL FOR ONTARIO

Proceeding commenced at Toronto

SUPPLEMENTARY CONFIDENTIAL RESPONDING FACTUM OF CRYSTALLEX INTERNATIONAL CORPORATION
(Appeal to be heard May 11, 2012)

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

AFFIDAVIT OF JOSH SLOAN
SWORN MARCH 25, 2026

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	[●] , THE [●]
	)	
JUSTICE CONWAY	)	DAY OF [●], 2026

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

CREDITOR ENTITLEMENT AND DISTRIBUTION ORDER

THIS MOTION made by Computershare Trust Company of Canada in its capacity as replacement trustee (the "**Trustee**") pursuant to that certain Trust Indenture dated December 23, 2004 (the "**Indenture**"), as supplemented by a First Supplemental Trust Indenture made by Crystallex dated December 23, 2004 (the "**First Supplemental Indenture**" and, collectively with the Indenture, the "**Trust Indenture**") pursuant to which Crystallex International Corporation ("**Crystallex**") issued U.S.$100,000,000 in principal amount of senior 9.375% notes (the "**Notes**") due December 23, 2011, together with the *ad hoc* committee of certain beneficial holders of the Notes (the "**Ad Hoc Noteholder Committee**") for the relief sought pursuant to the Notice of Motion dated March 26, 2026, including an Order, *inter alia*, establishing the Proven Noteholder Claim (as defined below) and ordering that Crystallex shall pay (i) the Proven Noteholder Claim and the Trustee Post-Standstill Order Fees and Expenses Claim (as defined below), together with all interest accrued thereon in accordance with the terms of the Trust Indenture and any other

obligations owing under the Trust Indenture, in full in U.S. dollars, and (ii) the proven claims of all other pre-filing creditors together with all interest accrued thereon in full in accordance with their contractual entitlements, in each case in accordance with the Waterfall Provision forthwith after Arbitration Proceeds are received by Crystallex, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING (i) the Affidavit of Scott Reid sworn March 26, 2026, and the exhibits thereto (the "**Reid Affidavit**"); (ii) the Affidavit of Josh Sloan sworn March 25, 2026, and the exhibit thereto; (iii) the [●] Report of the Monitor dated [●], 2026, [**and** ●], and on hearing the submissions of counsel for the Trustee and the Ad Hoc Noteholder Committee, Crystallex, Tenor Capital Management, [●], and Ernst & Young Inc., in its capacity as Court-appointed monitor of Crystallex (in such capacity, the "**Monitor**"), and the other parties that were present as reflected on the participant information form, no one appearing for any other party although duly served as appears from the certificate of service, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

DEFINITIONS

2. **THIS COURT ORDERS** that capitalized terms used and not otherwise defined herein shall have the meaning ascribed thereto in the Stay Extension and Standstill Order of this Court dated June 5, 2013 (the "**Standstill Order**").

PROVEN NOTEHOLDER CLAIM

3. **THIS COURT ORDERS** that U.S.$492,138,055.72 is due and payable by Crystallex to the Trustee on account of the Notes as at March 31, 2026, being the Proven Standstill Noteholder Claim plus interest thereon through such date (the "**Proven Noteholder Claim**"), exclusive of the fees and reimbursable costs and expenses of the Trustee for the period from and after June 6, 2013 (the "**Trustee Post-Standstill Order Fees and Expenses Claim**").

INTEREST

4. **THIS COURT ORDERS** that interest continues to accrue and Crystallex shall pay interest on (i) the Notes, including all outstanding interest thereon and all other obligations under the Trust Indenture (including, for the avoidance of doubt, the entirety of the Proven Noteholder Claim), in accordance with the terms of the Trust Indenture, and (ii) the proven claims of all other creditors in accordance with the terms of their contractual entitlements, in each case until such claims are satisfied in full by Crystallex.

5. **THIS COURT ORDERS** that, for reference purposes, the Proven Noteholder Claim, together with interest thereon calculated in accordance with paragraph 3 hereof through a given reference date is as set forth on Schedule "A" hereto. For the avoidance of any doubt, the amounts set forth on Schedule "A" do not include: (i) the Trustee Post-Standstill Order Fees and Expenses Claim and interest accrued thereon, (ii) any other obligations owing by Crystallex under the Trust Indenture, including, without limitation, any obligation of Crystallex to pay Additional Amounts (as such term is defined in Section 6.1 of the First Supplemental Indenture), or (iii) the Trustee Pre-Filing Fees and Expenses Claim.

6. **THIS COURT ORDERS** that, for greater certainty, the Prefiling Unsecured Creditors' Charge (as defined in the CCAA Financing Order of the Court dated April 16, 2012), shall secure: (i) the Proven Noteholder Claim and the Trustee Post-Standstill Order Fees and Expenses Claim, together with all interest accrued thereon from time to time, and (ii) all interest accrued on the proven claims of all other creditors from time to time.

TRUSTEE POST-STANDSTILL ORDER FEES AND EXPENSES CLAIM

7. **THIS COURT ORDERS** that the Trustee Post-Standstill Order Fees and Expenses Claim shall be in the amount of U.S.$[●], such amount having been agreed upon by Crystallex and the Trustee and the Ad Hoc Noteholder Committee, with the consent of the Monitor.

DISTRIBUTIONS

8. **THIS COURT ORDERS** that Crystallex shall pay (i) the Proven Noteholder Claim and the Trustee Post-Standstill Order Fees and Expenses Claim, together with all interest accrued thereon and any other obligations owing under the Trust Indenture (including, without limitation, any Additional Amounts) to the Trustee in full in U.S. dollars, and (ii) the proven claims of all other pre-filing creditors, together with all interest accrued thereon, in full, in each case in accordance with the Waterfall Provision forthwith after Arbitration Proceeds are received by Crystallex, free from any reduction for set-off or any other counter-claims (whether past, present or future).

TRUSTEE PRE-FILING FEES AND EXPENSES CLAIM

9. **THIS COURT ORDERS** that, for the avoidance of any doubt, in addition to the Proven Noteholder Claim and the Trustee Post-Standstill Order Fees and Expenses Claim, the Trustee Pre-

Filing Fees and Expenses Claim shall remain as a separate irrevocable proven claim of the Trustee against Crystallex in accordance with the terms of the Standstill Order.

GENERAL

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States or elsewhere, to give effect to this Order and to assist the Monitor, the Trustee and the Ad Hoc Noteholder Committee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, and the Trustee and the Ad Hoc Noteholder Committee as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Monitor, the Trustee and the Ad Hoc Noteholder Committee and their respective agents in carrying out the terms of this Order.

11. **THIS COURT ORDERS** that each of the Monitor and the Trustee and the Ad Hoc Noteholder Committee be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

SCHEDULE "A"

PROVEN NOTEHOLDER CLAIM PLUS INTEREST THROUGH REFERENCE DATE

Reference Date	**31-Mar-26**	**31-Dec-26**	**30-Jun-27**	**31-Dec-27**
Proven Noteholder Claim (A)	$492,138,055.72	$492,138,055.72	$492,138,055.72	$492,138,055.72
Additional Interest (B)	$0.00	$36,013,759.02	$61,143,783.62	$87,916,251.64
Total (A) + (B)	**$492,138,055.72**	**$528,151,814.74**	**$553,281,839.34**	**$580,054,307.36**

***** All amounts referenced are in U.S. dollars

****** Does not include (i) the Trustee Post-Standstill Order Fees and Expenses Claim and interest accrued thereon, (ii) any other obligations owing by Crystallex under the Trust Indenture, including, without limitation, any obligation of Crystallex to pay Additional Amounts, or (iii) the Trustee Pre-Filing Fees and Expenses Claim.

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

CREDITOR ENTITLEMENT AND DISTRIBUTION ORDER

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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

PLAN OF COMPROMISE AND ARRANGEMENT

pursuant to the *Companies' Creditors Arrangement Act*
concerning, affecting and involving

CRYSTALLEX INTERNATIONAL CORPORATION

DATED [●], 2026

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PLAN OF COMPROMISE AND ARRANGEMENT

pursuant to the *Companies' Creditors Arrangement Act*
concerning, affecting and involving

CRYSTALLEX INTERNATIONAL CORPORATION

DATED [●], 2026

ARTICLE 1
INTERPRETATION

1.1 Certain Definitions

In this Plan, the following capitalized terms shall have the meanings given to them below:

"**Additional Plan Consideration**" means an amount in U.S. dollars to be agreed to by the Company, the DIP Lender and the Noteholder Committee, with the consent of the Monitor;

"**Administration Charge**" means the Court-ordered administration charge granted in the Initial Order in an amount not to exceed CAD$3,000,000;

"**Administrative Reserve**" has the meaning given to such term in Section 5.2;

"**Affected Claim**" means any Pre-filing Claim, Restructuring Claim and the Aggregate Allowed Noteholder Claim, but excludes any Unaffected Claim;

"**Affected Creditor**" means any Creditor with an Affected Claim, but only with respect to and the extent of such Affected Claim;

"**Affected Creditors Class**" means the class of Creditors comprised solely of Affected Creditors grouped for the purposes of considering and voting on this Plan and receiving distributions hereunder;

"**Affiliate**" means, with respect to any corporation, partnership, limited partnership, trust, joint venture, or other entity, any other corporation, partnership, limited partnership, trust, joint venture or other entity that: (a) Controls, (b) is Controlled by or (c) is under common Control with, such corporation, partnership, limited partnership, trust, joint venture or other entity;

"**Aggregate Allowed Noteholder Claim**" has the meaning given to such term in Section 4.1(a) hereof;

"**Aggregate Reserve Amount**" means the aggregate amount of the Reserves from time to time;

"**Agreement**" means any agreement, whether written or oral, of any nature, including any contract, lease, instrument or credit document, and any and all amendments, modifications or supplements thereto;

"**Allowed Affected Claim**" means any Affected Claim or portion thereof that has been determined or deemed to be a Proven Claim for distribution purposes in accordance with the provisions of the Claims Procedure Order or this Plan, and, for greater certainty, includes the Aggregate Allowed Noteholder Claim and each Allowed General Creditor Claim;

"**Allowed General Creditor Claim**" has the meaning given to such term in Section 4.2(b) hereof;

"**Applicable Law**" means, with respect to any Person, property, transaction, event or other matter, any Law relating or applicable to such Person, property, transaction, event or other matter, including, where appropriate, any interpretation of the Law (or any part) by any Person, court or tribunal having jurisdiction over it, or charged with its administration or interpretation;

"**Arbitration Award**" means the award granted by ICSID in favour of the Company dated April 4, 2016 (ICSID Case No. ARB(AF)/11/2), which award includes monetary damages of $1.202 billion, together with interest thereon;

"**Arbitration Proceeding**" means the prosecution of all present or future claims of the Company or any of its Affiliates against Venezuela or any other Person (including PDVSA) in respect of any and all of the investments in Venezuela of the Company or any of its Affiliates or any of their respective successors or assigns, including in the Las Cristinas mines, in any court, or before any panel or decision-making body of any kind, including in the arbitration proceeding before the arbitral tribunal appointed under the rules of ICSID seated in Washington, D.C. under reference Crystallex International Corporation v. Bolivarian Republic of Venezuela (ICSID Case No. ARB(AF)/11/2) or any other claim, action, arbitration, litigation or other proceeding by the Company or any of its Affiliates against Venezuela or any other Person in respect of the foregoing, including as relates to any enforcement of the Arbitration Award;

"**Arbitration Proceeds**" means all past, present and future proceeds, value or remuneration of any kind in any form, including property, assets, Cash, bonds, securities, or any other form of payment (including any interest on the Arbitration Award or any judgment related thereto), in each case paid, payable, owing, or due to, or recovered, received or to be received by, the Company or any of its Affiliates or any of their respective successors or assigns from, or from the assets or property of, Venezuela (including any *alter ego* thereof), PDVSA, Affiliates of PDVSA (including PDV Holding, Inc. or any Affiliate thereof), any other instrumentality of Venezuela, or any other Person, pursuant to or in respect of any settlement, award, collection, judgment, sale, disposition, agreement, enforcement or any other monetization of any kind of, or relating in any way to, the Arbitration Award, any Arbitration Proceeding or any other present or future claim, action, arbitration, litigation, proceeding, judgment, settlement, award, collection or proceeds relating in any way to the Arbitration Award or any Arbitration Proceeding, including all past, present and future amounts received by the Company through or in any way relating to any settlement with Venezuela or the PDVH Enforcement Action. As used herein, Arbitration Proceeds shall be deemed to include any "Arbitration Proceeds" as such term is defined in the DIP Credit Agreement;

"**Available Cash**" means, from time to time, all Cash held or received by the Company, or on its behalf, from whatever source, including but not limited to the Company's Cash on hand and any Arbitration Proceeds received by the Company from time to time in Cash or that have been

monetized or converted to Cash pursuant to Section 5.1 hereof, but shall not include any Cash held in a Reserve unless and until released from such Reserve in accordance with the terms of this Plan;

"**BIA**" means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended to the Filing Date;

"**Business Day**" means a day, other than a Saturday, Sunday or statutory holiday, on which banks are generally open for business in Toronto, Ontario, Canada;

"**Cash**" means all cash on hand and cash equivalents (including marketable securities and short-term investments), bank deposits (whether in chequing, savings, money market, or other deposit accounts), certificates of deposit, bankers' acceptances, commercial paper, treasury bills, money orders, negotiable instruments, and all other liquid funds or near-cash items, in each case whether denominated in U.S. dollars, Canadian dollars or any foreign currency, together with all accrued and unpaid interest thereon;

"**Causes of Action**" means any and all claims, actions, causes of action, demands, counterclaims, suits, rights, entitlements, litigation, liabilities, arbitrations, proceedings, hearings, complaints, debts, obligations, sums of money, accounts, covenants, damages, judgments, orders (including for injunctive relief or specific performance and compliance orders), expenses, interest, costs, executions, and other recoveries of whatever nature that any Person has asserted or may be entitled to assert in law, equity or otherwise, including by reason of the commission of a tort (intentional or unintentional), by reason of any breach of contract or other agreement (oral or written), by reason of any breach of duty (including any legal, statutory, equitable or fiduciary duty), or by reason of any right of ownership of or title or entitlement to property or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise), and whether known or unknown, foreseen or unforeseen, reduced to judgment or not reduced to judgment, liquidated or unliquidated, contingent or non-contingent, matured or unmatured, disputed or undisputed, secured or unsecured, by guarantee, surety or otherwise, executory or anticipatory, assertable directly, indirectly, derivatively or through contribution or indemnity, existing or hereafter arising, and "**Cause of Action**" means any of the foregoing;

"**CCAA**" means the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended to the Filing Date;

"**CCAA Proceedings**" means the proceedings commenced in respect of the Company in the Court under the CCAA as contemplated by the Initial Order;

"**Charges**" means the Administration Charge, the DIP Charge, the Directors' Charge, the Prefiling Unsecured Creditors' Charge, the MIP Charge, and the Lender Additional Compensation Charge;

"**Claim**" has the meaning given to such term in the Claims Procedure Order; provided that Claim as used herein shall be deemed to include the Noteholder Claim;

"**Claimant**" means a Person asserting a Claim;

"**Claims Bar Date**" means the General Claims Bar Date and the Restructuring Claims Bar Date as such terms are defined in the Claims Procedure Order;

"**Claims Procedure Order**" means the Order (General Claims Procedure) of the Court dated November 30, 2012 in the CCAA Proceedings;

"**Company**" means Crystallex International Corporation;

"**Contract Rate**" means the rate of interest, if any, agreed to between a General Creditor and the Company on a General Creditor Claim under the applicable written agreement, contract or other document governing such General Creditor Claim; provided that if no rate of interest was agreed between a General Creditor and the Company the rate of interest shall be deemed to be [●]%;

"**Control**" means, when applied to the relationship between a Person and a corporation, the beneficial ownership by that Person at the relevant time of shares of that corporation carrying the greater of (a) a majority of the voting rights ordinarily exercisable at meetings of shareholders of that corporation, and (b) the percentage of voting rights ordinarily exercisable at meetings of shareholders of that corporation that are sufficient to elect a majority of the directors, and when applied to the relationship between a Person and a partnership, limited partnership, trust or joint venture, means the beneficial ownership by that Person at the relevant time of more than 50% of the ownership interests of the partnership, limited partnership, trust or joint venture or the contractual right to direct the affairs of the partnership, limited partnership, trust or joint venture; and the words "**Controlled by**", "**Controlling**" and similar words have corresponding meanings; provided that a Person who Controls a corporation, partnership, limited partnership or joint venture will be deemed to Control a corporation, partnership, limited partnership, trust or joint venture which is Controlled by such Person and so on;

"**Court**" means the Ontario Superior Court of Justice (Commercial List);

"**Creditor**" means any Person having a Claim, but solely with respect to and to the extent of such Claim, including the transferee or assignee of a Claim that is recognized as a Creditor in accordance with the Claims Procedure Order or a trustee, executor, liquidator, receiver, receiver and manager, or other Person acting on behalf of or through such Person. For the avoidance of any doubt, the Noteholders and the Trustee are Creditors under this Plan;

"**Crown Priority Claims**" has the meaning given to such term in Section 7.3 hereof;

"**D&O Claim**" has the meaning given to such term in the Claims Procedure Order;

"**Directors**" means all former and current directors of the Company and "**Director**" means any one of them;

"**Directors' Charge**" means the Court-ordered directors' charge granted in the Initial Order;

"**DIP Charge**" has the meaning given to such term in the DIP Order;

"**DIP Credit Agreement**" means that certain Senior Secured Credit Agreement dated as of April 5, 2012, between the Company, as borrower, and Tenor Special Situation Fund I, LLC (and its permitted successors and assigns), as lender, as amended through the date hereof;

"**DIP Lender**" means the "Lender" as defined in the DIP Credit Agreement;

"**DIP Lender Additional Compensation**" means the Lender Additional Compensation as such term is defined in the DIP Credit Agreement;

"**DIP Obligations**" means all obligations outstanding from time to time under the DIP Credit Agreement or related credit documents that are secured by the DIP Charge, in the amount agreed to by the Company and the DIP Lender, with the prior consent of the Noteholder Committee and the Monitor. For greater certainty, the DIP Obligations shall not include the DIP Lender Additional Compensation or any obligation owing under the DIP Credit Agreement that is secured by the Lender Additional Compensation Charge;

"**DIP Order**" means the CCAA Financing Order of the Court dated April 16, 2012;

"**DIP Repayment Date**" means the date on which all DIP Obligations are paid in full pursuant to Section 7.1 hereof;

"**Distributable Amount**" means the amount of Available Cash less the Aggregate Reserve Amount;

"**Distribution Date**" means the date or dates set from time to time to effect distributions in respect of the Allowed Affected Claims pursuant to this Plan, and for greater certainty includes the Initial Distribution Date and the Final Distribution Date;

"**Effective Time**" means 12:01 a.m. on the Plan Implementation Date;

"**Employee Priority Claims**" has the meaning given to such term in Section 7.4 hereof;

"**Equity Claim**" has the meaning given to such term in section 2(1) of the CCAA;

"**Equity Claimant**" means any Person with an Equity Claim or the holder of an Equity Interest, but only in such capacity;

"**Equity Interest**" has the meaning given to such term in section 2(1) of the CCAA;

"**Existing Common Shares**" means the common shares in the capital of the Company that were duly issued and outstanding as at the Filing Date and excludes, for greater certainty, any amount or interest secured by the Lender Additional Compensation Charge;

"**Filing Date**" means December 23, 2011;

"**Final Distribution Certificate**" has the meaning given to such term in Section 6.2(d) hereof;

"**Final Distribution Date**" has the meaning given to such term in Section 6.2(d) hereof;

"**Final Order**" means any order, ruling or judgment of the Court, the U.S. Bankruptcy Court, or any other court of competent jurisdiction (a) as to which no appeal, leave to appeal, motion to amend, motion to alter or amend judgment, motion for rehearing or motion for new trial has been timely filed, or, if any of the foregoing has been timely filed, it has been disposed of in a manner that upholds and affirms the subject order, ruling or judgment in all material respects without the possibility for further appeal thereon; (b) in respect of which any specified time period for

instituting or filing an appeal, leave to appeal, motion for rehearing or motion for new trial shall have expired; and (c) as to which no stay is in effect;

"**First Supplemental Indenture**" has the meaning given to such term in the definition of "Trust Indenture" herein;

"**General Creditor**" means any Creditor with a General Creditor Claim;

"**General Creditor Additional Plan Consideration**" means, with respect to a particular General Creditor, the amount determined by multiplying the Additional Plan Consideration by a fraction, the numerator of which is the Allowed General Creditor Claim of such General Creditor (excluding any General Creditor Additional Plan Consideration included therein) and the denominator of which is the total of all Allowed Affected Claims (excluding any Noteholder Additional Plan Consideration and General Creditor Additional Plan Consideration included therein);

"**General Creditor Claim**" means any Affected Claim other than a Noteholder Claim;

"**General Creditor Gross-Up Amount**" has the meaning given to such term in Section 6.5(b) hereof;

"**Government Authority**" means a federal, provincial, state, territorial, municipal or other government or government department, agency or authority (including a court of law) having jurisdiction over any Person;

"**ICSID**" means the Additional Facility of the International Centre for Settlement of Investment Disputes;

"**Initial Distribution**" means the first distribution to Affected Creditors to be made on the Initial Distribution Date;

"**Initial Distribution Date**" means the first Business Day following the DIP Repayment Date on which the Distributable Amount exceeds $5,000,000; provided that it shall be the Plan Implementation Date if the Distributable Amount (after accounting for the repayment of all DIP Obligations) exceeds $5,000,000 on the Plan Implementation Date;

"**Initial Order**" means the Initial Order of the Court dated December 23, 2011, as amended;

"**Intercompany Claim**" means any Claim held by an Affiliate of the Company;

"**ITA**" means the *Income Tax Act* (Canada) and the regulations promulgated thereunder, each as amended;

"**Law**" means any law, rule, statute, regulation, order, judgment, decree, treaty or other requirement having the force of law;

"**Lender Additional Compensation Charge**" has the meaning given to such term in the DIP Order;

"**Liens**" means any security interests, trusts (whether deemed, statutory or otherwise), statutory, liens (including builders' liens), charges, mortgages, hypothecs, pledges, security deposits, letters of credit, assignments by way of security, conditional sales, title retention arrangements or other encumbrances of any kind or nature whatsoever held by any Person, and includes the Charges;

"**Meeting**" means the meeting of the Affected Creditors Class to be held on the Meeting Date called pursuant to the Meeting Order for the purpose of considering and voting on the Plan pursuant to the CCAA, and includes any adjournment, postponement or other rescheduling of such meeting in accordance with the Meeting Order;

"**Meeting Date**" means the date on which the Meeting is held in accordance with the Meeting Order;

"**Meeting Order**" means an Order of the Court in the CCAA Proceedings that, among other things, accepts the filing of this Plan and calls and sets the date for the Meeting, in form and substance satisfactory to each of the Plan Proponents in their respective sole and absolute discretion;

"**MIP**" means the MIP as defined in the MIP Order;

"**MIP Charge**" has the meaning given to such term in the MIP Order;

"**MIP Order**" means the Management Incentive Plan Approval Order of the Court dated April 16, 2012;

"**Monetization of Arbitration Proceeds**" has the meaning given to such term in Section 5.1 hereof;

"**Monitor**" means Ernst & Young Inc., solely in its capacity as the Court-appointed monitor of the Company in the CCAA Proceedings;

"**Noteholder**" means a beneficial holder of one or more Notes, including any holder of a beneficial interest in Notes;

"**Noteholder Additional Plan Consideration**" means the amount determined by multiplying the Additional Plan Consideration by a fraction, the numerator of which is the Aggregate Allowed Noteholder Claim (excluding any Noteholder Additional Plan Consideration included therein) and the denominator of which is the total of all Allowed Affected Claims (excluding any Noteholder Additional Plan Consideration and General Creditor Additional Plan Consideration included therein);

"**Noteholder Claim**" has the meaning given to such term in the Claims Procedure Order;

"**Noteholder Committee**" means the ad hoc committee of certain Noteholders represented by its legal counsel, Goodmans LLP, as such ad hoc committee may be constituted from time to time;

"**Noteholder Gross-Up Amounts**" has the meaning given to such term in Section 6.4(b) hereof;

"**Notes**" means the senior unsecured notes due December 23, 2011, in the original aggregate principal amount of $100 million issued by the Company pursuant to the Trust Indenture;

"**Officers**" means all former and current officers of the Company and "**Officer**" means any one of them;

"**Order**" means any order of the Court in the CCAA Proceedings;

"**Party**" means a party to any agreement that the Company is a party to, including this Plan, and any reference to a Party includes its successors and permitted assigns, and "**Parties**" means every Party;

"**Payment in Full**" means the indefeasible payment in full by the Company of all amounts payable on account of Allowed Affected Claims pursuant to this Plan and shall include:

(a) in respect of the Noteholders, payment in full to the Trustee, on behalf of the Noteholders, of (i) the Aggregate Allowed Noteholder Claim, (ii) any Post-Implementation Interest payable on such Aggregate Allowed Noteholder Claim (or portion thereof) pursuant to this Plan, (iii) any Noteholder Gross-Up Amounts, and (iv) all Post-Implementation Noteholder Expenses; and

(b) in respect of a General Creditor, payment in full to such General Creditor of (i) its Allowed General Creditor Claim, (ii) any Post-Implementation Interest payable on such Allowed General Creditor Claim (or portion thereof) pursuant to this Plan, and (iii) any General Creditor Gross-Up Amount to which such General Creditor is entitled pursuant to this Plan;

and "**Paid in Full**" has a correlative meaning to "Payment in Full";

"**PDVH Enforcement Action**" means *Crystallex International Corp. v. Bolivarian Republic of Venezuela* (Misc. No. 17-151-LPS) pending before the United States District Court for the District of Delaware;

"**PDVSA**" means Petróleos de Venezuela, S.A.;

"**Person**" is to be broadly interpreted and includes any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization, joint venture, Government Authority or any agency, officer or instrumentality thereof or any other entity, wherever situate or domiciled, and whether or not having legal status;

"**Plan**", "this Plan", "the Plan", "hereof", "herein", "hereto", "hereby", "hereunder" and similar expressions mean this plan of compromise and arrangement, as such Plan may be amended, varied or supplemented from time to time in accordance with the terms hereof, the Meeting Order and the Sanction Order, and includes all schedules and exhibits to this Plan and any Plan Document;

"**Plan and Distribution Matters**" means all steps, actions or matters contemplated under or in connection with the Plan, the implementation of the Plan, and all distributions and payments made by or behalf of the Company to a Creditor or other Person as directed or authorized pursuant to this Plan, including any distribution or payment (i) to Affected Creditors in respect of Allowed Affected Claims, (ii) to the DIP Lender in respect of the DIP Obligations, and (iii) from Arbitration Proceeds paid to or received by the Company;

"**Plan Document**" means any agreement or other document delivered under or in connection with this Plan;

"**Plan Implementation**" means the fulfillment, satisfaction or waiver (to the extent permitted under Section 10.4 hereof) of the conditions set out in Section 10.3 hereof and the occurrence or effecting of the steps set out in Section 9.2 hereof;

"**Plan Implementation Date**" means the Business Day on which this Plan becomes effective, which shall be the Business Day on which the Monitor delivers the certificate pursuant to Section 10.5 hereof confirming that the conditions to Plan Implementation have been fulfilled, satisfied or waived in accordance with this Plan;

"**Plan Proponents**" means each of the Company, the Monitor, the DIP Lender, the Trustee and the Noteholder Committee;

"**Post-Filing Claim**" means any claim against the Company that arose from the provision of goods or services to the Company on or after the Filing Date in the ordinary course of business, but specifically excluding: (i) any Restructuring Claim; and (ii) any claim as a result of any provision in any Agreement involving the Company that becomes operative as a result of the initiation or existence of the CCAA Proceedings or the insolvency of the Company;

"**Post-Implementation Charges**" has the meaning given to such term in Section 7.5(e) hereof;

"**Post-Implementation Interest**" has the meaning given to such term in Section 6.3 hereof;

"**Post-Implementation Noteholder Expenses**" has the meaning given to such term in Section 7.6 hereof;

"**Pre-filing Claim**" has the meaning given to such term in the Claims Procedure Order;

"**Prefiling Litigation**" means any pre-Filing Date action, suit, proceeding, application, motion, appeal or litigation, whether actual or threatened, between or involving the Company and the Noteholders (or any one of them), or the Trustee on behalf of the Noteholders (including any predecessor to the Trustee), pertaining to the Notes, including all proceedings pertaining to: (i) Ontario Superior Court of Justice (Commercial List) Court File Number CV-08-00007890-00CL; (ii) Ontario Court of Appeal Court File Number CA C51573 concerning an appeal from the judgment in (i); (iii) Ontario Superior Court of Justice (Commercial List) Court File Number CV-11-9276-00CL; and (iv) Ontario Court of Appeal Court File Number C54553 concerning an appeal from the judgment in (iii);

"**Prefiling Unsecured Creditors' Charge**" has the meaning given to such term in the DIP Order;

"**Pro-Rata Share**" means, at any Distribution Date with respect to an Affected Creditor with an Allowed Affected Claim, the product of (A/B) x C where:

> A = the Allowed Affected Claim of such Affected Creditor stated in U.S. dollars (with all non-U.S. dollar denominated Allowed Affected Claims, or portions thereof, being converted to U.S. dollars in the manner specified in Section 1.5 hereof);

B = the total of all Allowed Affected Claims stated in U.S. dollars (with all non-U.S. dollar denominated Allowed Affected Claims, or portions thereof, being converted to U.S. dollars in the manner specified in Section 1.5 hereof); and

C = the total Distributable Amount stated in U.S. dollars.

"**Proof of Claim**" has the meaning given to such term in the Claims Procedure Order;

"**Proven Claim**" has the meaning given to such term in the Claims Procedure Order and shall include the Aggregate Allowed Noteholder Claim and any Claim that is designated as a Proven Claim pursuant to this Plan;

"**Released Claims**" has the meaning given to such term in Section 8.1;

"**Released Parties**" and "**Released Party**" have the meanings given to such terms in Section 8.1;

"**Required Majority**" means, with respect to the Affected Creditors Class, a majority in number of Affected Creditors with Allowed Affected Claims representing at least two thirds in value of the Allowed Affected Claims of Affected Creditors, in each case who are entitled to vote at the Meeting in accordance with the Meeting Order and who are present and voting in person or by proxy on the resolution approving the Plan at the Meeting;

"**Reserves**" means, collectively, the Administrative Reserve, the Tax Reserve, and the Unresolved Claims Reserve, and "**Reserve**" means any of them;

"**Residual Amount**" means (i) any remaining Available Cash following Payment in Full of the Allowed Affected Claims, and (ii) any Arbitration Proceeds or Available Cash received or held by the Company following Payment in Full of the Allowed Affected Claims;

"**Restructuring Claim**" has the meaning given to such term in the Claims Procedure Order;

"**Sanction Hearing**" means a hearing of the Court to consider the granting of the Sanction Order;

"**Sanction Order**" means an Order which, among other things, shall approve and sanction this Plan under the CCAA and shall include provisions as may be necessary or appropriate to give effect to this Plan (including the provisions specified in Section 10.2 hereof), in form and substance satisfactory to each of the Plan Proponents in their respective sole and absolute discretion;

"**Secured Claim**" means a Proven Claim that has the benefit of a valid and enforceable Lien against, or other similar interest in, any of the assets or property of the Company, solely to the extent of the realizable value of such assets or property subject to such security, but excludes any other type of Unaffected Claim hereunder and further excludes any claim secured by a Charge;

"**Shareholders**" means the beneficial holders of Existing Common Shares;

"**Standstill Order**" means the Stay Extension and Standstill Order of the Court dated June 5, 2013, as amended by the Order (Amendment to the Stay Extension and Standstill Order) dated April 14, 2014;

"**Standstill Period**" means the period from and including May 20, 2013, to and including December 31, 2015;

"**Taxation Authority**" means any Government Authority having authority or jurisdiction to assess, levy, collect, or administer Taxes, including the Canada Revenue Agency, the taxation authority in each province and territory of Canada, the Internal Revenue Service and any other taxation authority in the United States;

"**Taxes**" means any present or future tax, duty, impost, assessment, levy or other charge imposed or levied by or on behalf of a Taxation Authority; including pursuant to the ITA and its provincial equivalents in Canada and the *Excise Tax Act* (Canada);

"**Trust Indenture**" means, collectively, the trust indenture made as of December 23, 2004, between the Company, as issuer, and CIBC Mellon Trust Company, as trustee, as supplemented by a first supplemental trust indenture dated December 23, 2004, between the Company, as issuer, and CIBC Mellon Trust Company, as trustee (the "**First Supplemental Indenture**");

"**Trust Indenture Rate**" means the rate of interest payable on the Notes in accordance with the terms of the Trust Indenture;

"**Trustee**" means Computershare Trust Company of Canada, in its capacity as replacement trustee under the Trust Indenture, or such other Person appointed as trustee from time to time under the Trust Indenture;

"**Trustee Post-Standstill Order Fees and Expenses Claim**" means the fees and reimbursable costs and expenses of the Trustee for the period from and after June 6, 2013, as agreed upon by the Company and the Trustee and Noteholder Committee, with the consent of the Monitor, being $[●];

"**Trustee Pre-Filing Fees and Expenses Claim**" has the meaning given thereto in the Standstill Order and for the avoidance of doubt is $5,165,917.39;

"**Unaffected Claim**" means the following:

(c) any claim secured by the Post-Implementation Charges (provided that the Allowed Affected Claims secured by the Prefiling Unsecured Creditors' Charge from and after the Effective Time constitute Affected Claims pursuant to this Plan);

(d) any Post-Filing Claim;

(e) any Secured Claim;

(f) any Intercompany Claim;

(g) any Equity Claim;

(h) the Trustee Pre-Filing Fees and Expenses Claim; and

(i) any claim that is not permitted to be compromised pursuant to sections 19(2) or 5.1(2) of the CCAA.

"**Unaffected Creditors**" means the DIP Lender and all Persons holding Unaffected Claims, but only in respect of and to the extent of such Unaffected Claims, and "**Unaffected Creditor**" means any one of them;

"**Unresolved Claim**" means any Affected Claim or any Proof of Claim that has been timely filed by the Claims Bar Date in accordance with the Claims Procedure Order and which, at the relevant time, has yet to be finally determined to be a Proven Claim pursuant to the Claims Procedure Order or this Plan;

"**U.S. Bankruptcy Court**" means the United States Bankruptcy Court for the District of Delaware;

"**U.S. dollars**" means the lawful currency of the United States of America;

"**U.S. Plan Recognition Order**" means an order of the U.S. Bankruptcy Court in the U.S. Proceedings recognizing and giving effect to the Sanction Order, in form and substance acceptable to each of the Plan Proponents in their respective sole discretion, including authorizing the Company's transfer of Arbitration Proceeds received through the PDVH Enforcement Action outside of the United States to be distributed and otherwise dealt with by the Company strictly in accordance with the terms of this Plan;

"**U.S. Proceedings**" means the proceedings commenced in respect of the Company in the U.S. Bankruptcy Court pursuant to chapter 15, title 11 of the *United States Code*;

"**Venezuela**" means The Bolivarian Republic of Venezuela; and

"**Waterfall Provision**" means the order of payments provided for under Exhibit F of the DIP Credit Agreement provision titled "Order of Application of Arbitration Proceeds".

1.2 Certain Rules of Interpretation

For the purposes of this Plan:

(a) Any reference in this Plan to a contract, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions;

(b) Any reference in this Plan to an Order or an existing document or exhibit filed or to be filed means such document or exhibit as it may have been or may be amended, modified, or supplemented;

(c) The division of this Plan into Articles and Sections is for convenience of reference only and does not affect the construction or interpretation of this Plan, nor are the descriptive headings of Articles and Sections intended as complete or accurate descriptions of the content thereof;

(d) The use of words in the singular or plural, or with a particular gender, including a definition, shall not limit the scope or exclude the application of any provision of this Plan to such Person (or Persons) or circumstances as the context otherwise permits;

(e) The words "includes" and "including" and similar terms of inclusion shall not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation, but rather shall mean "includes but is not limited to" and "including but not limited to", so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive;

(f) Unless otherwise specified, all references to time herein and in any document issued pursuant hereto mean prevailing local time in Toronto, Ontario, Canada and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. (prevailing time in Toronto, Ontario, Canada) on such Business Day;

(g) Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next succeeding Business Day if the last day of the period is not a Business Day;

(h) Unless otherwise provided, any reference to a statute or other enactment of parliament, a legislature or other Government Authority includes all regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation;

(i) References to a specific Recital, Article, Section, schedule or exhibit shall, unless something in the subject matter or context is inconsistent therewith, be construed as references to that specific Recital, Article, Section, schedule or exhibit of this Plan, whereas the terms "this Plan", "the Plan", "hereof", "herein", "hereto", "hereunder" and similar expressions shall be deemed to refer generally to this Plan and not to any particular Recital, Article, Section, schedule, exhibit or other portion of this Plan and includes any documents supplemental hereto; and

(j) Any schedule or exhibit to this Plan shall be deemed to be integral parts of this Plan.

1.3 Successors and Assigns

This Plan shall be binding on and enure to the benefit of the Company, all Creditors, all Released Parties, and all other Persons and Parties named or referred to in, or subject to, this Plan.

1.4 Governing Law

This Plan shall be governed by and construed in accordance with the laws of Ontario and the federal laws of Canada applicable therein. All questions as to the interpretation of or application

of this Plan and all proceedings taken in connection with this Plan and its provisions shall be subject to the jurisdiction of the Court.

1.5 Currency

All dollar amounts referred to in this Plan are in U.S. dollars unless otherwise specified. For purposes of voting on the Plan, determining distributions under the Plan, and performing calculations under the Plan that involve a totalling of, or other calculation involving, certain Claims or other amounts, all Claims and other amounts (including Allowed Affected Claims) shall be valued in U.S. dollars and all non-U.S. dollar denominated Claims or other amounts (or portions thereof) shall be converted into U.S. dollars at the applicable exchange rates in effect on the Plan Implementation Date, such exchange rates to be determined by the Monitor, acting reasonably, and posted on the Monitor's website.

ARTICLE 2
PURPOSE AND EFFECT OF THIS PLAN

2.1 Purpose

The purposes of this Plan are to:

(a) effect a timely repayment of the Company's interest-bearing obligations to reduce the ongoing accrual of interest and maximize recoveries for the Company's stakeholders;

(b) satisfy, or reserve sufficient funds for the payment of, all Post-Filing Claims against the Company, all Taxes of the Company and all amounts necessary to complete the Company's restructuring (including any remaining efforts to collect Arbitration Proceeds) and an orderly wind-down of the CCAA Proceedings and the U.S. Proceedings;

(c) provide for the payment in full of all DIP Obligations owing to the DIP Lender pursuant to the DIP Credit Agreement;

(d) provide for the Payment in Full and release of all Allowed Affected Claims;

(e) provide for the release of the Released Claims in accordance with the terms of this Plan; and

(f) following Payment in Full of all Allowed Affected Claims, provide for distributions from the Company to: (i) the DIP Lender on account of the DIP Lender Additional Compensation; (ii) participants under the MIP in respect of amounts payable under the MIP; and (iii) Shareholders, in each case from any Residual Amount in accordance with the Waterfall Provision; provided that before any amount is distributed to Shareholders, the Company shall have first paid the Trustee Pre-Filing Fees and Expenses Claim in full in accordance with this Plan.

2.2 Persons Affected

This Plan provides for a full and final release and discharge of the Affected Claims and Released Claims, and a settlement of, and consideration for, all Allowed Affected Claims. Except as otherwise expressly indicated herein, the Plan will become effective at the Effective Time in accordance with its terms and shall be binding on and enure to the benefit of the Company, the Affected Creditors, the Released Parties and all other Persons directly or indirectly named or referenced in, or subject to, this Plan.

2.3 Persons Not Affected

This Plan does not affect the Unaffected Creditors with respect to and to the extent of their Unaffected Claims. Nothing in this Plan shall affect the Company's rights and defences, both legal and equitable, with respect to any Unaffected Claims, including all rights with respect to legal and equitable defences or entitlements to set-offs or recoupments against such Unaffected Claims, subject to any prior Orders of the Court in the CCAA Proceedings. Except for (i) the DIP Lender Additional Compensation and payments under the MIP (on the terms contemplated by Section 2.4(c) hereof), (ii) the Trustee Pre-Filing Fees and Expenses Claim (on the terms contemplated by Section 2.6(c) hereof), and (iii) payments from the Administrative Reserve on the terms contemplated by Section 5.2 hereof, the Company shall not make any payment on account of an Unaffected Claim without the prior consent of each of the other Plan Proponents in their sole and absolute discretion.

2.4 Lender Additional Compensation and MIP

(a) The Lender Additional Compensation and claims by participants under the MIP are Unaffected Claims pursuant to the Plan. The DIP Lender and participants under the MIP shall not receive a distribution or other consideration under the Plan and shall not be entitled to vote on the Plan in respect of the Lender Additional Compensation or entitlements under the MIP.

(b) The DIP Lender and participants under the MIP shall not be entitled to receive, and the Company shall not directly or indirectly pay, any distribution, dividend or other payment to the DIP Lender on account of the Lender Additional Compensation or to any participant under the MIP unless and until the Allowed Affected Claims are Paid in Full.

(c) Following all Allowed Affected Claims being Paid in Full, the Company shall distribute any portion of the Residual Amount payable to the DIP Lender on account of the DIP Lender Additional Compensation and to MIP participants under the MIP in accordance with the Waterfall Provision in such manner as may be reasonably determined by the Company and the DIP Lender, with the prior consent of the Monitor.

2.5 Equity Claims

(a) Equity Claims are Unaffected Claims pursuant to the Plan. Equity Claimants shall not receive a distribution or other consideration under the Plan and shall not be entitled to vote on the Plan in respect of their Equity Claims or Equity Interests.

(b) Equity Claimants shall not be entitled to receive, and the Company shall not directly or indirectly pay, any distribution, dividend or other payment to an Equity Claimant unless and until the Allowed Affected Claims are Paid in Full and other obligations of the Company that are entitled to payment in priority to Equity Claims pursuant to the Waterfall Provision are paid.

(c) Following all Allowed Affected Claims being Paid in Full and the Trustee Pre-Filing Fees and Expenses Claim being paid by the Company in full, the Company shall be entitled to distribute any portion of the Residual Amount payable to Shareholders in such manner as may be reasonably determined by the Company, with the prior consent of the Monitor.

2.6 Trustee Pre-Filing Fees and Expenses Claim

(a) The Trustee Pre-Filing Fees and Expenses Claim is an Unaffected Claim pursuant to the Plan.

(b) The Trustee shall not be entitled to receive, and the Company shall not directly or indirectly pay, any distribution, dividend or other payment on account of the Trustee Pre-Filing Fees and Expenses Claim unless and until the Allowed Affected Claims are Paid in Full.

(c) Following all Allowed Affected Claims being Paid in Full, the Company shall satisfy the Trustee Pre-Filing Fees and Expenses Claim from any portion of the Residual Amount available to the Company that would otherwise be available for distribution to Shareholders by distributing an amount equal to the Trustee Pre-Filing Fees and Expenses Claim to the Trustee.

2.7 Different Capacities

A Person may have various contractual and legal relationships with the Company and may be affected by or subject to this Plan or the terms thereof in different capacities. Where this Plan or the terms thereof apply to or affect a Person in a particular capacity, it shall apply to or affect such Person solely in such stated capacity and not in any other capacity.

ARTICLE 3
CLASSIFICATION AND TREATMENT OF CREDITORS AND RELATED MATTERS

3.1 Claims Procedure

The procedure for determining the validity and quantum of the Allowed Affected Claims for voting and distribution purposes under the Plan shall be governed by the Claims Procedure Order, the Meeting Order, the CCAA, the Plan and any further Order of the Court.

3.2 Classification of Creditors

In accordance with the Meeting Order, the only class of creditors for purposes of considering and voting on the Plan shall be the Affected Creditors Class. For greater certainty, Equity Claimants and holders of Equity Interests shall not be entitled to vote on the Plan or to receive any distributions hereunder.

3.3 Meeting

The Meeting shall be held in accordance with the Meeting Order and any further Order of the Court. The only Persons entitled to attend and vote at the Meeting are Affected Creditors. Each Affected Creditor who is entitled to vote at the Meeting pursuant to the Meeting Order shall be entitled to one vote equal to the dollar value of its Allowed Affected Claim.

3.4 Approval by Required Majority

In order to be approved, this Plan must receive the affirmative vote of the Required Majority.

3.5 Treatment of Affected Claims

In full and final satisfaction of all Affected Claims, each Affected Creditor with an Allowed Affected Claim shall be entitled to receive Payment in Full of its Allowed Affected Claim pursuant to this Plan. All Affected Claims shall be fully, finally, irrevocably and forever compromised, released, discharged and barred at the Effective Time, subject to (a) the right of Affected Creditors to receive distributions pursuant to this Plan in respect of Allowed Affected Claims, and (b) the survival and continuation of the Prefiling Unsecured Creditors' Charge, as amended pursuant to this Plan and the Sanction Order, until such time as Affected Creditors receive Payment in Full of all Allowed Affected Claims.

3.6 Unaffected Claims

Unaffected Creditors will not receive any consideration or distributions under the Plan in respect of their Unaffected Claims, except to the extent their Unaffected Claims are paid in accordance with the express terms of this Plan. Unaffected Creditors shall not be entitled to vote on the Plan at the Meeting in respect of their Unaffected Claims.

3.7 Unresolved Claims

(a) To the extent that Unresolved Claims exist as at the date of the Meeting, the holders of such Unresolved Claims shall be entitled to vote at the Meeting, and their votes shall be separately tabulated and recorded, in each case as provided for in the Meeting Order.

(b) Any Claimant with an Unresolved Claim shall not be entitled to receive any distribution under this Plan with respect to such Unresolved Claim unless and until such Unresolved Claim is finally determined to be an Allowed Affected Claim pursuant to the Claims Procedure Order and this Plan.

3.8 Released Claims

All Released Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred without consideration except as expressly contemplated pursuant to this Plan.

3.9 Extinguishment of Affected Claims and Released Claims

At the Effective Time, in accordance with the terms of this Plan and the Sanction Order, the treatment of Affected Claims and Released Claims, in each case as set forth herein, shall be final and binding on the Company, all Affected Creditors and any Person holding a Released Claim (and in each case their respective heirs, executors, administrators, legal personal representatives, successors and assigns), and all Affected Claims and all Released Claims shall be fully, finally, irrevocably and forever released, discharged, cancelled and barred, and the Released Parties shall thereupon have no further obligation whatsoever in respect of the Affected Claims or the Released Claims, as applicable; *provided that* (i) a Claim or Cause of Action of an Affected Creditor other than an Affected Claim or a Released Claim shall not be released, discharged, cancelled or barred pursuant to this Plan, (ii) nothing herein releases the Company from the obligation to make distributions on Allowed Affected Claims in the manner and to the extent provided for in the Plan, and (iii) the discharge and release of the Company in respect of Affected Claims and Released Claims shall be without prejudice to the right of a Claimant in respect of an Unresolved Claim to prove such Unresolved Claim in accordance with the Claims Procedure Order so that such Unresolved Claim may become an Allowed Affected Claim entitled to receive a distribution pursuant to this Plan.

ARTICLE 4
DETERMINATION OF ALLOWED AFFECTED CLAIMS

4.1 Aggregate Allowed Noteholder Claim

(a) The aggregate Affected Claim on account of the Notes under this Plan (the "**Aggregate Allowed Noteholder Claim**") shall be equal to the sum of:

(i) the Proven Standstill Noteholder Claim (as defined in the Standstill Order) calculated as at December 31, 2015, being $188,198,213.88; plus

(ii) interest on the Proven Standstill Noteholder Claim from December 31, 2015, through and including the Plan Implementation Date at the Trust Indenture Rate (solely for reference purposes, such amount of interest is indicated on Schedule A hereto, calculated through the dates referred to therein); plus

(iii) the Trustee Post-Standstill Order Fees and Expenses Claim; plus

(iv) the Noteholder Additional Plan Consideration.

(b) The Aggregate Allowed Noteholder Claim shall be a Proven Claim for all purposes of the Claims Procedure Order and this Plan. For the avoidance of any doubt, the Aggregate Allowed Noteholder Claim is in U.S. dollars.

4.2 Allowed General Creditor Claims

(a) General Creditors shall prove their respective Claims pursuant to the Claims Procedure Order. No General Creditor shall be entitled to receive a distribution under this Plan unless and until its Claim is a Proven Claim and an Allowed Affected Claim pursuant to this Plan, the Claims Procedure Order, or any other Order of the Court.

(b) The Allowed Affected Claim of a General Creditor (an "**Allowed General Creditor Claim**") for purposes of this Plan shall be equal to the sum of:

(i) the Proven Claim of such General Creditor as finally determined pursuant to the Claims Procedure Order; plus

(ii) any interest a General Creditor is entitled to on its Proven Claim as calculated in accordance with its Contract Rate from the Filing Date through and including the Plan Implementation Date, as such Contract Rate may be increased or decreased for the Standstill Period pursuant to paragraph 27 of the Standstill Order; plus

(iii) without duplication of any interest amount accounted for in the foregoing (ii), any interest a General Creditor is entitled to for the Standstill Period pursuant to paragraph 27 of the Standstill Order; plus

(iv) the General Creditor Additional Plan Consideration.

ARTICLE 5
CASH POOL AND RESERVES

5.1 Monetization of Arbitration Proceeds

The Company, in consultation with the Monitor, the DIP Lender and the professional advisors to the Trustee and the Noteholder Committee, shall forthwith monetize and, if applicable, convert into U.S. dollars all Arbitration Proceeds (including, all marketable securities, liquid securities or non-U.S. dollar denominated Cash) held, received or in the possession of the Company from time to time, whether prior to or following the Plan Implementation Date (any such sale, monetization or conversion being a "**Monetization of Arbitration Proceeds**") in a commercially reasonable manner; provided, however, that any Monetization of Arbitration Proceeds shall be subject to the prior consent of the Monitor or Order of the Court. Promptly following any Monetization of Arbitration Proceeds by the Company, the Company shall provide written notice to the Monitor, the DIP Lender, and the professional advisors to the Trustee and the Noteholder Committee confirming the Monetization of Arbitration Proceeds has occurred and providing the details of such Monetization of Arbitration Proceeds, including the selling price for any securities sold, any applicable conversion rate and the total proceeds realized by the Company in U.S. dollars. For the avoidance of doubt, the Cash proceeds of any Monetization of Arbitration Proceeds shall constitute Available Cash for purposes of this Plan.

5.2 Administrative Reserve

(a) The Company shall establish from the Available Cash an administrative reserve (the "**Administrative Reserve**") in such amount as may be agreed to among the Plan Proponents prior to the Plan Implementation Date (to a maximum of $10,000,000, unless otherwise agreed to by the Noteholder Committee) to fund, without duplication (collectively, the "**Administrative Expenses**"):

(i) the payment of Post-Filing Claims that are not satisfied on or prior to the Plan Implementation Date;

(ii) the payment of any Secured Claims and Crown Priority Claims;

(iii) any amount secured by the Administration Charge or the Directors' Charge (as modified pursuant to Section 7.5 hereof and the Sanction Order); and

(iv) the reasonable administrative and professional costs of the Company expected to be incurred in connection with (A) the implementation of the Plan; (B) the prosecution, collection, enforcement and administration of the Arbitration Award (including any Arbitration Proceeding) and the Arbitration Proceeds, and (C) the orderly completion of the CCAA Proceedings and the U.S. Proceedings.

(b) The Company shall be permitted from time to time following the Plan Implementation Date to (i) with the prior consent of the Monitor, disburse amounts from the Administrative Reserve to pay Administrative Expenses, and (ii) with the prior consent of the Monitor, reduce the amount of the Administrative Reserve by an appropriate amount having regard to the expected quantum of future Administrative Expenses, whereupon the amounts released from the Administrative Reserve shall constitute Available Cash.

5.3 Tax Reserve

(a) The Company and the Monitor, in consultation with the professional advisors to the Trustee, the Noteholder Committee and the DIP Lender, shall work in good faith to determine the amount of any unpaid or future Taxes payable by the Company on account of the Arbitration Proceeds.

(b) To fund any Taxes which may be payable or become payable by the Company on account of the Arbitration Proceeds, the Company shall establish from the Available Cash a Tax reserve (the "**Tax Reserve**") in such amount as may be agreed to by the Company, the Monitor, the DIP Lender and the Noteholder Committee prior to the Plan Implementation Date.

(c) The Company shall be permitted, with the prior consent of the Monitor, the DIP Lender, and the Noteholder Committee to (i) make payments or disbursements from the Tax Reserve from time to time to a Taxation Authority in full or partial satisfaction of the Company's obligations for Taxes on account of the Arbitration Proceeds, and (ii) reduce the amount of the Tax Reserve from time to time having

regard to the expected quantum of the Company's remaining obligations for Taxes on account of the Arbitration Proceeds, whereupon the amounts released from the Tax Reserve shall constitute Available Cash.

5.4 Unresolved Claims Reserve

(a) The Company shall establish from the Available Cash a reserve (the "**Unresolved Claims Reserve**") from time to time in the aggregate amount sufficient to pay each Claimant with an Unresolved Claim the lesser of (i) the amount such Claimant would be entitled to receive pursuant to this Plan if its Unresolved Claim was an Allowed Affected Claim, and (ii) such amount as may be ordered by the Court.

(b) The Company shall maintain the Unresolved Claims Reserve, as may be reduced from time to time pursuant to Section 6.7(a) hereof or by such other amount as the Monitor, in consultation with the Company, the DIP Lender and the Noteholder Committee, may determine, until the final determination of all Unresolved Claims in accordance with the Claims Procedure Order and this Plan.

ARTICLE 6
PROVISIONS REGARDING DISTRIBUTIONS, PAYMENTS AND CURRENCY

6.1 Distributions Generally

(a) All distributions to Affected Creditors and other payments to be effected pursuant to this Plan shall be made by the Company pursuant to this Article 6 and shall occur in the manner set out in this Article 6 under the supervision of the Monitor.

(b) All distributions to Affected Creditors pursuant to this Plan shall be made in U.S. dollars.

(c) All distributions made pursuant to this Plan shall be free and clear of any Liens, including the Post-Implementation Charges.

6.2 Distributions to Affected Creditors

(a) The Company shall make a distribution to each Affected Creditor with an Allowed Affected Claim on the Initial Distribution Date and, if applicable, one or more subsequent Distribution Dates, until all Allowed Affected Claims are Paid in Full.

(b) The amount of the distribution to be made by the Company on the Initial Distribution Date and any subsequent Distribution Date shall be determined as follows:

(i) if the Distributable Amount on such Distribution Date is sufficient to effectuate Payment in Full of all Allowed Affected Claims, the Company shall distribute to each Affected Creditor with an Allowed Affected Claim on such date such amount as will result in Payment in Full of its Allowed Affected Claim (including, for the avoidance of doubt, all interest

entitlements thereon through the date the distribution is made by the Company); and

(ii) if the Distributable Amount on such Distribution Date is not sufficient to effectuate Payment in Full of all Allowed Affected Claims, the Company shall distribute to each Affected Creditor with an Allowed Affected Claim on such date its Pro-Rata Share.

(c) There shall be a Distribution Date and a distribution to Affected Creditors in respect of their Allowed Affected Claims within three (3) Business Days of any date following the Plan Implementation Date on which the Distributable Amount exceeds $5,000,000.

(d) Promptly following the Distribution Date on which the Company makes a distribution that results in Payment in Full of all Allowed Affected Claims (the "**Final Distribution Date**"), the Monitor shall, upon the Trustee and the Noteholder Committee confirming receipt of Payment in Full as relates to the Aggregate Allowed Noteholder Claim (including, for the avoidance of doubt, receipt of all Post-Implementation Interest and other amounts referred to in subsection (a) of the definition of Payment in Full) to the Monitor, serve on the service list in the CCAA Proceedings and file with the Court a certificate of the Monitor (the "**Final Distribution Certificate**") certifying that all Allowed Affected Claims have been Paid in Full pursuant to this Plan.

6.3 Post-Implementation Interest

To the extent that all Allowed Affected Claims are not Paid in Full on the Plan Implementation Date, interest shall continue to accrue on the unpaid portion of the Allowed Affected Claims for the period commencing on the Plan Implementation Date and ending on the date on which such Allowed Affected Claims are Paid in Full at the same rate of interest applicable to such Allowed Affected Claims immediately prior to the Effective Time (being, in the case of the Aggregate Allowed Noteholder Claim, the Trust Indenture Rate and, in the case of an Allowed General Creditor Claim, the Contract Rate applicable to such Allowed General Creditor Claim) (such interest being "**Post-Implementation Interest**"). For the avoidance of doubt, where any Unresolved Claim is finally determined to be an Allowed Affected Claim following the Plan Implementation Date, an Affected Creditor's entitlement to Post-Implementation Interest in respect of such Allowed Affected Claim shall be calculated and determined as if such Allowed Affected Claim had been a Proven Claim on the Plan Implementation Date.

6.4 Distributions in respect of Aggregate Allowed Noteholder Claim

(a) Distributions for the benefit of Noteholders in respect of the Aggregate Allowed Noteholder Claim shall be made to the Trustee by wire transfer of immediately available funds to an account designated in writing by the Trustee to the Company. The Trustee shall administer such distributions as soon as is reasonably practicable in accordance with the Trust Indenture (including, as applicable, any resolution, direction or instruction of Noteholders provided thereunder) and this Plan.

(b) All distributions made by the Company in respect of the Aggregate Allowed Noteholder Claim pursuant to this Plan shall be increased or grossed-up by such Additional Amounts (as such term is defined in section 6.1 of the First Supplemental Indenture) as the Company is required to pay pursuant to the Trust Indenture and/or paragraph 16 of the Standstill Order (collectively, the "**Noteholder Gross-Up Amounts**").

(c) All distributions made by the Company in respect of the Aggregate Allowed Noteholder Claim shall be applied:

(i) first, in satisfaction of all fees, expenses, reimbursements and indemnities to which the Trustee is entitled pursuant to the Trust Indenture or any resolution, direction or instruction of Noteholders delivered pursuant thereto;

(ii) second, in satisfaction of all fees, expenses, reimbursements and indemnities to which the Noteholder Committee or any participant therein is entitled pursuant to the Trust Indenture or any resolution, direction or instruction of Noteholders delivered pursuant thereto;

(iii) third, in satisfaction of any accrued and unpaid interest in respect of the Notes; and

(iv) fourth, in satisfaction of the principal amount of the Notes,

provided that, subject to the prior payment in full of the fees, expenses and reimbursements referenced in Sections 6.4(c)(i) and 6.4(c)(ii) hereof, the Noteholder Committee may, in its sole and absolute discretion, elect to have all or any portion of a distribution made by the Company in respect of the Aggregate Allowed Noteholder Claim applied in full or partial satisfaction of the principal amount of the Notes prior to the satisfaction in full of all accrued and unpaid interest in respect of the Notes.

(d) References in this Plan to the Aggregate Allowed Noteholder Claim are for administrative convenience only and shall not, nor be deemed to, impact on the individual rights of each Noteholder under this Plan, the Meeting Order, the CCAA, the Trust Indenture, or Applicable Law.

(e) Notwithstanding anything to the contrary in this Plan, no past, present or future claims of set-off may be asserted by the Company in respect of the Aggregate Allowed Noteholder Claim (or any portion thereof), and all distributions made by the Company in respect of the Aggregate Allowed Noteholder Claim (including, any Post-Implementation Interest or Noteholder Gross-Up Amounts) shall be paid to the Trustee free from any reduction for set-off or deductions of any kind whatsoever and free from any other counter-claims (whether past, present or future) that the Company may allege.

6.5 Distributions in respect of Allowed General Creditor Claims

(a) Distributions for the benefit of a General Creditor in respect of its Allowed General Creditor Claim shall be made by the Company to such General Creditor by way of (in the sole discretion of the Company): (i) cheque sent by prepaid ordinary mail to the address of such General Creditor on file with the Company, or (ii) wire transfer of immediately available funds to an account designated in writing by such General Creditor to the Company.

(b) To the extent that the terms of a written agreement between the Company and a General Creditor governing an Allowed General Creditor Claim provide for an increase or gross-up of the amount to be received by such General Creditor on account of any deduction or withholding from an amount distributed to such General Creditor by the Company (a "**General Creditor Gross-Up Amount**"), such General Creditor shall continue to be entitled to the benefit of such General Creditor Gross-Up Amount and all distributions made by the Company in respect of such Allowed General Creditor Claim shall be increased or grossed-up by the amount of the applicable General Creditor Gross-Up Amount.

(c) If any amount distributed by the Company to a General Creditor pursuant to this Plan is returned as undeliverable or is not cashed, no further distributions to such General Creditor shall be made unless and until the Company or the Monitor is notified by such General Creditor of such General Creditor's current address or wire transfer instructions, following which time all such distributions to which such General Creditor is entitled as of the date of such notification shall be promptly made to such General Creditor, without any additional interest on the amount of such distribution. All claims for undeliverable or uncashed distributions in respect of Allowed General Creditor Claims must be made on or before the date that is two (2) years from the date of the Initial Distribution, after which date the Allowed General Creditor Claim to which such unclaimed or uncashed distributions relates shall be forever discharged and forever barred, without any compensation therefor, notwithstanding any Applicable Law to the contrary, at which time the Cash amount held by the Company in respect of such distributions shall form part of Available Cash. Nothing in this Plan or otherwise shall require the Company or the Monitor to attempt to locate any General Creditor holding an Allowed General Creditor Claim.

6.6 Withholding Rights

Subject to Sections 6.4(b), 6.4(e), 6.5(b) and 7.1(d) hereof, the Company shall be entitled to deduct and withhold from any distribution or payment to any Person pursuant to this Plan such amounts as may be required to be deducted or withheld with respect to such distribution or payment under Applicable Law and to remit such amounts to the appropriate Government Authority or other Person entitled thereto.

6.7 Determination of Unresolved Claims

(a) To the extent that an Unresolved Claim becomes an Allowed Affected Claim in accordance with the Claims Procedure Order and this Plan, the Company shall distribute to the holder of such Allowed Affected Claim, on or before the next following Distribution Date, an amount from the Unresolved Claims Reserve equal to the aggregate distributions that such Affected Creditor would have been entitled to receive in respect of its Allowed Affected Claim on the previous Distribution Date(s) had such Unresolved Claim been an Allowed Affected Claim on such Distribution Date(s).

(b) After an Unresolved Claim has been finally resolved in accordance with the Claims Procedure Order and this Plan and any required distributions contemplated pursuant to Section 6.7(a) hereof have been made, any remaining amount held in the Unresolved Claims Reserve in respect of such Unresolved Claim shall be released from the Unresolved Claims Reserve and shall thereafter constitute Available Cash.

6.8 Certificates and Notes

At the Effective Time, all debentures, notes, certificates, indentures, guarantees, agreements, invoices and other instruments evidencing Affected Claims, including the Notes and the Trust Indenture, will not entitle any holder thereof to any compensation or participation other than as expressly provided for in this Plan. For the avoidance of doubt, the Trust Indenture shall remain in full force and effect for the purpose of and to the extent necessary to: (i) allow the Trustee to make distributions for the benefit of Noteholders as contemplated by the Trust Indenture, (ii) maintain all of the rights and protections of the Trustee pursuant to the Trust Indenture with respect to the carrying out its duties thereunder, and (iii) preserve the rights of the Trustee and Noteholders to receive distributions and other payments pursuant to this Plan.

6.9 Recognition of Assignments of Allowed Affected Claims and Unresolved Claims

(a) An Affected Creditor may transfer or assign the whole of its Allowed Affected Claim and a Claimant may transfer the whole of its Unresolved Claim prior to the Meeting as provided for in the Meeting Order.

(b) After the Meeting, an Affected Creditor may transfer or assign the whole or part of its Allowed Affected Claim and a Claimant may transfer the whole of its Unresolved Claim upon giving actual written notice of such transfer or assignment, together with satisfactory evidence of the existence and validity of such transfer or assignment, to the Company and the Monitor.

(c) Notwithstanding any other provision of this Plan, Noteholders shall not be prohibited or restricted from transferring or assigning, in whole or in part and whether before or after the Meeting, any Notes or their proportionate entitlement to the Aggregate Allowed Noteholder Claim.

ARTICLE 7
PROVISIONS GOVERNING ADDITIONAL PAYMENTS AND POST-PLAN IMPLEMENTATION MATTERS

7.1 Repayment of DIP Obligations

(a) Prior to making any distribution in respect of the Allowed Affected Claims, the Company shall pay in full the DIP Obligations.

(b) On the Plan Implementation Date, the Company shall pay to the DIP Lender, or as the DIP Lender may direct, the lesser of:

(i) the aggregate DIP Obligations; and

(ii) the Available Cash on the Plan Implementation Date, less (A) the Aggregate Reserve Amount, and (B) any Available Cash required by the Company to make a payment to any Person on the Plan Implementation Date in respect of an Employee Priority Claim or any accrued and unpaid Post-Filing Claim.

(c) If the DIP Obligations are not repaid in full on the Plan Implementation Date, the Company shall thereafter effect a further repayment in respect of the DIP Obligations within three (3) Business Days of any date on which the Available Cash exceeds $2,000,000 until such time as the DIP Obligations have been paid in full.

(d) Notwithstanding any other provision of this Plan, matters with respect to withholdings or deductions in respect of the repayment of the DIP Obligations by the Company shall be governed by the DIP Credit Agreement.

7.2 Payment of Secured Claims and Post-Filing Claims

The Company (with the prior consent of each of the other Plan Proponents in their sole and absolute discretion) shall be entitled, prior to, on or following the Plan Implementation Date, to make payments on account of any Secured Claim and any Post-Filing Claim, on such terms as may be agreed to between the Company and the Person holding such Secured Claim or Post-Filing Claim. On the Plan Implementation Date, the Company shall pay all *bona fide* Post-Filing Claims that are accrued and due and owing by the Company as of the Plan Implementation Date, such payments to be subject to the prior consent of the Monitor, the DIP Lender and the Noteholder Committee. Any payments by the Company in respect of Secured Claims and Post-Filing Claims following the Plan Implementation Date shall be funded from the Administrative Reserve.

7.3 Payment of Crown Priority Claims

Within six (6) months after the date of the Sanction Order, the Company shall pay in full to His Majesty in right of Canada or any province all amounts, if any, of a kind that could be subject to a demand under the statutory provisions specified in section 6(3) of the CCAA that were outstanding on the Filing Date and which have not been paid by the Plan Implementation Date (the "**Crown Priority Claims**").

7.4 Payment of Employee Priority Claims

On the Plan Implementation Date, the Company shall pay to all employees and former employees of the Company holding Allowed Affected Claims, the minimum amounts, if any, contemplated to be paid to such employees and former employees pursuant to section 6(5) of the CCAA that have not been paid prior to the Plan Implementation Date (the "**Employee Priority Claims**"). Any Employee Priority Claim paid to an employee or former employee pursuant to this Section 7.4 shall be treated as a distribution on account of the Allowed Affected Claim of such employee or former employee and the Allowed Affected Claim of such employee or former employee shall be reduced by the amount of the Employee Priority Claim paid to such employee or former employee. Any distribution to an employee or former employee of the Company on the Plan Implementation Date in respect of its Allowed Affected Claim shall be allocated first, in payment of the Employee Priority Claim, if any, of such employee or former employee, and second, to the balance of the Allowed Affected Claim of such employee or former employee.

7.5 Post-Implementation Charges

(a) At the Effective Time, the Administration Charge shall only attach to the Administrative Reserve and not to any other property, assets or undertaking of the Company.

(b) If the DIP Obligations are paid in full on the Plan Implementation Date, the DIP Charge shall be fully and finally released and discharged on the Plan Implementation Date. If DIP Obligations remain outstanding following the Plan Implementation Date, the quantum of the DIP Charge at any particular time following the Plan Implementation Date shall be equal to the DIP Obligations then outstanding. The DIP Charge shall be fully and finally released and discharged on the DIP Repayment Date.

(c) At the Effective Time, the quantum of the Directors' Charge shall be reduced to $500,000.

(d) From and after the Effective Time, the Affected Creditors with Allowed Affected Claims shall be entitled to the benefit of the Prefiling Unsecured Creditors' Charge, which Charge shall be amended pursuant to this Plan and the Sanction Order effective as of the Effective Time to secure the Payment in Full of all Allowed Affected Claims pursuant to this Plan. Upon filing by the Monitor of the Final Distribution Certificate, the Prefiling Unsecured Creditors' Charge shall be fully and finally released and discharged.

(e) From and after the Effective Time, the priority of the Charges that have not been released and discharged as at the Effective Time (collectively, the "**Post-Implementation Charges**"), as among them, shall be as follows:

(i) First – the Administration Charge, as modified pursuant to Section 7.5(a) hereof;

(ii) Second – the DIP Charge, as modified pursuant to Section 7.5(b) hereof;

(iii) Third – the Directors' Charge, as modified pursuant to Section 7.5(c) hereof;

(iv) Fourth – the Prefiling Unsecured Creditors' Charge, as modified pursuant to Section 7.5(d) hereof; and

(v) Fifth – on a *pari passu* basis, the MIP Charge and the Lender Additional Compensation Charge.

7.6 Post-Implementation Noteholder Expenses

The Company shall pay in full the reasonable and documented fees of the Trustee and fees and expenses (including all legal expenses) incurred by the Trustee and the Noteholder Committee during the period commencing on the Plan Implementation Date and ending on the date on which the Monitor files the Final Distribution Certificate (the "**Post-Implementation Noteholder Expenses**"). The Company shall pay the Post-Implementation Noteholder Expenses to Goodmans LLP, or to such other Person as Goodmans LLP may direct, within seven (7) Business Days of the date on which the Monitor from time to time provides a written notice to the Company (including by email) confirming the Post-Implementation Noteholder Expenses to be paid by the Company at such time pursuant to this Section 7.6.

7.7 No Settlements re: Arbitration Award, etc., without Noteholder Committee Consent

Until Payment in Full of the Allowed Affected Claims, the Company shall not, without the prior consent of each of the other Plan Proponents in their sole and absolute discretion, agree, consent to or negotiate any settlement, compromise, arrangement or other agreement of any nature or kind relating in any way to the Arbitration Award, any Arbitration Proceeding or the Arbitration Proceeds, including as relates to any current or future enforcement effort related to any of the foregoing against Venezuela, PDVSA or any other Person or asset (including the PDVH Enforcement Action).

7.8 No New Priority Charges

Until Payment in Full of the Allowed Affected Claims, without the prior consent of the Trustee and the Noteholder Committee in their sole and absolute discretion, the Company is prohibited from bringing, and shall oppose, any motion in the CCAA Proceedings or U.S. Proceedings seeking the granting of a court-ordered charge or other Lien that would rank in priority to the Prefiling Unsecured Creditors' Charge.

ARTICLE 8
PLAN RELEASES

8.1 Released Claims

At the Effective Time, in accordance with the sequence set forth in Section 9.2 hereof, each of:

(a) the Company, its Affiliates, and each of their respective present and former directors, officers (including, for the avoidance of doubt, each Director and Officer), employees, agents, advisors, legal counsel and representatives;

(b) the Monitor and each present and former director, officer, principal, partner, employee, agent, advisor, legal counsel and representative of the Monitor;

(c) the DIP Lender, its Affiliates and each of their respective present and former directors, officers, employees, agents, advisors, legal counsel and representatives; and

(d) the Trustee, each present or former participant in the Noteholder Committee, each present or former Noteholder, each registered and participant holders of the Notes, and each of their respective Affiliates, affiliated or related funds and investment managers, and the present and former directors, officers, principals, partners, shareholders, employees, agents, advisors, legal counsel and representatives of any of the foregoing (all of the Persons referred to in (a), (b), (c) and (d) of this Section 8.1 being, the "**Released Parties**" and each a "**Released Party**"),

shall be forever and irrevocably released and discharged from all Causes of Action based in whole or in part on any action or omission, transaction, dealing, occurrence or other matter existing or taking place on or prior to the Plan Implementation Date, or in accordance with this Plan, in respect of, or relating in any way to, (i) the Company, (ii) the business, operations, assets, property and affairs of the Company wherever or however conducted or governed, (iii) the administration and/or management of the Company, (iv) the Plan and Distribution Matters (including, any Cause of Action that has been or could be asserted by Venezuela, PDVSA or its Affiliates or any Taxation Authority in respect of the Plan and Distribution Matters), (v) any Arbitration Proceeding, (vi) the Arbitration Award, or (vii) the CCAA Proceedings, the U.S. Proceedings, the Prefiling Litigation and any orders or judgments issued in any of the foregoing (collectively, subject to Section 8.2, the "**Released Claims**"), which Released Claims shall be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties at the Effective Time.

8.2 Non-Released Claims

Notwithstanding Section 8.1 or any other provision hereof, the Released Claims shall not include, and nothing in Section 8.1 or otherwise in this Plan shall waive, compromise, release, discharge, cancel or bar any of the following Causes of Action or Claims:

(a) the obligations of the Company or the Monitor arising under, or recognized or affirmed under, this Plan, or the right of any Person to enforce such obligations, including the right of Affected Creditors to receive Payment in Full from the Company pursuant to this Plan in respect of Allowed Affected Claims;

(b) the obligations of the Company in respect of any Unaffected Claim, or any Claim that is not permitted to be released pursuant to section 19(2) of the CCAA;

(c) any D&O Claim that is not permitted to be released pursuant to section 5.1(2) of the CCAA; and

(d) any Cause of Action against a Released Party if such Released Party is determined by Final Order of a court of competent jurisdiction to have committed fraud or wilful misconduct.

ARTICLE 9
PLAN IMPLEMENTATION

9.1 Corporate Authorizations

The adoption, execution, delivery, implementation and consummation of all matters contemplated under this Plan involving corporate action of the Company will occur and be effective as of the Effective Time, and will be authorized and approved under this Plan and by the Court pursuant to the Sanction Order.

9.2 Plan Implementation Transactions

Upon the fulfillment, satisfaction or waiver of the conditions set out in Section 10.3 hereof, the following actions, steps and releases to be taken and effected in the implementation of this Plan shall occur, and be deemed to have occurred and be taken and effected, immediately in sequence in the following order, without any further act or formality, on the Plan Implementation Date beginning at the Effective Time:

(a) each Affected Creditor with an Allowed Affected Claim shall become entitled to Payment in Full of its Allowed Affected Claim in consideration for the irrevocable, final and full satisfaction, discharge and release of such Allowed Affected Claim upon Payment in Full;

(b) all Affected Claims shall be fully, finally, irrevocably and forever compromised, released, discharged, cancelled and barred, subject to the rights of each Affected Creditor to receive the distributions and all other benefits and rights provided for under this Plan;

(c) each of the Charges except the Post-Implementation Charges shall be terminated, discharged and released;

(d) the Post-Implementation Charges (as amended pursuant to this Plan and the Sanction Order) shall continue as against the Company and its assets and property and such Post-Implementation Charges shall have the relative priorities set out in Section 7.5(e) hereof;

(e) all other agreements provided for in this Plan that are to become effective on the Plan Implementation Date shall come into effect;

(f) the release of the Released Claims pursuant to Article 8 hereof shall become effective;

(g) the Company shall pay all *bona fide* Post-Filing Claims that are accrued and due and payable as of the Plan Implementation Date in accordance with Section 7.2;

(h) the Company shall pay all Employee Priority Claims in accordance with Section 7.4;

(i) the Company shall pay to the DIP Lender, or as the DIP Lender may direct, the payment in respect of the DIP Obligations in accordance with Section 7.1(b); and

(j) if the Initial Distribution Date occurs on the Plan Implementation Date, the Company shall make the Initial Distribution to Affected Creditors pursuant to Article 6 hereof.

ARTICLE 10
COURT SANCTION, CONDITIONS PRECEDENT AND IMPLEMENTATION

10.1 Application for Sanction Order

If the Required Majority approves this Plan, the Company shall apply for the Sanction Order on or before the date set for the Sanction Hearing or such later date as the Court may set.

10.2 Sanction Order

The Sanction Order shall be in form and substance acceptable to each of the Plan Proponents and shall, among other things:

(a) declare that (i) this Plan has been approved by the Required Majority; (ii) this Plan complies with the provisions of the CCAA in all respects; and (iii) this Plan and the transactions contemplated thereby are fair and reasonable;

(b) declare that any Claims for which a Proof of Claim has not been filed by the Claims Bar Date in accordance with the Claims Procedure Order shall be forever released, barred and extinguished without any liability, payment or other compensation in respect thereof, and all proceedings with respect to, in connection with or relating to such Claims be permanently stayed (provided that the foregoing relief shall have no applicability to the Noteholder Claim);

(c) direct the Company to execute and deliver all such agreements, documents and instruments, and to do all such acts and things as may be necessary or desirable, to achieve Plan Implementation;

(d) declare that as of the Effective Time:

(i) this Plan and all associated steps, transactions, arrangements, releases and reorganizations effected thereby are approved, binding and effective as set out in this Plan upon the Company, the DIP Lender, the Trustee, the Noteholders, Affected Creditors, Shareholders and all other Persons and Parties affected by or referenced in this Plan;

(ii) the steps to occur, be taken and be effected, and the releases to be effected, on the Plan Implementation Date are deemed to occur, be taken and effected, and be effective in the sequential order contemplated by

Section 9.2 of this Plan on the Plan Implementation Date, beginning at the Effective Time;

(iii) each Affected Creditor with an Allowed Affected Claim is entitled to Payment in Full of its Allowed Affected Claim in consideration for the irrevocable, final and full satisfaction, discharge and release of such Allowed Affected Claim;

(iv) the Post-Implementation Charges shall remain in full force and effect as amended pursuant to this Plan;

(v) other than Post-Implementation Charges, all Charges, including the DIP Charge if the DIP Obligations are repaid in full on the Plan Implementation Date, shall be terminated, released and discharged;

(vi) all Liens against the Company, other than the Post-Implementation Charges, shall be terminated, released and discharged; and

(vii) the releases referred to in Article 8 of this Plan shall become effective in accordance with the terms hereof;

(e) direct the Company to comply with the provisions of this Plan, including, making the distributions to Affected Creditors in respect of their Allowed Affected Claims pursuant to and in accordance with the Plan and paying the Post-Implementation Noteholder Expenses as and when required pursuant to Section 7.6 hereof;

(f) provide that the Company shall remain subject to the CCAA Proceedings, including under the oversight of the Court and the Monitor, and that the stay of proceedings shall be extended for a period of one (1) year, subject to further order of the Court;

(g) declare that, subject to the Plan and the performance by the Company of its obligations thereunder, all Agreements specified in the Sanction Order to which the Company is currently a party (such list of specified Agreements to be consented to by each of the Plan Proponents) shall be and remain in full force and effect, unamended, as at the Plan Implementation Date, unless disclaimed, repudiated or resiliated pursuant to the Initial Order or the CCAA, and no Party to any such Agreement shall on or following the Plan Implementation Date accelerate, terminate, refuse to renew, rescind, refuse to perform or otherwise disclaim, rescind or resiliate its obligations thereunder, or enforce or exercise (or purport to enforce or exercise) any right or remedy under or in respect of any such Agreement, by reason:

(i) of any event that occurred prior to, and is not continuing after, the Plan Implementation Date, or which is or continues to be suspended or waived under this Plan or the Initial Order, which would otherwise entitle any other Party to enforce those rights or remedies;

(ii) that the Company has sought or obtained relief or has taken steps as part of this Plan or under the CCAA;

(iii) of any default or event of default arising as a result of the financial condition or insolvency of the Company;

(iv) of the effect upon the Company of the implementation of this Plan or any transactions contemplated under this Plan; or

(v) of any compromises, settlements, arrangements, restructurings or reorganizations effected pursuant to this Plan;

(h) direct the Trustee to comply with the provisions of this Plan;

(i) stay the commencing, taking, applying for or issuing or continuing any and all steps or proceedings, including administrative hearings and orders, declarations or assessments, commenced, taken or proceeded with or that may be commenced, taken or proceeded with against the Released Parties in respect of the Released Claims; and

(j) authorize the Monitor to perform its functions and fulfil its obligations under this Plan.

10.3 Conditions to Plan Implementation

The implementation of this Plan shall be conditional upon the fulfillment, satisfaction or waiver, to the extent permitted by Section 10.4 hereof, of the following conditions at or prior to the Effective Time:

(a) this Plan shall have been approved by the Required Majority;

(b) the Court shall have granted the Sanction Order;

(c) the Sanction Order shall have become a Final Order;

(d) the U.S. Bankruptcy Court shall have granted the U.S. Plan Recognition Order and the U.S. Plan Recognition Order shall have become a Final Order;

(e) the Available Cash less the Aggregate Reserve Amount shall be sufficient to provide for the payment in full on the Plan Implementation Date of all *bona fide* Post-Filing Claims that are accrued and due and payable as of the Plan Implementation Date and all Employee Priority Claims;

(f) the Additional Plan Consideration shall be in an amount acceptable to the Noteholder Committee in its sole and absolute discretion;

(g) all Plan Documents necessary or desirable to achieve Plan Implementation shall have been executed and be in form and substance acceptable to each of the Plan Proponents; and

(h) there shall not be in effect any Law, or any order, injunction, decree or judgment of any court or other Government Authority, prohibiting, preventing or making illegal

the consummation of the Plan or any of the transactions contemplated hereby and the Plan and all transactions contemplated hereby shall be completed in compliance with Applicable Law.

10.4 Waiver of Conditions

With the exception of the conditions set out in Sections 10.3(a) and 10.3(b) hereof, which cannot be waived by any Person, and Section 10.3(f) (which may only be waived by the Noteholder Committee in its sole and absolute discretion), the Plan Proponents may, acting unanimously (but each in their respective sole and absolute discretion), at any time and from time to time, waive the fulfillment or satisfaction, in whole or in part, of the conditions set out in Section 10.3 hereof.

10.5 Monitor's Certificate

Upon the fulfillment, satisfaction or waiver of the conditions set out in Section 10.3 hereof, the Monitor shall then promptly deliver to the service list in the CCAA Proceedings and file with the Court a certificate of the Monitor stating that the conditions to Plan Implementation have been satisfied or waived in accordance with the Plan, the Effective Time has occurred, and that the Plan is effective in accordance with its terms and the terms of the Sanction Order.

ARTICLE 11
GENERAL

11.1 Binding Effect

At the Effective Time:

(a) this Plan shall become effective;

(b) the treatment of all Persons and Parties named or referred to in, or subject to, this Plan shall be final and binding for all purposes and shall enure to the benefit of the Company, the Noteholder Committee, the Trustee, the Affected Creditors, the DIP Lender, the Released Parties and all other Persons and Parties named or referred to in, or subject to, this Plan and their respective heirs, executors, administrators and other legal representatives, successors and assigns;

(c) each provision of this Plan in its entirety and any other Plan Document shall have been deemed to have been consented to and agreed to by all necessary Persons and Parties, including with respect to any provision for which the unanimous consent of Noteholders would be required pursuant to the Trust Indenture; and

(d) all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out this Plan in its entirety shall be deemed to have been executed and delivered.

11.2 Waiver of Defaults

From and after the Plan Implementation Date, all Persons shall be deemed to have waived any and all defaults or events of default of the Company then existing or previously committed by the

Company, or caused by the Company, by reason of or related to any of the provisions in this Plan, the actions, steps and transactions contemplated by or undertaken pursuant to this Plan, or non-compliance with any covenant, warranty, representation, term, provision, condition or obligation, expressed or implied, in any Agreement existing between such Person and the Company and any and all notices of default and demands for payment or any step or proceeding taken or commenced in connection therewith under any such Agreement shall be deemed to have been rescinded and of no further force or effect; provided that nothing in this Section 11.2 shall, or shall be deemed to, excuse or release the Company from performing any obligation under this Plan (including any obligation recognized or affirmed under this Plan) or act as a waiver of any default by the Company under this Plan or the Plan Documents. This Section 11.2 does not affect or waive the rights of any Person to pursue any recoveries for a Claim that may be obtained from a guarantor (other than the Company or a Released Party) and any security granted by such guarantor.

11.3 Deeming Provisions

In this Plan, the deeming provisions are not rebuttable and are conclusive and irrevocable.

11.4 Modification of Plan

(a) The Company, with the prior consent of each of the other Plan Proponents (each in their respective sole and absolute discretion) may amend, restate, modify and/or supplement this Plan, provided that any such amendment, restatement, modification or supplement must:

(i) if made prior to the Meeting, be communicated to Affected Creditors in the manner required by the Meeting Order and otherwise in compliance with the Meeting Order; and

(ii) if made following the Meeting, be approved by the Court following notice to the service list in the CCAA Proceedings.

(b) Notwithstanding anything to the contrary in Section 11.4(a) hereof, any amendment, restatement, modification or supplement to this Plan may be made by the Company, with the prior consent of each of the other Plan Proponents (each in their respective sole and absolute discretion), at any time prior to the Plan Implementation Date without notice to Affected Creditors or approval of the Court if such amendment, restatement, modification or supplement, in the reasonable opinion of the foregoing Parties, is of an administrative nature required to better give effect to the implementation of this Plan and the Sanction Order or to cure any errors, omissions or ambiguities and is not materially adverse to the financial or economic interests of the Company, the Affected Creditors or the DIP Lender, and such amendment, restatement, modification or supplement is to be forthwith filed with the Court.

(c) Any amended, restated, modified or supplementary Plan filed with the Court pursuant to this Section 11.4 shall, for all purposes, be and be deemed to be a part of and incorporated in this Plan and the Sanction Order.

11.5 Preferential Transactions

Section 36.1 of the CCAA, sections 95 to 101 of the BIA, and any federal or provincial Law relating to preferences, fraudulent conveyances or transfers at undervalue shall not apply to this Plan (including, to any and all transactions contemplated by and to be implemented pursuant to this Plan) or to any payments or distributions made in connection with this Plan.

11.6 Severability of Plan Provisions

If, prior to Plan Implementation, any term or provision of this Plan is held by the Court to be invalid, void or unenforceable, at the unanimous joint request of the Plan Proponents (each in their respective sole and absolute discretion), the Court shall have the power to either (a) sever such term or provision from the balance of this Plan and provide the Plan Proponents with the option to proceed with the implementation of the balance of this Plan as of and with effect from the Plan Implementation Date, or (b) alter and interpret such term or provision to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted, provided that each of the foregoing Plan Proponents has approved such alteration or interpretation in its sole and absolute discretion. Notwithstanding any such holding, alteration or interpretation, but subject to the foregoing approval rights of the Plan Proponents, the remainder of the terms and provisions of this Plan shall remain in full force and effect and shall in no way be affected, impaired or invalidated by such holding, alteration or interpretation.

11.7 Responsibilities of the Monitor

The Monitor is acting solely in its capacity as Monitor in the CCAA Proceedings with respect to this Plan, without personal or corporate liability, and is not and will not be responsible or liable for any obligations of the Company.

11.8 Notices

Any notice or other communication to be delivered hereunder must be in writing and refer to this Plan and may, subject as hereinafter provided, be made or given by personal delivery, courier, or email addressed to the respective Parties as follows:

(a) If to the Company:

Crystallex International Corporation
8 King Street East, Suite 1201
Toronto, Ontario
M5C 1B5

Attention: Robert Fung
Email: rfung@crystallex.com

with a copy to:

Davies Ward Phillips & Vineberg LLP
155 Wellington Street West
Toronto, Ontario
M5V 3J7

Attention: Robin B. Schwill
Email: rschwill@dwpv.com

(b) If to the Monitor:

Ernst & Young Inc.
100 Adelaide Street West
Toronto, Ontario
M5H 0B3

Attention: Brian Denega
Email: brian.denega@ca.ey.com

with a copy to:

Stikeman Elliott LLP
5300 Commerce Court West
199 Bay Street
Toronto, Ontario
M5L 1B9

Attention: Maria Konyukhova
Email: mkonyukhova@stikeman.com

(c) If to the Noteholder Committee and/or the Trustee:

c/o Goodmans LLP
Bay Adelaide Centre – West Tower
333 Bay St., Suite 3400
Toronto, Ontario
M5H 2S7

Attention: Robert J. Chadwick and Chris Armstrong
Email: rchadwick@goodmans.ca / carmstrong@goodmans.ca

(d) If to the DIP Lender:

c/o Cassels Brock & Blackwell LLP
Bay Adelaide Centre – North Tower
40 Temperance St., Suite 3200

Toronto, Ontario
M5H 0B4

Attention: Ryan Jacobs
Email: rjacobs@casselsbrock.com

or to such other address as any Party may from time to time notify the others in accordance with this Section 11.8. Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of emailing, provided that such day in either event is a Business Day and the communication is so delivered, emailed or sent before 5:00 p.m. (prevailing time in Toronto, Ontario, Canada) on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

11.9 Paramountcy

From and after the Effective Time and except as expressly provided for herein, this Plan shall take precedence and priority over any and all rights of any Person under any Agreement or Applicable Law with respect to the matters addressed in this Plan.

11.10 Further Assurances

Each of the Persons named or referred to in, or subject to, this Plan will execute and deliver all such documents and instruments and do all such acts and things as may be necessary or desirable to carry out the full intent and meaning of this Plan and to give effect to the transactions contemplated herein.

[***remainder of page left intentionally blank***]

SCHEDULE A

Reference Date	**31-Mar-26**	**31-Dec-26**	**30-Jun-27**
(i) Proven Standstill Noteholder Claim	188,198,213.88	188,198,213.88	188,198,213.88
(ii) Post-Standstill Period Interest	303,939,841.84	339,953,600.86	365,083,625.46
Total	**492,138,055.72**	**528,151,814.74**	**553,281,839.34**

***** all amounts are in U.S. dollars

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

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

MOTION RECORD
(Creditor Entitlement and Distribution Order)

VOLUME 2 OF 2

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Fax: (416) 979-1234

Lawyers for Computershare Trust Company in its capacity as Trustee for the holders of Crystallex senior 9.375% notes due December 23, 2011, and the Ad Hoc Noteholder Committee