

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

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In re:	)	
	)	Chapter 11
	)	
COBALT INTERNATIONAL ENERGY, INC., <i>et al.</i> , <sup>1</sup>	)	Case No. 17-36709 (MI)
	)	
Reorganized Debtors.	)	(Jointly Administered)
	)	
	)	Re: Docket No. 784

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**EMERGENCY MOTION PURSUANT TO 11 U.S.C. §§ 105(A) AND 1142(B) FOR ENTRY OF ORDER IN AID OF THE FOURTH AMENDED PLAN**

**THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTIES TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTIES CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTIES. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEYS.**

**EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO**

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<sup>1</sup> The Reorganized Debtors in the Chapter 11 Cases, along with the last four digits of each Reorganized Debtor's federal tax identification number, are: Cobalt International Energy, Inc. (1169); Cobalt International Energy GP, LLC (7374); Cobalt International Energy, L.P. (2411); Cobalt GOM LLC (7188); Cobalt GOM # 1 LLC (7262); and Cobalt GOM # 2 LLC (7316). The Reorganized Debtors' service address is: 920 Memorial City Way, Suite 100, Houston, Texas 77024.



**THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.**

Nader Tavakoli, solely in his capacity as Lead Member and Chairman of the Plan Administrator Committee of Cobalt International Energy, Inc., *et al.* (the “Plan Administrator”), moves (the “Motion”) this Court, on an emergency basis, for entry of an order authorizing certain action in connection with the provisions of the *Order (I) Confirming The Fourth Amended Joint Chapter 11 Plan Of Cobalt International Energy, Inc. And Its Debtor Affiliates And (II) Approving The Sale Transaction* [Dkt. No. 784].<sup>2</sup> In support of this Motion, the Plan Administrator states as follows:

**BACKGROUND**

1. The Debtors commenced these Chapter 11 bankruptcy cases on December 14, 2017 (the “Petition Date”) by filing voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (the “Bankruptcy Code”). These cases are jointly administered under the caption *In re Cobalt International Energy, Inc., et al.*, Case No. 17-36709 (the “Chapter 11 Cases”).

2. On April 5, 2018, this Court entered the Confirmation Order confirming the Fourth Amended Plan. Under the Fourth Amended Plan, each Holder of an Allowed Second Lien Notes Secured Claim is entitled to receive its Pro Rata share of the Second Lien Recovery up to payment in full of such Second Lien Noteholder’s Allowed Second Lien Notes Secured Claim. Under the confirmed Fourth Amended Plan, distributions on account of the Allowed

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<sup>2</sup> Unless otherwise indicated, all capitalized terms in this Motion shall have the same meaning as ascribed to them in the *Fourth Amended Joint Chapter 11 Plan of Cobalt International Energy, Inc. and Its Debtor Affiliates* (as may be amended, supplemented, or otherwise modified from time to time, and including all exhibits and supplements thereto, the “Fourth Amended Plan”) or the Confirmation Order, as applicable.

Second Lien Notes Claims will be made only to the Second Lien Indenture Trustee, who will thereafter, in turn, make distributions to the individual Holders of the Allowed Second Lien Notes Claims through Depository Trust Company (“DTC”), which is the central depository and clearing house for the Second Lien Notes.

3. The Effective Date of the Fourth Amended Plan was April 10, 2018, which was also determined to be the Distribution Record Date for determining which Holders of the Second Lien Notes Claims were entitled to receive distributions under the Fourth Amended Plan. Pursuant to paragraph 157 of the Confirmation Order, the Second Lien Indenture Trustee notified the DTC of the Distribution Record Date and directed the DTC to freeze the positions for the Second Lien Notes as of the Distribution Record Date for purposes of making distributions to the Holders of the Second Lien Notes Claims in accordance with the Fourth Amended Plan.

4. Pursuant to the confirmed Fourth Amended Plan and Confirmation Order, the Plan Administrator made a partial distribution to the Second Lien Indenture Trustee on account of the Allowed Second Lien Notes Secured Claims in the amount of \$297,231,114.38 on the Effective Date, and, on April 11, 2018, the Second Lien Indenture Trustee, in turn, made an interim distribution in the same aggregate amount to Holders of the Allowed Second Lien Notes Secured Claims as of the Distribution Record Date.

5. Given the amount of time that may transpire until future distributions are made to the Second Lien Indenture Trustee on account of the Second Lien Notes Claims, the Holders of the Second Lien Notes Claims (including former members of the Second Lien Ad Hoc Group), have indicated that their desire to transfer or trade out of their positions prior to waiting for such final distributions.

6. However, the DTC interprets paragraph 157 of the Confirmation Order as requiring a permanent freeze on the transferability or ability of the Second Lien Noteholders to transfer and trade their respective positions in the Second Lien Notes. Paragraph 157 was not intended to require permanent freeze of the positions of the Second Lien Notes. Instead it was intended to establish a Distribution Record Date to facilitate payment by the Second Lien Indenture Trustee without affecting the ability of the Second Lien Noteholders to thereafter transfer or trade their positions after the Distribution Record Date.

7. The DTC will “unfreeze” the positions of the Second Lien Notes upon entry of an order from this Court authorizing the DTC to take the appropriate internal steps to allow the positions to be transferred and traded without risk of running afoul of the Court’s Confirmation Order.

8. Accordingly, the Plan Administrator seeks the relief requested herein.

#### **JURISDICTION AND VENUE**

9. The Court has subject matter jurisdiction over this matter under 28 U.S.C. § 1334. *See also* Dkt. No. 784, ¶ 121. This matter is a core proceeding under 28 U.S.C. § 157(b)(2).

#### **RELIEF REQUESTED**

10. To provide the DTC with the clarification it requires, the Plan Administrator seeks entry of an order pursuant to sections 105(a) and 1142(b) of the Bankruptcy Code (a) providing that paragraph 157 of the Confirmation Order does not require a permanent freeze of the positions of the Second Lien Notes, and (b) authorizing the Second Lien Indenture Trustee to (i) present for payment the global securities representing the Second Lien Notes, (ii) notify and direct the DTC to take the following actions, which the DTC shall take following receipt of such direction from the Second Lien Indenture Trustee, or as soon thereafter as is reasonably

practicable: (A) unfreeze the positions of the Second Lien Notes; (B) cancel the global securities representing the Second Lien Notes that are presented to the DTC; and (C) cancel the existing CUSIPs for the Second Lien Notes and create contra-CUSIPs with respect to same, also known as Escrow CUSIPs, which shall be freely transferable by the beneficial owners of the Second Lien Notes as of the date the Escrow CUSIPs are issued. Future distributions by the Second Lien Indenture Trustee shall be made to the then-current record holder of any contra-CUSIPs.

### **ARGUMENT**

11. The relief requested by this Motion is authorized pursuant to section 1142 of the Bankruptcy Code, which provides, in pertinent part:

The court may direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a confirmed plan, and to perform any other act . . . that is necessary for the consummation of the plan.

11 U.S.C. § 1142(b).

12. The Confirmation Order and Fourth Amended Plan provide that this Court shall retain jurisdiction to, among other things, interpret the terms of the Confirmation Order. *See* Conf. Ord., ¶ 121 (“This Court retains jurisdiction over the Chapter 11 Cases, all matters arising out of or related to the Chapter 11 Cases and the Plan, the matters set forth in Article XI of the Plan, and other applicable provisions of the Plan.”); Plan, Art. IX (“Notwithstanding the entry of the Confirmation Order and the occurrence of the Effective Date, on or after the Effective Date, the Bankruptcy Court shall retain jurisdiction over the Chapter 11 Cases and all matters, arising out of, or related to, the Chapter 11 Cases and the Plan, including jurisdiction to...hear and determine disputes arising in connection with the interpretation, implementation, modification, or enforcement of the Plan, or the Confirmation Order ....”). The relief requested in this Motion is also appropriate under the Court’s equitable powers under section 105(a) of the Bankruptcy

Code grants bankruptcy courts broad authority and discretion to take actions necessary to enforce the provisions of the Bankruptcy Code and this Court's general equitable powers. *See* 11 U.S.C. § 105(a).

13. The Plan Administrator seeks an order providing relief in connection with paragraph 157 of the Confirmation Order as set forth herein.

14. The Plan Administrator is not seeking to modify, alter, amend or otherwise affect the Fourth Amended Plan and the Confirmation Order.

### **EMERGENCY CONSIDERATION**

15. The Plan Administrator respectfully requests consideration of this Motion on an emergency basis. On information and belief, the Second Lien Noteholders have been prevented from transferring or trading their positions since the Effective Date. Entry of the order will allow the DTC to facilitate such transfers and trades post-Effective Date.

### **CERTIFICATION OF EMERGENCY**

16. Pursuant to the Bankruptcy Local Rules, the undersigned counsel certifies the accuracy of the facts relating to the need for emergency relief.

### **NOTICE**

17. The Plan Administrator will provide notice of this Motion to: (a) the Office of the United States Trustee for the Southern District of Texas; and (b) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Plan Administrator submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, for the reasons stated herein, the Plan Administrator requests this Court enter the proposed order that will be submitted by the Plan Administrator and grant such other and further relief as it deems appropriate.

Dated: June 29, 2018  
Houston, Texas

Respectfully submitted,

GREENBERG TRAURIG, LLP

*/s / Shari L. Heyen*

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*Counsel for Nader Tavakoli, solely in his capacity as Lead Member and Chairman of the Plan Administrator Committee of Cobalt International Energy, Inc., et al.*