

**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)
	)	
	)	<b>Re: Docket Nos. 300, 784</b>

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**MOTION OF NADER TAVAKOLI, ACTING SOLELY AS PLAN ADMINISTRATOR,  
FOR ENTRY OF ORDER PURSUANT TO BANKRUPTCY RULE 9019  
APPROVING SETTLEMENT AGREEMENT RELATING  
TO CLASS ACTION SECURITIES LITIGATION**

**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.**

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 for entry of an order pursuant to Bankruptcy Rule 9019

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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).



approving a Stipulation and Agreement of Settlement (the “Settlement Agreement”), attached hereto as **Exhibit A**, between and among: (a) lead plaintiffs GAMCO Global Gold, Natural Resources & Income Trust and GAMCO Natural Resources, Gold & Income Trust (together, the “GAMCO Funds” or “Lead Plaintiffs”), St. Lucie County Fire District Firefighters’ Pension Trust Fund, Fire and Police Retiree Health Care Fund, San Antonio, Sjunde AP-Fonden, and Universal Investment Gesellschaft m.b.H. (collectively, with Lead Plaintiffs, “Plaintiffs”), on behalf of themselves and the certified class of investors who transacted in Cobalt International Energy, Inc. securities (collectively, the “Securities Plaintiffs”), in the lawsuit styled *Cobalt International Energy, Inc. Securities Litigation*, Lead Case No. 4:14-cv-3428 (S.D. Tex.) (the “Securities Litigation”); (b) defendant Cobalt International Energy, Inc. (“Cobalt”) and its Debtor Affiliates<sup>2</sup> (collectively, the “Debtors”), by and through the Plan Administrator; and (c) defendants Joseph H. Bryant, James W. Farnsworth, Jack E. Golden, Jon A. Marshall, Myles W. Scoggins, William P. Utt, John P. Wilkirson, and Martin H. Young, Jr. (the “Cobalt Individual Defendants,” together with Cobalt, the “Cobalt Settling Defendants,” and collectively with Plaintiffs, the “Settling Parties”). In support of this Motion, the Plan Administrator states as follows:

**PRELIMINARY STATEMENT**

1. After nearly four years of contentious litigation, and months of robust negotiations, the Plan Administrator has reached a settlement of the claims in the Securities Litigation, which, if approved by this Court<sup>3</sup> and by the District Court, will provide for the recovery to the Debtors’ estates of at least \$4.2 million and potentially up to \$28.5 million from

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<sup>2</sup> All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in ¶ 1 of the Settlement Agreement.

<sup>3</sup> This Court retained broad jurisdiction regarding Claims and Causes of Action, Plan, at Article XI(1), (4), (6), (7), (9), (11) and (21).

existing and future insurance proceeds and provide the Debtors with a broad release and protection from contribution claims.

2. As more specifically set forth in the Settlement Agreement, the settlement will result in the prompt disbursement of approximately \$4.2 million currently held in escrow from Cobalt's prior settlements with certain insurance carriers, which escrow the Cobalt Individual Defendants assert was established pre-petition for their sole benefit. The balance of the \$28.5 million will be paid from future proceeds of ongoing litigation against various insurance carriers, if ultimately successful, and distributed according to a sharing formula which essentially pays the Plan Administrator 50% of the net proceeds until the Plan Administrator has received \$28.5 million, subject to certain discounts as an incentive for prompt payment. The Settlement Agreement also provides that any attorneys' fees and expenses of Debtors' counsel incurred in the pursuit of insurance must be reimbursed to Debtors before any allocation can be made to the Settling Parties according to the sharing formula. Consistent with the Plan and Confirmation Order, which provide that recovery on any of the claims of the Securities Plaintiffs shall be limited to available insurance, the Settlement Agreement also settles the claims against the Debtors and the other Cobalt Settling Defendants for \$220 million, payable exclusively from existing and future insurance proceeds, subject to the sharing formula described above.

3. The Settlement Agreement requires approval both by this Court and the District Court. Pursuant to Bankruptcy Rule 9019, the proposed Settlement Agreement satisfies the "reasonable, fair and equitable" standard. The settlement resolves all claims against the Debtors and the other Cobalt Settling Defendants at no additional cost to the Debtors' estates, and provides for a recovery to the Debtors' estates of up to \$28.5 million from existing and any proceeds that may be received in the future from ongoing litigation against various insurance

carriers, as well as for the reimbursement of attorneys' fees and expenses of Debtors' counsel incurred in the pursuit of such insurance. Thus, the Plan Administrator believes this settlement represents the best opportunity to resolve significant pending litigation against the Debtors, while also maximizing the value of the remaining D&O Insurance Policies.

4. For these reasons, and as set forth more fully below, the Plan Administrator respectfully requests that the Settlement Agreement be approved.

### **BACKGROUND**

5. Beginning on or about November 30, 2014, multiple putative securities class action complaints were filed in the United States District Court for the Southern District of Texas (the "District Court") by purchasers of Cobalt Securities (Cobalt common stock, Cobalt 2.625% Convertible Senior Notes due 2019, and Cobalt 3.125% Convertible Senior Notes due 2024). On March 3, 2015, the District Court consolidated all similar putative class actions into the Securities Litigation, and appointed the GAMCO Funds as Lead Plaintiffs in the Securities Litigation.

6. On May 1, 2015, Plaintiffs filed the Consolidated Amended Class Action Complaint, which sought damages on behalf of a putative class of investors in Cobalt Securities during the Class Period from March 1, 2011 through November 3, 2014.

7. On June 30, 2015, the Cobalt Settling Defendants, Sponsor Defendants,<sup>4</sup> Sponsor Designee Defendants<sup>5</sup> and Underwriter Defendants<sup>6</sup> (collectively, the "Defendants") filed

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<sup>4</sup> The Goldman Sachs Group, Inc., Riverstone Holdings LLC, FRC Founders Corporation (f/k/a First Reserve Corporation), ACM Ltd. (f/k/a KERN Partners Ltd.), and The Carlyle Group, L.P.

<sup>5</sup> Peter R. Coneway, Henry Cornell, N. John Lancaster, Kenneth W. Moore, J. Hardy Murchison, Kenneth A. Pontarelli, D. Jeff van Steenbergen, Scott L. Lebovitz, and Michael G. France.

<sup>6</sup> Goldman Sachs & Co. LLC, Morgan Stanley & Co. LLC, Credit Suisse Securities (USA) LLC, Citigroup Global Markets Inc., J.P. Morgan Securities LLC, Tudor, Pickering, Holt & Co. Securities, Inc., Deutsche Bank Securities Inc., RBC Capital Markets, LLC, UBS Securities LLC, Howard Weil Incorporated, Stifel, Nicolaus & Company, Incorporated, Capital One Southcoast, Inc., and Lazard Capital Markets LLC.

motions to dismiss the Amended Complaint. On January 19, 2016, the District Court entered a Memorandum and Order denying in part and granting in part Defendants' motions to dismiss the Amended Complaint. The District Court further denied Defendants' interlocutory appeal motions on March 14, 2016, and Defendants answered the Amended Complaint on March 25, 2016, denying liability and the essential factual allegations therein.

8. On November 2, 2016, Plaintiffs moved to certify the Action as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure. On June 15, 2017, the District Court entered its Memorandum and Order granting Plaintiffs' motion for class certification, in which the District Court certified the Action to proceed as a class action (on behalf of a class of purchasers of Cobalt Securities during the Class Period as defined therein) (the "Certified Class"), appointed Plaintiffs as class representatives for that class, and appointed Lead Counsel as class counsel. The class certification is currently on appeal in the Fifth Circuit.

9. On December 14, 2017, Cobalt and the other Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code, commencing these bankruptcy cases.

10. On January 4, 2018, Plaintiffs and Defendants agreed to stay all proceedings in the Securities Litigation until April 21, 2018 in light of Cobalt's bankruptcy.

11. On April 4, 2018, this Court confirmed [ECF No. 784] (the "Confirmation Order") the Debtors' plan of reorganization (the "Plan"), which became effective on April 10, 2018 (the "Effective Date").

12. Pursuant to the Plan and Confirmation Order, the Plaintiffs' claims against Cobalt were "preserved, provided that any recovery on such Claims shall be limited to available insurance and subject to Articles VI.I.2 and VI.I.3 of the Plan, as applicable" (ECF No. 784 at p 44). The Confirmation Order did not affect Plaintiffs' claims against the Cobalt Individual

Defendants, nor did it limit the Debtors' claims against the insurers, including claims for reimbursement of the significant legal fees that had been incurred in connection with the Securities Litigation.

13. Pursuant to the Plan, the Plan Administrator was appointed to act in the capacity of a board of directors and officers of the Debtors and was expressly authorized to effectuate and implement the terms and conditions of the Plan. After his appointment in April 2018, the Plan Administrator immediately entered into robust settlement negotiations in an attempt to resolve the Securities Litigation on terms favorable to these bankruptcy estates.

14. Following months of arm's-length negotiations, the Plan Administrator, counsel for Lead Plaintiffs and the Cobalt Individual Defendants entered into the Settlement Agreement to resolve all claims asserted by the Plaintiffs, on their own behalf and on behalf of members of the Certified Class, against Cobalt, the Cobalt Individual Defendants, and any potential claims against the other Debtors, with the Cobalt Settling Defendants keeping the insurers apprised as to the proposed terms of the settlement during the negotiation process, including providing all insurers with several versions of the Settlement Term Sheet that provided all key terms and conditions contained in the Settlement Agreement. The Settlement Agreement (together with the exhibits thereto) memorializes the agreement among the Settling Parties, eliminates the uncertainty, burden, and expense of further protracted litigation, and obtains a recovery to the Debtors' estates of up to \$28.5 million, including the prompt disbursement from escrow of approximately \$4.2 million.

## THE PROPOSED SETTLEMENT AGREEMENT

15. The following highlights portions of the Settlement Agreement favorable to the Debtors' estates, but is qualified in its entirety by reference to the attached Settlement Agreement:<sup>7</sup>

- a. Cobalt Creditors' Share. The Settlement Amount provides for the Plan Administrator to obtain an allocation of insurance proceeds on behalf of creditors of the Debtors of up to **\$28.5 million** (the "Cobalt Creditors' Share"),<sup>8</sup> payable as follows:
  - i. Approximately **\$4.2 million** in Existing Proceeds from prior settlements with Insurers will be disbursed to the Plan Administrator after the Settlement Agreement is approved by the District Court;
  - ii. the first \$2 million of any future net recoveries in the AIG Litigation;
  - iii. fifty percent (50%) of any other future recoveries in the AIG Litigation;
  - iv. fifty percent (50%) of any other future recoveries in the D&O Coverage Litigation; and
  - v. 50% of any funds returned from the \$1,750,000 Defense Cost Reserve.
- b. Control and expense of coverage litigation. Lead Counsel on behalf of the Settlement Class will have certain control over the D&O Coverage Litigation through the first \$57 million in recoveries (except with respect to the AIG Litigation) and complete control over the D&O Coverage Litigation thereafter. The first proceeds from D&O Coverage Litigation will be applied to the any attorneys' fees and expenses, including the fees and expenses of non-testifying and testifying experts, of AIG Litigation Counsel and D&O Litigation Counsel selected to pursue or prosecute the AIG Litigation or remaining D&O Coverage Litigation.

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<sup>7</sup> Parties in interest are directed to the Settlement Agreement, attached hereto as Exhibit A, for a full and complete understanding of the terms of the settlement. In the event of any inconsistency between the terms of the Settlement Agreement and the summary in this Motion, the terms of the Settlement Agreement shall control.

<sup>8</sup> The Plan Administrator negotiated an incentive to obtain the Cobalt Creditors' Share sooner, by offering certain discounts based upon the timing of receipt of payments by the Plan Administrator (\$500,000 discount if \$12 million or more received within 6 months; additional \$1 million discount if \$17 million or more received within 12 months; additional \$1 million if \$22 million or more received within 18 months; and additional \$1 million if \$28.5 million, less applicable discounts, received within 24 months).

- c. Mutual Release. Upon the final termination of all D&O Coverage Litigation involving the Insurers or D&O Liability Insurance Policies, the Plaintiffs shall execute the Settlement Release in favor of the Cobalt Settling Defendants.
- d. Contribution Bar Order. The Debtors, their respective Estates, and each of the D&O Defendants shall be discharged from all claims for contribution brought by other persons. The Final Order of the District Court approving the settlement shall include a mutual bar order in accordance with 15 U.S.C. § 78u-4(f)(7)(A) (the “Bar Order”).

### **RELIEF REQUESTED**

16. The Plan Administrator seeks approval, pursuant to Rule 9019 of the Bankruptcy Rules, of the Settlement Agreement.

### **ARGUMENT AND AUTHORITIES**

17. Rule 9019(a) of the Bankruptcy Rules permits the Court, following notice and hearing as provided by Bankruptcy Rule 2002, to approve a compromise of a controversy. Rule 9019(a) provides:

On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.

Fed. R. Bankr. P. 9019(a). Approval of a compromise is within the sound discretion of the bankruptcy court. *United States v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 297 (5th Cir. 1984); *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602-03 (5th Cir. 1980). Settlements are considered a “normal part of the process of reorganization” and “desirable and wise methods of bringing to a close proceedings otherwise lengthy, complicated and costly.” *Jackson Brewing*, 624 F.2d at 602.

18. Neither Bankruptcy Rule 9019(a) nor any section of the Bankruptcy Code explicitly sets forth the standards by which a court is to evaluate a proposed settlement for



approval. In the seminal case on approval of settlements in bankruptcy cases, *In re Protective Comm. for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968), the United States Supreme Court held that the trial court must make an informed, independent judgment as to whether a settlement is fair and equitable, and explained: “There can be no informed and independent judgment as to whether a proposed compromise is fair and equitable until the bankruptcy judge has apprised himself of all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated.” *Id.* at 424. *See also Jackson Brewing Co.*, 624 F.2d at 608 (noting that “there must be a substantial factual basis for the approval of a compromise”).

19. Generally, the role of the bankruptcy court is not to decide the issues in dispute when evaluating a settlement. Instead, the court should determine whether the settlement is fair and equitable as a whole. *TMT Trailer*, 390 U.S. at 424; *Watts v. Williams*, 154 B.R. 56, 59 (S.D. Tex. 1993).

20. In deciding whether to approve a settlement, the following factors must be considered:

- (a) the probability of success in litigation, with due consideration of the uncertainty in fact and law;
- (b) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay; and
- (c) all other factors bearing on the wisdom of the compromise.

*See TMT Trailer*, 390 U.S. at 424.

21. Under the rubric of the third, catch-all provision, the Fifth Circuit has specified two additional factors that bear on the decision to approve a proposed settlement. First, the court should consider “the paramount interest of creditors with proper deference to their reasonable views.” *Connecticut Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*,

68 F.3d 914, 917 (5th Cir. 1995). Second, the court should consider “the extent to which the settlement is truly the product of arms-length bargaining, not of fraud and collusion.” *Id.* at 918 (citations omitted).

22. Here, the Settlement Agreement is the product of arm’s-length bargaining, over the course of several months, diligently pursued by the Plan Administrator through lengthy and hard-fought negotiations. As noted above, the settlement resolves all claims against the Debtors and the other Cobalt Settling Defendants at no cost to the Debtors’ estates, provides the Debtors’ estates with a release, and provides the benefit of the Bar Order. In addition, the Settlement Agreement provides for a recovery to the Debtors’ estates of up to \$28.5 million from the allocation of at least \$4.2 million in escrowed funds that the former Directors and Officers assert was established pre-petition for their sole benefit, and any proceeds that may be received in the future from ongoing litigation against various insurance carriers, as well as the reimbursement of attorneys’ fees and expenses of Debtors’ counsel incurred in the pursuit of such insurance. The Debtors’ estates have limited resources, likely short of the resources necessary to finance what would no doubt be lengthy and costly class action litigation and related insurance recovery litigation. Absent the Settlement Agreement, the Debtors’ own assets would be depleted by litigating the insurance coverage issues and, to the extent insurance is obtained, the limits of the insurance policies would be depleted by the defense costs incurred in defending the underlying actions. Under the circumstances, the Plan Administrator believes this settlement is more than “reasonable, fair and equitable” and represents the best chance to resolve significant claims against the estates, while also maximizing the value of the remaining D&O Insurance Policies.

**NOTICE**

23. The Plan Administrator will provide notice of this Motion to: (a) the Office of the United States Trustee for the Southern District of Texas; (b) the Settling Parties; (c) the Insurers; (d) the Second Lien Indenture Trustee; and (e) any party that has requested post-Effective Date 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 submitted contemporaneously herewith, approve the Settlement Agreement and grant such other and further relief as it deems just and equitable.

Respectfully submitted this 22nd day of October, 2018.

**GREENBERG TRAURIG, LLP**

*/s/ Shari L. Heyen*

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Shari L. Heyen (SBN 09564750)  
David R. Eastlake (SBN 24074165)  
1000 Louisiana Street, Suite 1700  
Houston, Texas 77002  
Telephone: (713) 374-3500  
Facsimile: (713) 374-3505  
Email: [heyens@gtlaw.com](mailto:heyens@gtlaw.com)  
Email: [eastlaked@gtlaw.com](mailto:eastlaked@gtlaw.com)

- and -

Karl G. Dial (SBN 05800400)  
2200 Ross Avenue Suite 5200  
Dallas Texas 75201  
Telephone: (214) 665-3611  
Facsimile: (214) 665-5915  
[dialk@gtlaw.com](mailto:dialk@gtlaw.com)

*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.*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Motion has been served upon the parties eligible to receive notice through the Court's ECF facilities by electronic mail, and upon the other parties identified on the Service List attached hereto, in the manner indicated, on October 22, 2018.

*/s/ David R. Eastlake* \_\_\_\_\_

David R. Eastlake

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

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

**ORDER GRANTING MOTION OF NADER TAVAKOLI, ACTING SOLELY  
AS PLAN ADMINISTRATOR, FOR ENTRY OF ORDER PURSUANT TO  
BANKRUPTCY RULE 9019 APPROVING SETTLEMENT AGREEMENT  
RELATING TO CLASS ACTION SECURITIES LITIGATION**

[Refers to Docket No. \_\_\_\_]

Upon the *Motion of Nader Tavakoli, Acting Solely as Plan Administrator, for Entry of Order Pursuant to Bankruptcy Rule 9019 Approving Settlement Agreement Relating to Class Action Securities Litigation* (the “Motion”);<sup>2</sup> and upon consideration of the Motion and the relief requested therein; and this being a core proceeding pursuant to 28 U.S.C. § 157; and the Court having jurisdiction pursuant to 28 U.S.C. § 1334; and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and it appearing that no other or further notice need be provided; the Court having determined that there exists just cause for the relief granted herein; and the Court finding that the Settlement Agreement is fair and equitable and in the best interests of the Debtors’ estates, and that the Settlement Agreement is the product of arm’s-length bargaining; and upon the record of the hearing before the Court, and any responses to the Motion having been withdrawn, resolved,

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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).

<sup>2</sup> Unless otherwise indicated, all capitalized terms in this Order shall have the same meaning as ascribed to them in the Motion.

or overruled on the merits; and after due deliberation and sufficient cause appearing therefor, it is  
HEREBY ORDERED that:

1. The Motion is GRANTED.
2. The Settlement Agreement is approved in all respects.
3. The Plan Administrator is authorized to take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Settlement Agreement.
4. This Order shall not alter, amend, modify, or otherwise affect the rights and obligations of any other party in interest under the Plan.
5. Except as expressly set forth in this Order, the Plan and Confirmation Order remain in full and force and effect as originally entered.
6. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
7. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation, implementation, and enforcement of this Order.

Dated: \_\_\_\_\_, 2018  
Houston, Texas

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THE HONORABLE MARVIN ISGUR  
UNITED STATES BANKRUPTCY JUDGE

# **EXHIBIT A**

## **Settlement Agreement**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

IN RE COBALT INTERNATIONAL  
ENERGY, INC. SECURITIES LITIGATION

Lead Case No. 4:14-cv-3428 (NFA)

**STIPULATION AND AGREEMENT OF SETTLEMENT AMONG THE  
PLAINTIFFS, COBALT INDIVIDUAL DEFENDANTS, AND NADER  
TAVAKOLI, SOLELY ACTING AS PLAN ADMINISTRATOR ON  
BEHALF OF THE COBALT DEBTORS**

This Stipulation and Agreement of Settlement, dated as of October 11, 2018 (the “Settlement Agreement”) is entered into between and among: (a) lead plaintiffs GAMCO Global Gold, Natural Resources & Income Trust and GAMCO Natural Resources, Gold & Income Trust (together, the “GAMCO Funds” or “Lead Plaintiffs”), St. Lucie County Fire District Firefighters’ Pension Trust Fund, Fire and Police Retiree Health Care Fund, San Antonio, Sjunde AP-Fonden, and Universal Investment Gesellschaft m.b.H. (collectively, with Lead Plaintiffs, “Plaintiffs”), on behalf of themselves and the Settlement Class; (b) defendant Cobalt International Energy, Inc. (“Cobalt”) and its Debtor Affiliates<sup>1</sup> (collectively, the “Debtors”) in the Debtors’ Chapter 11 cases (the “Chapter 11 Cases” as more fully described below), by and through 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”); and (c)

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<sup>1</sup> All terms with initial capitalization not otherwise defined herein shall have the meanings ascribed to them in ¶ 1 herein.



*EXECUTION VERSION*

defendants Joseph H. Bryant, James W. Farnsworth, Jack E. Golden, Jon A. Marshall, Myles W. Scoggins, William P. Utt, John P. Wilkirson, and Martin H. Young, Jr., and embodies the terms and conditions of the settlement of all claims by Plaintiffs against the Cobalt Settling Defendants (the “Settlement”) in the above-captioned action (the “Action”). Subject to the approval of the District Court and Bankruptcy Court and the terms and conditions expressly provided herein, this Settlement Agreement is intended to fully, finally, and forever compromise, settle, release, resolve, and dismiss with prejudice all claims asserted in the Action against the Cobalt Settling Defendants upon the completion of the Settling Parties’ respective obligations set forth herein.

WHEREAS:

A. Beginning on or about November 30, 2014, multiple putative securities class action complaints were filed in the United States District Court for the Southern District of Texas (the “District Court”) by purchasers of Cobalt Securities. Pursuant to the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §§77z-1 and 78u-4, as amended, notice to the public was issued setting forth the deadline by which putative class members could move the District Court to be appointed to act as lead plaintiff.

B. On March 3, 2015, the District Court consolidated all similar putative class actions into the Action, appointed the GAMCO Funds as Lead Plaintiffs in the Action, and approved Lead Plaintiffs’ selection of the law firms of Entwistle & Cappucci LLP and Bernstein Litowitz Berger & Grossmann LLP as Lead Counsel and Ajamie LLP as Liaison Counsel for the putative class.

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C. On May 1, 2015, Plaintiffs filed the Consolidated Amended Class Action Complaint. The Amended Complaint asserted (a) claims under Section 11 of the Securities Act of 1933 (the “Securities Act”) against Cobalt, certain of the Cobalt Individual Defendants, and the Underwriter Defendants; (b) claims under Section 12(a)(2) of the Securities Act against the Underwriter Defendants; (c) claims under Section 15 of the Securities Act against the Cobalt Individual Defendants, the Sponsor Defendants, the Sponsor Designee Defendants, and Underwriter Defendant Goldman Sachs & Co. LLC (“GS&Co.”); (d) claims under Section 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) and Securities and Exchange Commission (“SEC”) Rule 10b–5 promulgated thereunder, against Cobalt and certain of the Cobalt Individual Defendants; and (e) claims under Section 20(a) of the Exchange Act against certain of the Cobalt Individual Defendants. The Amended Complaint sought damages on behalf of a putative class of investors in Cobalt Securities during the Class Period from March 1, 2011 through November 3, 2014.

D. On June 30, 2015, the Cobalt Settling Defendants, Sponsor Defendants, Sponsor Designee Defendants and Underwriter Defendants (collectively, the “Defendants”) filed motions to dismiss the Amended Complaint. On August 31, 2015, Plaintiffs filed papers in opposition to the motions to dismiss; and on September 29, 2015, Defendants filed reply papers on those motions. On January 19, 2016, the District Court entered a Memorandum and Order denying in part and granting in part Defendants’ motions to dismiss the Amended Complaint. The District Court further denied

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Defendants' interlocutory appeal motions on March 14, 2016, and Defendants answered the Amended Complaint on March 25, 2016, denying liability and the essential factual allegations therein.

E. On November 2, 2016, Plaintiffs moved to certify the Action as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure. On March 22, 2017, Defendants filed their papers in opposition to the motion for class certification; and on May 26, 2017, Plaintiffs filed their reply papers on that motion. On June 15, 2017, the District Court entered its Memorandum and Order granting Plaintiffs' motion for class certification, in which the District Court certified the Action to proceed as a class action (on behalf of a class of purchasers of Cobalt Securities during the Class Period as defined therein (the "Certified Class")), appointed Plaintiffs as class representatives for that class, and appointed Lead Counsel as class counsel.

F. On March 15, 2017, Plaintiffs filed the Operative Complaint adding a claim under Section 20A of the Exchange Act against the Sponsor Defendants. On June 15, 2017, the District Court entered its Memorandum and Order granting the motion to dismiss the new Section 20A claim by The Carlyle Group, L.P. and denying the motion to dismiss of the other Sponsor Defendants.

G. On June 30, 2017, Defendants filed a petition in the United States Court of Appeals for the Fifth Circuit (the "Court of Appeals") pursuant to Federal Rule of Civil Procedure 23(f), seeking permission to take an interlocutory appeal of the District Court's Class Certification Order. On August 4, 2017, the Court of Appeals granted Defendants'

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petition. On October 10, 2017, Defendants filed their opening briefs on the appeal; on November 22, 2017, Plaintiffs filed their answering briefs on appeal; and on December 2017, Defendants filed their reply briefs. On July 19, 2018, the Court of Appeals issued a notice stating that oral argument on the appeal would take place on October 1, 2018. By virtue of agreements in principle to this Settlement and the Sponsor Settlement, on September 18, 2018, the Court of Appeals granted in part and denied in part Plaintiffs' September 13, 2018 motion to stay further proceedings in Defendants' appeal, and ruled that the appeal is stayed and held in abeyance as to all Defendants except the Underwriter Defendants other than GS&Co. and oral argument as to the appeal by the Underwriter Defendants occurred as scheduled on October 1, 2018.

H. On December 14, 2017, Cobalt and the other Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101–1532, in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”). Debtors' jointly-administered Chapter 11 cases are captioned *In re Cobalt International Energy, Inc.*, Case No. 4:17–bk–36709 (Bankr. S.D. Tex.).

I. On January 4, 2018, Plaintiffs and Defendants agreed to stay all proceedings in the Action until April 21, 2018 in light of Cobalt's bankruptcy, and an order to that effect was entered in the Bankruptcy Court on that date.

J. On April 4, 2018, the Bankruptcy Court entered an order in the Chapter 11 Cases (ECF No. 784) confirming the Debtors' plan of reorganization (the “Plan”) in the

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Chapter 11 Cases, which became effective by its terms on April 10, 2018 (the “Confirmation Order”).

K. Pursuant to the Plan and paragraph 106 of the Confirmation Order, the Plaintiffs’ claims against Cobalt were “preserved, provided that any recovery on such Claims shall be limited to available insurance and subject to Articles VI.I.2 and VI.I.3 of the Plan, as applicable.” The Confirmation Order did not affect Plaintiffs’ claims against the Cobalt Individual Defendants.

L. Pursuant to the Plan, the Plan Administrator was appointed to act in the capacity of a board of directors and officers of the Debtors to wind down the business and affairs of the Debtors.

M. On May 22, 2018, after the expiration of the bankruptcy stay, the District Court entered a revised Docket Control Order, establishing forthcoming deadlines in the case.

N. On August 31, 2018, fact discovery closed in the Action. In total, during more than two years of discovery, the parties to the Action exchanged dozens of written requests for discovery, produced more than a million of pages of documents, and conducted more than twenty depositions.

O. On October 9, 2018, following months of arm’s-length negotiations directly and through a mediator, Plaintiffs, the Sponsor Defendants, the Sponsor Designee Defendants and GS&Co. executed a settlement agreement setting forth the terms of a settlement of all claims in the Action asserted by Plaintiffs, on their own behalf and on

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behalf of members of the Certified Class, against the Sponsor Defendants, the Sponsor Designee Defendants, and GS&Co. (the “Sponsor Settlement”). The Sponsor Settlement was filed with the District Court on or about October 12, 2018, and remains subject to preliminary and final approval by the District Court.

P. On September 14, 2018, following months of arm’s-length negotiations, counsel for Lead Plaintiffs, the Plan Administrator and the Cobalt Individual Defendants executed a Settlement Term Sheet describing the principal terms of the proposed Settlement to resolve all claims asserted by the Plaintiffs, on their own behalf and on behalf of members of the Certified Class, against Cobalt and the Cobalt Individual Defendants, and any potential claims against the other Debtors.

Q. This Settlement Agreement (together with the exhibits hereto) reflects the final and binding agreement between the Settling Parties with respect to the Settlement.

R. Based upon their investigation and prosecution of the case, Plaintiffs and Lead Counsel have concluded that the terms and conditions of this Settlement Agreement and Settlement are fair, reasonable, and adequate to Plaintiffs and the other members of the Settlement Class, and in their best interests. Based on Plaintiffs’ direct oversight of the prosecution of this matter and with the advice of their counsel, Plaintiffs have agreed to settle and release the claims raised in the Action against the Cobalt Settling Defendants (and any potential claims) pursuant to the terms and provisions of this Settlement Agreement, after considering, among other things: (a) the substantial financial benefit that Plaintiffs and the other members of the Settlement Class may receive under the

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proposed Settlement; and (b) the significant risks and costs of continued litigation and trial against the Cobalt Settling Defendants, particularly in light of Cobalt's bankruptcy.

S. This Settlement Agreement constitutes a compromise of all matters that are in dispute between the Settling Parties. The Cobalt Settling Defendants are entering into this Settlement Agreement solely to eliminate the uncertainty, burden and expense of further protracted litigation. Each of the Cobalt Settling Defendants denies any wrongdoing, and this Settlement Agreement shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any of the Cobalt Settling Defendants with respect to any claim or allegation of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that the Cobalt Settling Defendants have, or could have, asserted. The Cobalt Settling Defendants expressly deny that Plaintiffs have asserted any valid claims as to any of them, and expressly deny any and all allegations of fault, liability, wrongdoing or damages whatsoever.

T. Similarly, this Settlement Agreement shall in no event be construed or deemed to be evidence of or an admission or concession on the part of Plaintiffs of any infirmity in any of the claims asserted in the Action, or an admission or concession that any of the Cobalt Settling Defendants' defenses to liability had any merit. Each of the Settling Parties recognizes and acknowledges, however, that the Action has been initiated, filed, and prosecuted by Plaintiffs in good faith and defended by the Cobalt Settling Defendants in good faith, and that the Action as to the Cobalt Settling Defendants is being voluntarily settled with the advice of counsel.

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NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and among Plaintiffs (individually and on behalf of the Settlement Class) and the Cobalt Settling Defendants, by and through their respective undersigned attorneys and subject to approval by the District Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure and the Bankruptcy Court pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure, that, in consideration of the benefits flowing to the Settling Parties from the Settlement, all Released Plaintiffs' Claims as against the Settling Defendants' Releasees and all Released Settling Defendants' Claims as against the Plaintiffs' Releasees shall be settled and released, upon and subject to the terms and conditions set forth below.

**DEFINITIONS**

1. As used in this Settlement Agreement and any exhibits attached hereto and made a part hereof, the following capitalized terms shall have the following meanings:

(a) "Action" means the consolidated securities class action in the matter styled *In re Cobalt International Energy, Inc. Securities Litigation*, Lead Case No. 4:14-cv-3428 (NFA) (S.D. Tex.), and includes all actions consolidated therein.

(b) "AIG Litigation" means the claims against Illinois National Insurance Company in *Cobalt International Energy, Inc. v. Illinois National Insurance Company, an AIG Subsidiary*, Cause No. 2016-31648, in the District Court of Harris County, Texas, 125th Judicial District.

(c) "AIG Litigation Counsel" means counsel selected by the Plan Administrator to pursue and prosecute the AIG Litigation.



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(d) “Alternate Judgment” means a form of final judgment that may be entered by the District Court herein but in a form other than the form of Judgment provided for in this Settlement Agreement and that the Settling Parties have confirmed in writing is acceptable.

(e) “Amended Complaint” means the Consolidated Amended Class Action Complaint for Violations of the Federal Securities Laws filed by Plaintiffs in the Action on May 1, 2015.

(f) “Authorized Claimant” means a Settlement Class Member who submits a Claim to the Claims Administrator that is approved by the District Court for payment from the Net Settlement Fund.

(g) “Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of Texas.

(h) “Certified Class” means the class of investors as defined in the District Court’s June 15, 2017 Memorandum and Order granting Plaintiffs’ motion for class certification.

(i) “Claim” means a paper claim submitted on a Proof of Claim Form to the Claims Administrator or an electronic claim that is submitted to the Claims Administrator.

(j) “Claim Form” or “Proof of Claim Form” means the form, substantially in the form attached hereto as Exhibit 2 to Exhibit A, that a Claimant must

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complete and submit should that Claimant seek to share in a distribution of the Net Settlement Fund.

(k) “Claimant” means a person or entity who or which submits a Claim to the Claims Administrator seeking to be eligible to share in the proceeds of the Net Settlement Fund.

(l) “Claims Administrator” means the firm retained by Lead Plaintiffs and Lead Counsel, subject to approval of the District Court, to provide all notices approved by the District Court to potential Settlement Class Members and to administer the Settlement.

(m) “Class Distribution Order” means an order entered by the District Court authorizing and directing that the Net Settlement Fund be distributed, in whole or in part, to Authorized Claimants.

(n) “Class Period” means the period from March 1, 2011 through November 3, 2014, inclusive.

(o) “Cobalt” means Cobalt International Energy, Inc., its estate in bankruptcy.

(p) “Cobalt Creditors’ Share” means up to \$28,500,000 to be paid from Existing Proceeds and any future recoveries from the AIG Litigation and D&O Coverage Litigation.

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(q) “Cobalt Individual Defendants” means Joseph H. Bryant, James W. Farnsworth, Jack E. Golden, Jon A. Marshall, Myles W. Scoggins, William P. Utt, John P. Wilkirson, and Martin H. Young, Jr.

(r) “Cobalt Securities” means Cobalt common stock, Cobalt 2.625% Convertible Senior Notes due 2019, and Cobalt 3.125% Convertible Senior Notes due 2024.

(s) “Cobalt Settling Defendants” means (i) Debtors; (ii) the Cobalt Individual Defendants; and (iii) any Sponsor Designee Defendant that has provided written notice to Lead Counsel prior to the Effective Date that he elects to join the Settlement Agreement, in which case he will be deemed a Cobalt Individual Defendant for the purposes of this Settlement.

(t) “Coverage Counsel” means counsel designated to prosecute the D&O Coverage Litigation.

(u) “Court of Appeals” means the United States Court of Appeals for the Fifth Circuit.

(v) “D&O Coverage Litigation” means the coverage litigation on behalf of Cobalt and the Cobalt Individual Defendants seeking recovery on the D&O Liability Insurance Policies to fund some or all of the Settlement Amount.

(w) “D&O Liability Insurance Policies” means those various insurance policies listed in Exhibit C that were issued in favor of the Debtors and the Cobalt Individual Defendants.

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(x) “D&O Prosecution and Payment Obligation” means the prosecution of the D&O Coverage Litigation and deposit into the Settlement Escrow Account for the benefit of the Settlement Class and/or payment to the Plan Administrator of the net proceeds, if any, after litigation expenses and attorneys’ fees for Coverage Counsel, of such litigation pursuant to the agreed-upon allocation provided herein.

(y) “Debtors” means Cobalt International Energy, Inc.; Cobalt International Energy GP, LLC; Cobalt International Energy, L.P.; Cobalt GOM LLC; Cobalt GOM # 1 LLC; and Cobalt GOM # 2 LLC.

(z) “Defendants” means Cobalt, the Cobalt Individual Defendants, the Underwriter Defendants, the Sponsor Defendants, and the Sponsor Designee Defendants.

(aa) “Defense Cost Reserve” means \$1,750,000 of the Existing Proceeds to be reserved for the Cobalt Individual Defendants to use for the limited purposes provided herein.

(bb) “District Court” means the United States District Court for the Southern District of Texas.

(cc) “Effective Date” with respect to the Settlement means the first date by which all of the events and conditions specified in ¶49 of this Settlement Agreement have been met and have occurred or have been waived in writing pursuant to the notice provision provided herein.

(dd) “Escrow Agent” means City National Bank.

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(ee) “Escrow Agreement” means the agreement between Lead Counsel and the Escrow Agent setting forth the terms under which the Escrow Agent shall maintain the Settlement Escrow Account.

(ff) “Existing Escrow Accounts” means the two escrow accounts maintained at Citibank, N.A., which holds the Existing Proceeds.

(gg) “Existing Proceeds” means \$10,173,832.13, the proceeds existing as of October 3, 2018 from prior settlements of claims under certain D&O Liability Insurance Policies that are maintained in the Existing Escrow Accounts, and any proceeds of additional such settlements prior to the Effective Date of this Settlement.

(hh) “Final,” with respect to the Judgment or, if applicable, the Alternate Judgment, or any other court order, means: (i) if no appeal is filed, the expiration date of the time provided for filing or noticing any appeal under the Federal Rules of Appellate Procedure or other applicable rules of procedure; or (ii) if there is an appeal from the judgment or order, (a) the date of final dismissal of all such appeals, or the final dismissal of any proceeding on certiorari or otherwise, or (b) the date the judgment or order is finally affirmed on an appeal, the expiration of the time to file a petition for a writ of certiorari or other form of review, or the denial of a writ of certiorari or other form of review, and, if certiorari or other form of review is granted, the date of final affirmance following review pursuant to that grant. Any appeal or proceeding seeking subsequent judicial review pertaining solely to an order issued with respect to (i) attorneys’ fees, costs or expenses, or (ii) the plan of allocation of Settlement proceeds among Plaintiffs

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and the Settlement Class (as submitted or subsequently modified), shall not in any way delay or preclude the Judgment or Alternate Judgment if applicable, from becoming Final.

(ii) “GS&Co.” means Goldman Sachs & Co. LLC (f/k/a Goldman, Sachs & Co.).

(jj) “Immediate Family” or “Immediate Family Members” means children, stepchildren, parents, stepparents, spouses, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law. As used in this definition, “spouse” shall mean a husband, a wife, or a partner in a state-recognized domestic relationship or civil union.

(kk) “Insureds” means the Debtors and the Cobalt Individual Defendants.

(ll) “Insurer” means any insurer that issued any of the D&O Liability Insurance Policies.

(mm) “Judgment” means the final judgment, substantially in the form attached hereto as Exhibit B, to be entered by the District Court approving the Settlement.

(nn) “Lead Counsel” means the law firms of Entwistle & Cappucci, LLP and Bernstein Litowitz Berger & Grossmann LLP.

(oo) “Lead Plaintiffs” means GAMCO Global Gold, Natural Resources & Income Trust and GAMCO Natural Resources, Gold & Income Trust.

(pp) “Liaison Counsel” means Ajamie LLP.

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(qq) “Litigation Expenses” means reasonable costs and expenses incurred in connection with commencing, prosecuting and settling the Action (which may include the costs and expenses of Plaintiffs directly related to their representation of the Settlement Class), for which Lead Counsel intend to apply to the District Court for reimbursement from the Settlement Fund. Litigation Expenses does not include attorneys’ fees incurred in connection with commencing, prosecuting and settling the Action.

(rr) “Net Settlement Fund” means the Settlement Fund less: (i) any Taxes; (ii) any Notice and Administration Costs (to be paid in accordance with ¶ [ ] below); (iii) any Litigation Expenses awarded by the District Court; and (iv) any attorneys’ fees awarded by the District Court.

(ss) “Non-Settling Defendants” means the Underwriter Defendants other than GS&Co.

(tt) “Notice” means the Notice of (I) Pendency of Class Action and Proposed Settlement with the Cobalt Settling Defendants; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses, substantially in the form attached hereto as Exhibit 1 to Exhibit A, which is to be mailed to Settlement Class Members.

(uu) “Notice and Administration Costs” means the reasonable costs, fees, and expenses that are incurred by the Claims Administrator and Lead Counsel, to be paid in accordance with ¶ 29 below, in connection with: (i) providing notices to the Settlement

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Class concerning the Settlement as set forth herein (including, without limitation, mailing of the Notice to Settlement Class Members and publication of the Summary Notice); and (ii) administering the Settlement, including but not limited to the Claims process, as well as the reasonable costs, fees, and expenses incurred in connection with the Settlement Escrow Account.

(vv) “Operative Complaint” means the Second Consolidated Amended Class Action Complaint for Violations of the Federal Securities Laws filed by Plaintiffs in the Action on March 15, 2017.

(ww) “Opt-Out Securities Litigation” means any securities litigation commenced by any member of the Certified Class no later than forty-five (45) days following Final Approval by the District Court.

(xx) “Plaintiffs” means the GAMCO Funds, St. Lucie County Fire District Firefighters’ Pension Trust Fund, Fire and Police Retiree Health Care Fund, San Antonio, Sjunde AP-Fonden, and Universal Investment Gesellschaft m.b.H.

(yy) “Plaintiffs’ Counsel” means Lead Counsel, Liaison Counsel, and all other legal counsel who, at the direction and under the supervision of Lead Counsel, performed services on behalf of the Settlement Class in the Action.

(zz) “Plaintiffs’ Releasees” means (i) Plaintiffs, their respective attorneys, and all other Settlement Class Members; (ii) the current and former parents, affiliates, subsidiaries, successors, predecessors, assigns, and assignees of each of the foregoing in



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(i); and (iii) the current and former officers, directors, agents, employees, attorneys, and advisors of each of the foregoing in (i) and (ii), in their capacities as such.

(aaa) “Plan Administrator” means Nader Tavakoli, solely in his capacity as Lead Member and Chairman of the Plan Administrator Committee of Debtors.

(bbb) “Plan of Allocation” means the proposed plan of allocation of the Net Settlement Fund among Plaintiffs and the Settlement Class as set forth in the Notice.

(ccc) “Preliminary Approval Order” means the order, substantially in the form attached hereto as Exhibit A, to be entered by the District Court preliminarily approving the Settlement and directing that notice of the Settlement be provided to the Settlement Class.

(ddd) “Prior Complaints” means any complaint, other than the Operative Complaint, filed in the Action or in any action consolidated into the Action, including: (1) Complaint, *St. Lucie County Fire District Firefighters’ Pension Trust Fund et al. v. Bryant et al.*, No. 4:14-cv-03428 (S.D. Tex.) (filed on November 30, 2014); (2) Complaint, *Newman v. Cobalt International Energy, Inc. et al.*, No. 4:14-cv-03488 (S.D. Tex.) (filed on December 5, 2014); (3) Complaint, *Ogden v. Bryant et al.*, No. 4:15-cv-00139 (S.D. Tex.) (filed on January 16, 2015); and (4) the Amended Complaint.

(eee) “PSLRA” means the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §§ 77z-1, 78u-4, as amended.

(fff) “Released Claims” means all Released Plaintiffs’ Claims and all Released Settling Defendants’ Claims.

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(ggg)“Released Plaintiffs’ Claims” means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common or foreign law, that were or could have been asserted in any forum that relate to, arise out of, or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Operative Complaint or in any of the Prior Complaints and that relate to the purchase, acquisition, sale, or holding of Cobalt Securities during the Class Period. Released Plaintiffs’ Claims do not include: (i) any claims asserted, or that may be asserted, against any of the Sponsor Defendants, any Sponsor Designee Defendant who has not opted in to this Settlement Agreement prior to the Effective Date, GS&Co. and/or any Non-Settling Defendants; (ii) any claims of any person or entity who or that submits a request for exclusion from the Settlement Class that is accepted by the District Court; and (iii) any claims relating to the enforcement of the Settlement.

(hhh)“Released Settling Defendants’ Claims” means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common or foreign law, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims asserted in the Action against the Cobalt Settling Defendants. Released Settling Defendants’ Claims do not include: (i) any claims against any person or entity who or that submits a request for exclusion from the Settlement Class that is accepted by the District Court; (ii) any claims against any Insurer; and (iii) any claims relating to the enforcement of the Settlement.

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(iii) “Releasee(s)” means each and any of the Settling Defendants’ Releasees and each and any of the Plaintiffs’ Releasees.

(jjj) “Releases” means the releases set forth in ¶¶ 19-22 of this Settlement Agreement.

(kkk) “Settlement” means the settlement between Plaintiffs and the Cobalt Settling Defendants and the resolution of this Action as against the Cobalt Settling Defendants on the terms and conditions set forth in this Settlement Agreement.

(lll) “Settlement Agreement” means this Stipulation and Agreement of Settlement Among the Plaintiffs, Cobalt Individual Defendants, and Plan Administrator on Behalf of the Cobalt Defendants.

(mmm) “Settlement Amount” means \$220,000,000, that is payable exclusively from the Existing Proceeds and future proceeds from the D&O Prosecution and Payment Obligation.

(nnn) “Settlement Class” means all persons and entities who or which purchased or otherwise acquired Cobalt Securities between March 1, 2011 and November 3, 2014, inclusive, and were damaged thereby. Included within the Settlement Class are all persons and entities who or which purchased or otherwise acquired shares of Cobalt common stock on the open market and/or pursuant or traceable to the registered public offerings on or about (i) February 23, 2012; (ii) January 16, 2013; and (iii) May 8, 2013. Also included within the Settlement Class are all persons and entities who or which purchased or otherwise acquired Cobalt convertible senior notes on the open market

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and/or pursuant or traceable to registered public offerings on or about (i) December 12, 2012; and (ii) May 8, 2014. Excluded from the Settlement Class are Defendants; the officers and directors of Defendants during the Class Period (the “Excluded Officers and Directors”); members of the Immediate Family of the Individual Defendants and of the Excluded Officers and Directors; any entity in which any Defendant, any Excluded Officer or Director, or any of their respective Immediate Family Members has, and/or had during the Class Period, a controlling interest; Defendants’ liability insurance carriers; any affiliates, parents, or subsidiaries of the corporate Defendants; all corporate Defendants’ plans that are covered by ERISA; and the legal representatives, heirs, agents, affiliates, successors-in-interest or assigns of any excluded person or entity, in their respective capacity as such. Also excluded from the Settlement Class are any persons and entities who or which exclude themselves by submitting a request for exclusion that is accepted by the District Court.

(ooo) “Settlement Class Member” means each person and entity who or which is a member of the Settlement Class.

(ppp) “Settlement Escrow Account” means an account maintained at City National Bank wherein the Settlement Fund shall be deposited and held in escrow under the control of Lead Counsel.

(qqq) “Settlement Fund” means the portion of the Existing Proceeds to be allocated to Plaintiffs and the Settlement Class, plus any future recoveries to be allocated to Plaintiffs and the Settlement Class from the D&O Coverage Litigation (including the

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AIG Litigation) pursuant to the D&O Prosecution and Payment Obligation, plus any and all interest earned thereon.

(rrr) “Settlement Hearing” means the hearing set by the District Court under Rule 23(e)(2) of the Federal Rules of Civil Procedure to consider final approval of the Settlement.

(sss) “Settlement Release” means a full and absolute Settlement Release of the Cobalt Individual Defendants from the unpaid balance, if any, of the Settlement Amount, as well as a full and absolute release of the Debtors, in the form attached as Exhibit D to this Settlement Agreement, to be executed by Plaintiffs and provided to the Cobalt Settling Defendants and the Debtors following the final termination of all D&O Coverage Litigation involving the Insurers or D&O Liability Insurance Policies, or, pursuant to ¶ 22, executed in advance and held in escrow by counsel for the Plan Administrator and Cobalt Individual Defendants.

(ttt) “Settling Defendants’ Counsel” means the law firms of Greenberg Traurig, LLP, Baker Botts LLP and Quinn Emanuel Urquhart & Sullivan, LLP.

(uuu) “Settling Defendants’ Releasees” means (i) the Cobalt Settling Defendants; (ii) the current and former parents, affiliates, subsidiaries, successors, predecessors, assigns, and assignees of each of the Cobalt Settling Defendants; (iii) the current and former officers, directors, agents, employees, attorneys, and advisors of each of the foregoing in (i) and (ii), in their capacities as such; and (iv) the members of the Immediate Family of the Cobalt Individual Defendants. Notwithstanding the foregoing,

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the Settling Defendants' Releasees do not include any of the Sponsor Defendants, any Sponsor Designee Defendant who has not opted in to this Settlement Agreement prior to the Effective Date, GS&Co., or the Non-Settling Defendants or Cobalt's liability insurance carriers, in their capacities as such.

(vvv) "Settling Parties" means the Cobalt Settling Defendants and Plaintiffs, on behalf of themselves and the Settlement Class.

(www) "Sponsor Defendants" means defendants The Goldman Sachs Group, Inc., Riverstone Holdings LLC, FRC Founders Corporation (f/k/a First Reserve Corporation), ACM Ltd. (f/k/a KERN Partners Ltd.), and The Carlyle Group, L.P.

(xxx) "Sponsor Designee Defendants" means defendants Peter R. Coneway, Henry Cornell, N. John Lancaster, Kenneth W. Moore, J. Hardy Murchison, Kenneth A. Pontarelli, D. Jeff van Steenberg, Scott L. Lebovitz, and Michael G. France.

(a) "Sponsor Settlement" means the settlement between Plaintiffs and the Sponsor Defendants, Sponsor Designee Defendants, and GS&Co and the resolution of this Action as against the Sponsor Defendants, Sponsor Designee Defendants, and GS&Co on the terms and conditions set forth in Stipulation and Agreement of Settlement with the Sponsor Defendants, the Sponsor Designee Defendants and Goldman Sachs & Co. LLC dated October 9, 2018.

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(b) “Summary Notice” means the Summary Notice of (I) Pendency of Class Action and Proposed Settlement with the Cobalt Settling Defendants; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses, substantially in the form attached hereto as Exhibit 2 to Exhibit A, to be published as set forth in the Preliminary Approval Order.

(c) “Taxes” means: (i) all federal, state, and/or local taxes of any kind (including any interest or penalties thereon) on any income earned by the Settlement Fund; (ii) the expenses and costs incurred by Lead Counsel in connection with determining the amount of, and paying, any taxes owed by the Settlement Fund (including, without limitation, expenses of tax attorneys and accountants); and all taxes imposed on payments by the Settlement Fund, including withholding taxes.

(d) “Underwriter Defendants” means defendants GS&Co., Morgan Stanley & Co. LLC, Credit Suisse Securities (USA) LLC, Citigroup Global Markets Inc., J.P. Morgan Securities LLC, Tudor, Pickering, Holt & Co. Securities, Inc., Deutsche Bank Securities Inc., RBC Capital Markets, LLC, UBS Securities LLC, Howard Weil Incorporated, Stifel, Nicolaus & Company, Incorporated, Capital One Southcoast, Inc., and Lazard Capital Markets LLC.

(e) “Unknown Claims” means any Released Plaintiffs’ Claims which Plaintiffs or any other Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the release of such claims, and any Released Settling Defendants’ Claims which any Cobalt Settling Defendant does not know or suspect to

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exist in his or its favor at the time of the release of such claims, which, if known by him, her, or it, might have affected his, her, or its decision as to this Settlement. As to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date of the Settlement, Plaintiffs and the Cobalt Settling Defendants shall expressly waive, and each of the other Settlement Class Members shall be deemed to have waived, and by operation of the Judgment or the Alternate Judgment, if applicable, shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, that is similar, comparable, or equivalent to California Civil Code §1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Plaintiffs and the Cobalt Settling Defendants acknowledge, and each of the other Settlement Class Members shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

**CLASS CERTIFICATION**

2. Solely for purposes of the Settlement and for no other purpose, the Cobalt Settling Defendants do not contest: (a) certification of the Action as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the Settlement Class; (b) certification of Plaintiffs as class representatives for the Settlement Class; and (c) appointment of Lead Counsel as class counsel for the



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Settlement Class pursuant to Rule 23(g) of the Federal Rules of Civil Procedure. In the event that the Settlement is terminated pursuant to the terms of this Settlement Agreement, the certification of the Settlement Class in connection with the Settlement shall become null and void. In such case, the Cobalt Settling Defendants shall have the right to continue to prosecute their appeal in the Court of Appeals of the District Court's June 15, 2017 Memorandum and Order certifying the Class, and shall have the right to otherwise seek decertification of the Class.

**PRELIMINARY APPROVAL OF SETTLEMENT**

3. Promptly upon execution of this Settlement Agreement, but in no event later than ten (10) calendar days following such execution, Plaintiffs shall move for preliminary approval of the Settlement, certification of the Settlement Class for settlement purposes only, and the scheduling of a hearing for consideration of final approval of the Settlement, before the District Court, and the Cobalt Settling Defendants shall not oppose that motion. Concurrently with the motion for preliminary approval, Plaintiffs shall apply to the District Court for, and the Cobalt Settling Defendants shall agree to, entry of the Preliminary Approval Order, substantially in the form attached hereto as Exhibit A.

4. Where practicable and with consent of the Cobalt Settling Defendants, which is not to be unreasonably withheld, but in no event later than ten (10) calendar days following execution of this Settlement Agreement, Plaintiffs are permitted to seek preliminary approval of the Settlement in conjunction with preliminary approval of the

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Sponsor Settlement, including by filing combined motions and related filings with the District Court and providing combined notice to Settlement Class Members concerning both this Settlement and the Sponsor Settlement.

5. Promptly upon execution of this Settlement Agreement, but in no event later than ten (10) calendar days following such execution, the Plan Administrator and the Cobalt Individual Defendants shall move for approval of the Settlement before the Bankruptcy Court, and Plaintiffs shall not oppose that motion.

6. If either the District Court denies Plaintiffs' motion for preliminary approval or the Bankruptcy Court denies the Cobalt Settling Defendants' motion for approval, the Settling Parties shall have the respective rights set forth in ¶¶ 51-52 herein.

**THE SETTLEMENT CONSIDERATION**

7. In full and final satisfaction, compromise, settlement, and discharge of the Cobalt Settling Defendants' obligation to satisfy the Settlement Amount, as set forth herein, the Settling Parties agree:

(a) That the Plaintiffs shall pursue and prosecute on the Insureds' behalf all rights to, interests in, claims and/or coverage under D&O Liability Insurance Policies (including claims of bad faith) in the D&O Coverage Litigation, except the AIG Litigation, which shall continue to be pursued and prosecuted by the Insureds through AIG Litigation Counsel. Lead Counsel and the Plan Administrator shall mutually agree on Coverage Counsel other than AIG Litigation Counsel until such time as the Plan

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Administrator is paid-in-full the Cobalt Creditors' Share, after which time Lead Counsel for Plaintiffs are permitted to replace Coverage Counsel with counsel of their choice;

(b) To fully cooperate with each other in the conduct of the D&O Coverage Litigation; and

(c) To immediately deposit into the Settlement Escrow Account any future recoveries by the Insureds pursuant to the D&O Prosecution and Payment Obligation against any D&O Liability Insurance Policy, except that (i) any attorneys' fees and expenses, including the fees and expenses of non-testifying and testifying experts, of AIG Litigation Counsel and Coverage Counsel selected to pursue or prosecute the AIG Litigation and D&O Coverage Litigation shall be paid first from any recoveries before any other allocations pursuant to this ¶ 7; (ii) the first \$2,000,000 of any future recoveries in the AIG Litigation shall be paid to the Plan Administrator to be administered in accordance with the Plan; (iii) 50 percent of any other future recoveries in the AIG Litigation shall be paid to the Plan Administrator to be administered in accordance with the Plan; and (iv) 50 percent of any other future recoveries in the D&O Coverage Litigation shall be paid to the Plan Administrator to be administered in accordance with the Plan, until the total amount the Plan Administrator has received from the Existing Proceeds, the AIG Litigation and the D&O Coverage Litigation equals the Cobalt Creditors' Share, after which any additional recoveries shall be deposited in full into the Settlement Escrow Account; *provided*, however, that the Cobalt Creditors' Share shall be discounted based on the timing of recoveries paid to the Plan Administrator as follows:

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(i) If the Cobalt Creditors' Share received by the Plan Administrator within 6 months of the date of execution of the Settlement Agreement totals \$12,000,000 or more, the Cobalt Creditors' Share shall be discounted by \$500,000;

(ii) If the Cobalt Creditors' Share received by the Plan Administrator within 12 months of the date of execution of the Settlement Agreement totals \$17,000,000 or more, the Cobalt Creditors' Share shall be discounted by \$1,000,000 (which shall be in addition to any discount attained under (i) above);

(iii) If the Cobalt Creditors' Share received by the Plan Administrator within 18 months of the date of execution of the Settlement Agreement totals \$22,000,000 or more, the Cobalt Creditors' Share shall be discounted by \$1,000,000 (which shall be in addition to any discount(s) attained under (i) or (ii) above); and

(iv) if the Cobalt Creditors' Share received by the Plan Administrator within 24 months of the date of the execution of the Settlement Agreement totals \$28,500,000, less any discount(s) attained under (i), (ii), or (iii) above, the Cobalt Creditors' Share shall be discounted by \$1,000,000 (which shall be in addition to any discount(s) attained under (i), (ii), or (iii) above).

8. Any settlement of a claim with an Insurer under the D&O Coverage Litigation or AIG Litigation is subject to the written consent of Lead Counsel and the Plan Administrator, which will not be unreasonably withheld, until such time as the Cobalt Creditors' Share is paid-in-full, after which any such settlement is solely at the discretion of Lead Counsel.

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9. The Existing Proceeds from prior settlements or other prior resolution of claims under the D&O Liability Insurance Policies that are maintained in the Existing Escrow Accounts, after subtracting the Defense Cost Reserve, shall be allocated 50 percent to the Plaintiffs and 50 percent to the Plan Administrator to be administered in accordance with the Plan. The 50 percent of the Existing Proceeds allocable to the Plaintiffs shall be deposited into the Settlement Escrow Account to be administered by the Plaintiffs. The 50 percent of the Existing Proceeds allocable to the Plan Administrator shall be sent via wire transfer to the Plan Administrator. The Cobalt Individual Defendants and/or the Plan Administrator or Debtors, as required to facilitate the deposit, shall give instructions to the Escrow Agent for the Existing Escrow Accounts to release the Existing Proceeds in accordance with the Settlement.

10. Notwithstanding any other provision of this Settlement Agreement, the Defense Cost Reserve will remain in the Existing Escrow Accounts for the use by one or more of the Cobalt Individual Defendants solely to (a) pay accrued defense fees and costs prior to Final Approval, (b) respond to any challenges or objections to the Settlement Agreement, and (c) defend Opt-Out Securities Litigation, if any, commenced by any member of the Certified Class of Plaintiffs no later than forty-five (45) days following Final Approval by the District Court, at which time, if no Opt-Out Securities Litigation has been commenced, the remaining Defense Cost Reserve will be allocated 50 percent to the Plaintiffs and 50 percent to the Plan Administrator on behalf of the creditors of Cobalt. The 50 percent of any remaining Defense Cost Reserve allocable to the Plaintiffs

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shall be deposited into the Settlement Escrow Account and the 50 percent of any remaining Defense Cost Reserve allocable to the Plan Administrator shall be sent via wire transfer to the Plan Administrator. Notwithstanding the foregoing, no more than \$400,000 of the Defense Costs Reserve may be used by the Cobalt Individual Defendants for the purposes set forth in (a) and (b) above.

11. The Parties agree that the D&O Prosecution and Payment Obligation is accepted in full settlement of the Released Plaintiffs' Claims except as to the claims the Debtors and/or the Cobalt Individual Defendants may have under and against the D&O Liability Insurance Policies and Insurers, subject to execution and delivery of the Settlement Release and provided in ¶¶ 1(sss) and 19.

12. For the avoidance of doubt, the D&O Prosecution and Payment Obligation is not an assignment of the D&O Liability Insurance Policies themselves, which continue to be owned by the Debtors, or of rights or coverage under such policies, which will continue to be held by the Insureds.

13. Subject to the allocation set forth herein, the Debtors and the Cobalt Individual Defendants also agree to pay over to the Settlement Escrow Account all future recoveries (if any) they receive from any insurance policy or policies other than the D&O Liability Insurance Policies in connection with any claim asserted against the Debtors or the Cobalt Individual Defendants in the Securities Litigation. For the avoidance of doubt, no Debtor or Cobalt Individual Defendant shall have any obligation to pursue any

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recovery from any insurance policy or policies other than the D&O Liability Insurance Policies.

14. Following the Effective Date of this Settlement Agreement, reasonable costs or expenses of the Insureds necessary to enable the Insureds to meet their cooperation obligations under this Agreement related to the Action and D&O Coverage Litigation shall be borne by the Plaintiffs, with the exception of outstanding and yet-to-be completed discovery obligations (if any) in the Action.

15. The Plan Administrator and the Cobalt Individual Defendants agree that, following payment in full of the Cobalt Creditors' Share, decisions in respect of the recovery of insurance proceeds on behalf of the Insureds, including but not limited to selection of counsel and prosecution of any D&O Coverage Litigation in the name of the Insureds, will be made on behalf of the Debtors and the Cobalt Individual Defendants by Lead Counsel for the Plaintiffs, who shall have sole authority to decide such issues. Decisions in respect of the claims in the AIG Litigation, including the selection of counsel to pursue and prosecute such claims and the settlement of such claims, shall remain with the Plan Administrator until the AIG Litigation is fully and finally resolved; *provided*, however, that any settlement of the AIG Litigation is subject to the consent of Lead Counsel and the Plan Administrator, which will not be unreasonably withheld.

16. Where applicable under this Settlement Agreement, the Plan Administrator and the Cobalt Individual Defendants shall cause the immediate payment of all recoveries from D&O Liability Insurance Policies and the D&O Prosecution and Payment

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Obligation into the Settlement Escrow Account, and by operation of the Settlement Agreement no additional consent by the Plan Administrator and/or the Cobalt Individual Defendants to such payment shall be required.

17. The Plan Administrator and the Cobalt Individual Defendants waive any and all right to object to payment of proceeds into the Settlement Escrow Account in satisfaction of the D&O Prosecution and Payment Obligation, except that the Plan Administrator retains its right to maintain possession of or require the transfer of those amounts due to it pursuant to this Settlement Agreement.

18. The Plaintiffs and Lead Counsel covenant not to collect, execute, or take any steps or actions to record, enforce, or execute against the Debtors or the Cobalt Individual Defendants with respect to the unpaid Settlement Amount and agree to look solely to the D&O Insurance Policies and Insurers for the remaining balance of the Settlement Amount. This covenant is binding on all successors and assigns of the Plaintiffs and, upon Final Judgment (or the Alternate Judgment, if applicable) in this Action and the Final approval of this Settlement by the Bankruptcy Court, shall survive in all respects the termination of the Settlement Agreement.

**RELEASE OF CLAIMS**

19. Upon the final termination of all D&O Coverage Litigation involving the Insurers or D&O Liability Insurance Policies, the Plaintiffs shall execute the Settlement Release.



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20. The Judgment, or the Alternate Judgment, if applicable, and the Settlement Release shall provide that, upon the final termination of all D&O Coverage Litigation involving the Insurers or D&O Liability Insurance Policies, Plaintiffs and each of the other Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of the Judgment, or the Alternate Judgment, if applicable, shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs' Claim against the Settling Defendants' Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs' Claims against any of the Settling Defendants' Releasees.

21. The Judgment, or the Alternate Judgment, if applicable, and the Cobalt Settling Defendants' release of the Plaintiffs' Releasees shall provide that, upon the final termination of all D&O Coverage Litigation involving the Insurers or D&O Liability Insurance Policies, the Cobalt Settling Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of the Judgment, or the Alternate Judgment, if applicable, shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Settling Defendants' Claim against Plaintiffs and the other Plaintiffs' Releasees, and shall forever be barred and enjoined from prosecuting any or all of the

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Released Settling Defendants' Claims against any of the Plaintiffs' Releasees. This release shall not apply to any person or entity who or that submits a request for exclusion from the Settlement Class that is accepted by the District Court.

22. At the election of either the Plan Administrator or the Cobalt Individual Defendants, the Settlement Release may be executed in advance and held in escrow by counsel for the Plan Administrator and the Cobalt Individual Defendants, which conditions and obligations will be memorialized in a separate escrow agreement.

**USE OF SETTLEMENT FUND**

23. The Settlement Fund shall be used to pay: (a) any Taxes; (b) any Notice and Administration Costs, to be paid in accordance with ¶ 29; (c) any Litigation Expenses awarded by the District Court; and (d) any attorneys' fees awarded by the District Court. The balance remaining in the Settlement Fund, that is, the Net Settlement Fund, shall be distributed to Authorized Claimants as provided in ¶¶ 37-44 below.

24. Except as provided herein or pursuant to orders of the District Court, the Net Settlement Fund shall remain in the Settlement Escrow Account prior to the Effective Date. All funds held by the Escrow Agent shall be deemed to be in the custody of the District Court and shall remain subject to the jurisdiction of the District Court until such time as the funds shall be distributed or returned pursuant to the terms of this Settlement Agreement and/or further order of the District Court. The Escrow Agent shall invest any funds in the Settlement Escrow Account exclusively in United States Treasury Bills (or a mutual fund invested solely in such instruments) and shall collect and reinvest all interest

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accrued thereon, except that any residual cash balances up to the amount that is insured by the FDIC may be deposited in any account that is fully insured by the FDIC. In the event that the yield on United States Treasury Bills is negative, in lieu of purchasing such Treasury Bills, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States. Additionally, if short-term placement of the funds is necessary, all or any portion of the funds held by the Escrow Agent may be deposited in any account that is fully insured by the FDIC or backed by the full faith and credit of the United States.

25. The Settling Parties agree that the Settlement Fund is intended to be a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and that Lead Counsel, as administrators of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall be solely responsible for filing or causing to be filed all informational and other tax returns as may be necessary or appropriate (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)) for the Settlement Fund. Lead Counsel shall also be responsible for causing payment to be made from the Settlement Fund of any Taxes owed with respect to the Settlement Fund. The Settling Defendants' Releasees shall not have any liability or responsibility for any such Taxes.

26. Upon written request, the Cobalt Settling Defendants will provide to Lead Counsel a combined statement described in Treasury Regulation § 1.468B-3(e). Lead

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Counsel, as administrators of the Settlement Fund within the meaning of Treasury Regulation § 1.468B-2(k)(3), shall timely make such elections as are necessary or advisable to carry out this paragraph, including, as necessary, making a “relation back election,” as described in Treasury Regulation § 1.468B-1(j), to cause the Qualified Settlement Fund to come into existence at the earliest allowable date, and shall take or cause to be taken all actions as may be necessary or appropriate in connection therewith.

27. All Taxes shall be paid out of the Settlement Fund, and shall be timely paid, by the Escrow Agent pursuant to the disbursement instructions to be set forth in the Escrow Agreement, and without further order of the District Court. Any tax returns prepared for the Settlement Fund (as well as the election set forth therein) shall be consistent with the previous paragraph and in all events shall reflect that all Taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein. The Settling Defendants’ Releasees shall have no responsibility or liability for the acts or omissions of Lead Counsel or their agents with respect to the payment of Taxes, as described herein.

28. The Settlement is not a claims-made settlement. Upon the occurrence of the Effective Date, no Settling Defendant, Settling Defendants’ Releasee, or any other person or entity who or which paid any portion of the Settlement Amount shall have any right to the return of the Settlement Fund or any portion thereof for any reason whatsoever, including without limitation, the number of Claims submitted, the collective amount of Recognized Claims (as set forth in the Plan of Allocation set forth in the

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Notice attached hereto as Exhibit 1 to Exhibit A, or in such other plan of allocation as the District Court approves) of Authorized Claimants, the percentage of recovery of losses, or the amounts to be paid to Authorized Claimants from the Net Settlement Fund.

29. Before the Effective Date of the Settlement, Lead Counsel may pay up to \$100,000 from the Settlement Fund, without further approval from Cobalt Settling Defendants or further order of the District Court, for Notice and Administration Costs actually incurred and paid or payable. Such costs and expenses shall include, without limitation, the actual costs of printing and mailing the Notice, publishing the Summary Notice, reimbursements to nominee owners for forwarding the Notice to their beneficial owners, the administrative expenses incurred and fees charged by the Claims Administrator in connection with providing notice, and the fees, if any, of the Escrow Agent. In the event that the Settlement is terminated pursuant to the terms of this Settlement Agreement, all Notice and Administration Costs paid or incurred, including any related fees, shall not be returned or repaid to any Cobalt Settling Defendants, any of the other Settling Defendants' Releasees, or any other person or entity who or which paid any portion of the Settlement Amount.

30. In the event that Plaintiffs reach any settlement with any of the Non-Settling Defendants and notice of any other such settlement, including the Sponsor Settlement, is disseminated simultaneously with notice of this Settlement, or administration of any other such settlement is conducted in conjunction with administration of this Settlement, Lead Counsel shall have the discretion to allocate

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reasonably all Notice and Administration Costs paid or incurred, including any related fees, among the Settlement Fund and any settlement funds for any other such settlements involving the Non-Settling Defendants.

**ATTORNEYS' FEES AND LITIGATION EXPENSES**

31. Lead Counsel may apply to the District Court for a collective award of attorneys' fees to Plaintiffs' Counsel to be paid from (and out of) the Settlement Fund. Lead Counsel also may apply to the District Court for reimbursement of Litigation Expenses, which may include a request for reimbursement of Plaintiffs' reasonable costs and expenses directly related to their representation of the Settlement Class, to be paid from (and out of) the Settlement Fund. Lead Counsel's application for an award of attorneys' fees and Litigation Expenses is not the subject of any agreement between the Settling Parties other than what is set forth in this Settlement Agreement. The Cobalt Settling Defendants shall have no responsibility for or liability whatsoever for any notice sent to members of the Settlement Class concerning Lead Counsel's application for an award of attorneys' fees and Litigation Expenses.

32. Subject to the terms and requirements of Paragraphs 9 and 10 of this Settlement Agreement, any attorneys' fees and Litigation Expenses that are awarded by the District Court from Existing Proceeds shall be paid to Lead Counsel immediately upon award, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Plaintiffs' Counsel's obligation to make appropriate refunds or repayments to

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the Existing Escrow Accounts, plus accrued interest at the same net rate as is earned by the Existing Escrow Accounts, if the Settlement is terminated pursuant to the terms of this Settlement Agreement or if, as a result of any appeal or further proceedings on remand, or successful collateral attack, the award of attorneys' fees and/or Litigation Expenses is reduced or reversed and such order reducing or reversing the award has become Final. Plaintiffs' Counsel shall make the appropriate refund or repayment in full no later than thirty (30) days after: (a) receiving from the Settling Defendants' Counsel notice of the termination of the Settlement; or (b) any order reducing or reversing the award of attorneys' fees and/or Litigation Expenses has become Final. An award of attorneys' fees and/or Litigation Expenses is not a necessary term of this Settlement Agreement and is not a condition of the Settlement embodied herein. Neither Plaintiffs nor Lead Counsel may cancel or terminate the Settlement based on the District Court's or any appellate court's ruling with respect to attorneys' fees and/or Litigation Expenses.

33. Lead Counsel shall allocate the attorneys' fees awarded amongst Plaintiffs' Counsel in a manner which they, in good faith, believe reflects the contributions of such counsel to the institution, prosecution and settlement of the Action against the Cobalt Settling Defendants. The Settling Defendants' Releasees shall have no responsibility for or liability whatsoever with respect to the allocation or award of attorneys' fees or Litigation Expenses. The attorneys' fees and Litigation Expenses that are awarded to Plaintiffs' Counsel shall be payable solely from the Settlement Escrow Account.

**NOTICE AND SETTLEMENT ADMINISTRATION**

34. As part of the Preliminary Approval Order, Plaintiffs shall seek appointment of a Claims Administrator. The Claims Administrator shall administer the Settlement, including but not limited to the process of receiving, reviewing, and approving or denying Claims, under Lead Counsel's supervision and subject to the jurisdiction of the District Court. None of the Cobalt Settling Defendants, nor any other Settling Defendants' Releasees, shall have any involvement in or any responsibility, authority, or liability whatsoever for the selection of the Claims Administrator, the Plan of Allocation, the administration of the Settlement, the Claims process, or disbursement of the Net Settlement Fund, and shall have no liability whatsoever to any person or entity, including, but not limited to, Plaintiffs, any other Settlement Class Members, or Lead Counsel in connection with the foregoing. Settling Defendants' Counsel shall cooperate in the administration of the Settlement to the extent reasonably necessary to effectuate its terms.

35. In accordance with the terms of the Preliminary Approval Order to be entered by the District Court, Lead Counsel shall cause the Claims Administrator to mail the Notice and Claim Form to those members of the Settlement Class as may be identified through reasonable effort. Lead Counsel shall also cause the Claims Administrator to have the Summary Notice published in accordance with the terms of the Preliminary Approval Order to be entered by the District Court. For the purposes of identifying and providing notice to the Settlement Class, within ten (10) business days of



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the date of entry of the Preliminary Approval Order, the Debtors shall provide or cause to be provided to the Claims Administrator in electronic format (at no cost to the Settlement Fund, Lead Counsel or the Claims Administrator) a list (consisting of names and addresses) of the holders of Cobalt Securities during the Class Period.

36. No later than ten (10) calendar days following the filing of this Settlement Agreement with the District Court, the Cobalt Settling Defendants shall serve the notice required under the Class Action Fairness Act, 28 U.S.C. § 1715 *et seq.* (“CAFA”). The Cobalt Settling Defendants are solely responsible for the costs of the CAFA notice and administering the CAFA notice. At least seven (7) calendar days before the Settlement Hearing, the Cobalt Settling Defendants shall cause to be served on Lead Counsel and filed with the District Court proof, by affidavit or declaration, regarding compliance with CAFA § 1715(b).

37. The Claims Administrator shall receive Claims and determine first, whether the Claim is a valid Claim, in whole or part, and second, each Authorized Claimant’s *pro rata* share of the Net Settlement Fund based upon each Authorized Claimant’s Recognized Claim compared to the total Recognized Claims of all Authorized Claimants (as set forth in the Plan of Allocation set forth in the Notice attached hereto as Exhibit 1 to Exhibit A, or in such other plan of allocation as the District Court approves).

38. The Plan of Allocation proposed in the Notice is not a necessary term of the Settlement or of this Settlement Agreement and it is not a condition of the Settlement or of this Settlement Agreement that any particular plan of allocation be approved by the

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District Court. Plaintiffs and Lead Counsel may not cancel or terminate the Settlement (or this Settlement Agreement) based on the District Court's or any appellate court's ruling with respect to the Plan of Allocation or any other plan of allocation in this Action. The Cobalt Settling Defendants and the other Settling Defendants' Releasees shall not object in any way to the Plan of Allocation or any other plan of allocation in this Action. No Cobalt Settling Defendant, nor any other Settling Defendants' Releasee, shall have any involvement with or liability, obligation or responsibility whatsoever for the application of the District Court-approved plan of allocation.

39. Any Settlement Class Member who or that does not submit a valid Claim will not be entitled to receive any distribution from the Net Settlement Fund, but will otherwise be bound by all of the terms of this Settlement Agreement and the Settlement, including the terms of the Judgment or the Alternate Judgment, if applicable, to be entered in the Action and the Releases provided for herein and therein, and will be permanently barred and enjoined from bringing any action, claim, or other proceeding of any kind against the Settling Defendants' Releasees with respect to the Released Plaintiffs' Claims in the event that the Effective Date occurs with respect to the Settlement.

40. Any Settlement Class Member who or that does not timely and validly request exclusion from the Settlement Class in the manner stated in the Preliminary Approval Order: (a) shall be deemed to have waived his, her, or its right to be excluded from the Settlement Class; (b) shall be forever barred from requesting exclusion from the

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Settlement Class in this or any other proceeding; (c) shall be bound by the provisions of this Settlement Agreement, the Settlement, and all proceedings, determinations, orders, and judgments in the Action relating to the Settlement, including, but limited to, the Judgment or the Alternate Judgment, if applicable, and the Releases provided for herein and therein whether favorable or unfavorable to the Settlement Class; and (d) shall be barred and enjoined from commencing, maintaining, or prosecuting any of the Released Plaintiffs' Claims against any of the Settling Defendants' Releasees.

41. Lead Counsel shall be responsible for supervising the administration of the Settlement and the disbursement of the Net Settlement Fund subject to District Court approval. No Settling Defendant or any other Settling Defendants' Releasee shall be permitted to review, contest, or object to any Claim, or any decision of the Claims Administrator or Lead Counsel with respect to accepting or rejecting any Claim for payment. Lead Counsel shall have the right, but not the obligation, to waive what they deem to be formal or technical defects in any Claims submitted in the interests of achieving substantial justice. The extent, if any, to which a Settlement Class Member shall be entitled to be treated as an Authorized Claimant shall be as set forth in the Preliminary Approval Order attached hereto as Exhibit A and in the Notice attached hereto as Exhibit 1 to Exhibit A.

42. Each Claimant shall be deemed to have submitted to the jurisdiction of the District Court with respect to the Claimant's Claim, and the Claim will be subject to investigation and discovery under the Federal Rules of Civil Procedure, provided,

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however, that such investigation and discovery shall be limited to that Claimant's status as a Settlement Class Member and the validity and amount of the Claimant's Claim. No discovery shall be allowed on the merits of this Action or of the Settlement in connection with the processing of Claims.

43. Lead Counsel will apply to the District Court, on notice to Settling Defendants' Counsel, for a Class Distribution Order: (a) approving the Claims Administrator's administrative determinations concerning the acceptance and rejection of the Claims submitted, by or on behalf of persons and entities seeking to share in the distribution of the Net Settlement Fund; (b) approving payment of any administration fees and expenses associated with the administration of the Settlement from the Settlement Escrow Account; and (c) if the Effective Date has occurred, directing payment of the Net Settlement Fund to Authorized Claimants from the Settlement Escrow Account.

44. Payment pursuant to the Class Distribution Order shall be final and conclusive against all Claimants. All Settlement Class Members whose Claims are not approved by the District Court for payment shall be barred from participating in distributions from the Net Settlement Fund, but otherwise shall be bound by all of the terms of this Settlement Agreement and the Settlement, including the terms of the Judgment or Alternate Judgment, if applicable, to be entered in this Action and the Releases provided for herein and therein, and will be permanently barred and enjoined

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from bringing any action against any and all Settling Defendants' Releasees with respect to any and all of the Released Plaintiffs' Claims.

45. No person or entity shall have any claim against Plaintiffs, Plaintiffs' Counsel, the Claims Administrator, or any other agent designated by Lead Counsel, or the Settling Defendants' Releasees and/or their respective counsel, arising from distributions made substantially in accordance with the Settlement Agreement, the plan of allocation approved by the District Court, or any order of the District Court. The Settling Parties, their respective counsel, and all other Releasees shall have no liability whatsoever for the investment or distribution of the Settlement Fund or the Net Settlement Fund, the plan of allocation, or the determination, administration, calculation, or payment of any claim or nonperformance of the Claims Administrator, the payment or withholding of Taxes (including interest and penalties) owed by the Settlement Fund, or any losses incurred in connection therewith.

46. All proceedings with respect to the administration, processing and determination of Claims and the determination of all controversies relating thereto, including disputed questions of law and fact with respect to the validity of Claims, shall be subject to the jurisdiction of the District Court. All Settlement Class Members, other Claimants, and the Settling Parties expressly waive trial by jury (to the extent any such right may exist) and any right of appeal or review with respect to such determinations.

**TERMS OF THE JUDGMENT**

47. If the Settlement contemplated by this Settlement Agreement is approved by the District Court, Lead Counsel and the Settling Defendants' Counsel shall request that the District Court enter a Judgment, substantially in the form attached hereto as Exhibit B, providing that the District Court may immediately enter final judgment as against the Cobalt Settling Defendants pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

48. The Judgment shall contain a bar order ("Bar Order") substantially in the form set forth in Exhibit B that shall, pursuant to the PSLRA and common law, bar all future claims and claims over by any individual or entity against any of the Settling Defendants' Releasees, and by the Settling Defendants' Releasees against any individual or entity, for (a) contribution or indemnity (or any other claim or claim over, however denominated on whatsoever theory) arising out of or related to the claims or allegations asserted by Plaintiffs in the Action, or (b) any other claim of any type, whether arising under state, federal, common, or foreign law, for which the injury claimed is that person's or entity's actual or threatened liability to Plaintiffs and/or members of the Settlement Class arising out of or related to the claims or allegations asserted by Plaintiffs in the Action. The Bar Order shall also provide that any final verdict or judgment that may be obtained by or on behalf of the Settlement Class or a Settlement Class Member against any individual or entity subject to the Bar Order shall be reduced by the greater of: (a) an amount that corresponds to the percentage of responsibility of the Cobalt Settling

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Defendants for common damages; or (b) the amount paid by or on behalf of the Cobalt Settling Defendants to the Settlement Class or Settlement Class Members for common damages. Nothing in the Bar Order or this Settlement Agreement shall release any proofs of claim that any of the Cobalt Settling Defendants has filed in the Cobalt bankruptcy. Nothing in the Bar Order or this Settlement Agreement shall be construed to impair, negate, diminish, or adversely affect any rights of the Cobalt Settling Defendants or their successors or assigns under or with respect to any insurance policies, including, but without limitation, any rights to seek to recover or to recover insurance proceeds or payments under any insurance policies with respect to amounts paid pursuant to this Settlement Agreement or incurred in connection with the Action, or any other actual or alleged loss or liability, and the Cobalt Settling Defendants expressly reserve all rights, claims, positions, arguments, contentions, and defenses with respect to such matters.

**CONDITIONS OF SETTLEMENT AND EFFECT OF DISAPPROVAL, CANCELLATION OR TERMINATION**

49. The Effective Date of the Settlement shall be deemed to occur on the occurrence or waiver in writing of all of the following events:

(a) the District Court has entered the Preliminary Approval Order, substantially in the form set forth in Exhibit A attached hereto, as required by ¶ 3 above;

(b) the applicable portions of the Existing Proceeds have been deposited into the Settlement Escrow Account and sent to the Plan Administrator in accordance with the provisions of ¶ 9 above;

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(c) the Cobalt Settling Defendants have not exercised their option to terminate the Settlement pursuant to the provisions of this Settlement Agreement;

(d) Plaintiffs have not exercised their option to terminate the Settlement pursuant to the provisions of this Settlement Agreement; and

(e) the District Court has approved the Settlement as described herein, following notice to the Settlement Class and a hearing, as prescribed by Rule 23 of the Federal Rules of Civil Procedure, and entered the Judgment and the Judgment has become Final, or the District Court has entered an Alternate Judgment and none of the Settling Parties seek to terminate the Settlement and the Alternate Judgment has become Final.

50. The occurrence of the Effective Date is not conditioned on the District Court having approved a plan of allocation for the Settlement proceeds or a claims process having begun. It is expressly understood and agreed that the determination of when the Plan of Allocation for the proceeds of the Settlement should be presented to the District Court for approval is to be made solely by Plaintiffs. Upon the occurrence of all of the events referenced in ¶ 49 above, any and all remaining interest or right of the Cobalt Settling Defendants in or to the Settlement Fund, if any, shall be absolutely and forever extinguished.

51. If (i) the Cobalt Settling Defendants exercise their right to terminate the Settlement as provided in this Settlement Agreement; (ii) Plaintiffs exercise their right to terminate the Settlement as provided in this Settlement Agreement; (iii) the District Court



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disapproves the Settlement; (iv) the Bankruptcy Court disapproves the Settlement; or (v) the Effective Date as to the Settlement otherwise fails to occur, then:

(a) the Settlement and the relevant portions of this Settlement Agreement shall be canceled and terminated; and

(b) Plaintiffs and the Cobalt Settling Defendants shall revert to their respective positions in the Action as of immediately prior to the date of execution of this Settlement Agreement.

(c) The terms and provisions of this Settlement Agreement, with the exception of this ¶ 51 and ¶¶ 29, 32, 53, and 76 of this Settlement Agreement, shall have no further force and effect with respect to the Settling Parties and shall not be used in the Action or in any other proceeding for any purpose, and any Judgment, or Alternate Judgment, if applicable, or order entered by the District Court in accordance with the terms of this Settlement Agreement shall be treated as vacated, *nunc pro tunc*.

(d) Within five (5) business days after joint written notification of termination is sent by the Settling Defendants' Counsel and Lead Counsel to the Escrow Agent, the Settlement Fund (including accrued interest thereon, and change in value as a result of the investment of the Settlement Fund, and any funds received by Lead Counsel consistent with ¶ 32 above), less any Notice and Administration Costs actually incurred, paid or payable and less any Taxes paid, due or owing shall be refunded by the Escrow Agent to the Cobalt Settling Defendants. In the event that the funds received by Lead Counsel consistent with the above have not been refunded to the Settlement Fund within

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the five (5) business days specified in this paragraph, those funds shall be refunded by the Escrow Agent to the Cobalt Settling Defendants in proportion to the amounts that each contributed to the Settlement Fund immediately upon their deposit into the Settlement Escrow Account.

52. It is further stipulated and agreed that each of the Settling Parties shall have the right to terminate the Settlement and this Settlement Agreement, by providing written notice of their election to do so (“Termination Notice”) to the other parties to this Settlement Agreement within thirty (30) days of: (a) the District Court’s final refusal to enter the Preliminary Approval Order in any material respect; (b) the District Court’s final refusal to approve the Settlement or any material part thereof; (c) the District Court’s final refusal to enter the Judgment or Alternate Judgment, if applicable, in any material respect as to the Settlement; (d) the Bankruptcy Court’s refusal to approve the Settlement or any material part of thereof; or (e) the date upon which the Judgment or Alternate Judgment, if applicable, in this Action or the Bankruptcy Court’s order approving the settlement is modified or reversed in any material respect, and the provisions of ¶ 51 above shall apply. Any decision or proceeding, however, whether in the District Court or any appellate court, with respect to an application for attorneys’ fees or reimbursement of Litigation Expenses or with respect to any plan of allocation shall not be considered material to the Settlement, shall not affect the finality of any Judgment or Alternate Judgment, if applicable, and shall not be grounds for termination of the Settlement.

**NO ADMISSION OF WRONGDOING**

53. Neither this Settlement Agreement (whether or not consummated), including the exhibits hereto and the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the District Court), the negotiations leading to the execution of this Settlement Agreement, nor any proceedings taken pursuant to or in connection with this Settlement Agreement and/or approval of the Settlement (including any arguments proffered in connection therewith):

(a) shall be offered against any of the Settling Defendants' Releasees as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Settling Defendants' Releasees with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Settling Defendants' Releasees or in any way referred to for any other reason as against any of the Settling Defendants' Releasees, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Settlement Agreement;

(b) shall be offered against any of the Plaintiffs' Releasees as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Plaintiffs' Releasees that any of their claims are without

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merit, that any of the Settling Defendants' Releasees had meritorious defenses, or that damages recoverable from the Cobalt Settling Defendants under the Operative Complaint would not have exceeded the Settlement Amount or with respect to any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Plaintiffs' Releasees, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Settlement Agreement; or

(c) shall be construed against any of the Releasees as an admission, concession, or presumption that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial against the Cobalt Settling Defendants;

*provided, however,* that if this Settlement Agreement is approved by the District Court and the Bankruptcy Court, the Settling Parties and the Releasees and their respective counsel may refer to it to effectuate the protections from liability granted hereunder or otherwise to enforce the terms of the Settlement, or in connection with the AIG Litigation or D&O Coverage Litigation.

**MISCELLANEOUS PROVISIONS**

54. All of the exhibits attached hereto are hereby incorporated by reference as though fully set forth herein. Notwithstanding the foregoing, in the event that there exists

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a conflict or inconsistency between the terms of this Settlement Agreement and the terms of any exhibit attached hereto, the terms of the Settlement Agreement shall prevail.

55. In the event of the entry of a final order of a court of competent jurisdiction determining the transfer of money to the Settlement Fund or any portion thereof by or on behalf of any Settling Defendant to be a preference, voidable transfer, fraudulent transfer or similar transaction and any portion thereof is required to be returned, and such amount is not promptly deposited into the Settlement Fund by others, then, at the election of Plaintiffs, Plaintiffs and the Cobalt Settling Defendants shall jointly move the District Court to vacate and set aside the Releases given and the Judgment or Alternate Judgment, if applicable, entered in favor of the Cobalt Settling Defendants and the other Releasees pursuant to this Settlement Agreement, in which event the releases and Judgment, or Alternate Judgment, if applicable, shall be null and void, and the Settling Parties shall be restored to their respective positions in the litigation as provided in ¶ 51 above and any cash amounts in the Settlement Fund (less any Taxes paid, due or owing with respect to the Settlement Fund and less any Notice and Administration Costs actually incurred, paid or payable) shall be returned as provided in ¶ 51.

56. The Parties acknowledge that the Insurers have disputed or denied coverage under the D&O Liability Policies, and the Plaintiffs proceed with this Settlement at their own risk. The Insureds make no representation or warranty (and expressly disclaim any representations or warranties) as to the availability of coverage or the collectability of any

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monies under the D&O Liability Insurance Policies, including the effect, if any, of this settlement or the D&O Prosecution and Payment Obligation thereon.

57. Nothing in this Settlement Agreement is intended to or shall affect the releases provided for in the Plan. The claims being resolved by the Plaintiffs in this Settlement are only those asserted against the Debtors and the Cobalt Individual Defendants and not against any other existing or potential defendant in the Action; provided that the Plaintiffs shall not add any current or former officer, director, or employee of the Debtors, the Plan Administrator, or any Member of the Plan Administrator Committee, as a defendant in the Action.

58. The Cobalt Settling Defendants will take reasonable steps to retain and preserve any documents, information (including electronically stored information), and other evidence potentially relevant to continuing litigation, if any, against the Non-Settling Defendants, or against the insurance carriers for Cobalt and the Cobalt Individual Defendants. For the avoidance of doubt, no Settling Defendant shall have any obligation to provide any documents, information, or other evidence: (a) protected by the attorney-client privilege, joint defense privilege, or work product doctrine in the Action, or (b) reflecting legal advice provided to the Cobalt Settling Defendants by defense counsel concerning the allegations in the Action.

59. The Settling Parties intend this Settlement Agreement and the Settlement to be a final and complete resolution of all disputes asserted or which could be asserted by Plaintiffs and any other Settlement Class Members against the Settling Defendants'

*EXECUTION VERSION*

Releasees with respect to the Released Plaintiffs' Claims. Accordingly, Plaintiffs and their counsel and the Cobalt Settling Defendants and their counsel agree not to assert in any forum that this Action was brought by Plaintiffs or defended by the Cobalt Settling Defendants in bad faith or without a reasonable basis. No Settling Party shall assert any claims of any violation of Rule 11 of the Federal Rules of Civil Procedure relating to the institution, prosecution, defense, or settlement of this Action. The Settling Parties agree that the amounts paid and the other terms of the Settlement were negotiated at arm's length and in good faith by the Settling Parties, and reflect the Settlement that was reached voluntarily after extensive negotiations and consultation with experienced legal counsel, who were fully competent to assess the strengths and weaknesses of their respective clients' claims or defenses.

60. While retaining their right to deny that the claims asserted in the Action were meritorious, the Cobalt Settling Defendants and their counsel, in any statement made to any media representative (whether or not for attribution) will not assert that the Action was commenced or prosecuted in bad faith, nor will they deny that the Action was commenced and prosecuted in good faith and is being settled voluntarily after consultation with competent legal counsel. In all events, Plaintiffs and their counsel and Cobalt Settling Defendants and their counsel shall not make any accusations of wrongful or actionable conduct by any Settling Party concerning the prosecution, defense, and resolution of the Action, and shall not otherwise suggest that the Settlement constitutes an admission of any claim or defense alleged.

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61. The terms of the Settlement, as reflected in this Settlement Agreement, may not be modified or amended, nor may any of its provisions be waived except by a writing signed on behalf of both Plaintiffs and the Cobalt Settling Defendants (or their successors-in-interest).

62. The obligations and duties in this Settlement Agreement may not be assigned or transferred absent written consent of the Parties.

63. The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

64. The administration and consummation of the Settlement as embodied in this Settlement Agreement shall be under the authority of the District Court, and the District Court shall retain jurisdiction for the purpose of entering orders providing for awards of attorneys' fees and Litigation Expenses to Plaintiffs' Counsel and enforcing the terms of this Settlement Agreement, including the Plan of Allocation (or such other plan of allocation as may be approved by the District Court) and the distribution of the Net Settlement Fund to Settlement Class Members.

65. The waiver by one Settling Party of any breach of this Settlement Agreement by any other Settling Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement.

66. This Settlement Agreement may be executed in one or more counterparts, including by signature transmitted via facsimile, or by a .pdf or .tif image of the signature



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transmitted via email. All executed counterparts and each of them shall be deemed to be one and the same instrument.

67. This Settlement Agreement shall be binding upon and inure to the benefit of the Settling Parties and their respective affiliates, successors, heirs, executors, trustees, administrators, agents, and assigns, including any and all Releasees and any corporation, partnership, or other entity into or with which any Settling Party may merge, consolidate or reorganize.

68. The construction, interpretation, operation, effect and validity of this Settlement Agreement and all documents necessary to effectuate it shall be governed by the internal laws of the State of Texas without regard to conflicts of laws, except to the extent that federal law requires that federal law govern.

69. Any action arising under or to enforce this Settlement Agreement or any portion thereof, shall be commenced and maintained only in the District Court.

70. This Settlement Agreement shall not be construed more strictly against one Settling Party than another merely by virtue of the fact that it, or any part of it, may have been prepared by counsel for one of the Settling Parties, it being recognized that it is the result of arm's-length negotiations between the Settling Parties and all Settling Parties have contributed substantially and materially to the preparation of this Settlement Agreement.

71. All counsel and any other person executing this Settlement Agreement and any of the exhibits hereto, or any related Settlement documents, warrant and represent

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that they have the full authority to do so and that they have the authority to take appropriate action required or permitted to be taken pursuant to the Settlement Agreement to effectuate its terms.

72. Lead Counsel and Settling Defendants' Counsel agree to cooperate with one another in seeking District Court approval of the Preliminary Approval Order and the Settlement, as embodied in this Settlement Agreement, and to use best efforts to promptly agree upon and execute all such other documentation as may be reasonably required to obtain final approval by the District Court of the Settlement. Lead Counsel and Settling Defendants' Counsel also agree to cooperate in seeking Bankruptcy Court approval of the Settlement.

73. In the event that any dispute arises among the Settling Parties over the interpretation of this Settlement Agreement or the actual or alleged failure of any Settling Party to comply with the terms of this Settlement Agreement, the Settling Parties shall endeavor to engage former United States District Judge Layn Phillips, or another mediator mutually acceptable to the Settling Parties in the event that Judge Phillips cannot be engaged, to mediate the issue.

74. If any Settling Party is required to give notice to another Settling Party under this Settlement Agreement, such notice shall be in writing and shall be deemed to have been duly given upon receipt of hand delivery or facsimile or email transmission, with confirmation of receipt. Notice shall be provided as follows:

*EXECUTION VERSION*

If to Plaintiffs or Lead Counsel: Entwistle & Cappucci LLP  
Attn: Andrew J. Entwistle, Esq.  
299 Park Avenue, 20th Floor  
New York, NY 10171  
Telephone: (212) 894-7200  
Facsimile: (212) 894-7272  
Email: aentwistle@entwistle-law.com

-and-

Bernstein Litowitz Berger & Grossmann  
LLP  
Attn: David R. Stickney, Esq.  
12481 High Bluff Drive, Suite 300  
San Diego, CA 92130-3582  
Telephone: (858) 793-0070  
Facsimile: (858) 793-0323  
Email: davids@blbglaw.com

If to the Plan Administrator Nader Tavakoli  
c/o EagleRock Capital Management, LLC  
505 Park Avenue, 2nd Floor  
New York, NY 10022  
Email: ntavakoli@eaglerockcapital.com

and

Greenberg Traurig, LLP  
Attn: Shari L. Heyen, Esq.  
1000 Louisiana, Suite 1700  
Houston, TX 77002  
Telephone: (713) 374-3500  
Facsimile: (713) 374-3505  
Email: Heyens@gtlaw.com

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If to the Cobalt Individual  
Defendants

Baker Botts LLP  
Attn: David D. Sterling, Esq.  
910 Louisiana Street  
Houston, TX 77002  
Telephone: (713) 229-1234  
Facsimile: (713) 229-1522  
Email: david.sterling@bakerbotts.com

If to Joseph H. Bryant

Quinn Emanuel Urquhart & Sullivan, LLP  
Attn: Karl Stern, Esq.  
Pennzoil Place  
711 Louisiana St., Suite 500  
Houston, TX 77002  
Telephone: (713) 221-7000  
Facsimile: (713) 221-7100  
Email: karlstern@quinnemanuel.com

75. Except as otherwise provided herein, each Settling Party shall bear its own costs.

76. Whether or not the Settlement Agreement is approved by the District Court and whether or not the Settlement Agreement is consummated, or the Effective Date occurs, the Settling Parties and their counsel shall use their best efforts to keep all negotiations, discussions, acts performed, drafts, documents signed (other than this Settlement Agreement), and previous proceedings in connection with the Settlement Agreement confidential; *provided*, however, that nothing herein shall prohibit disclosure of the foregoing to the Cobalt Settling Defendants' respective (i) limited partners; (ii) liability insurance carriers; (iii) reinsurers or (iv) other parties who serve a valid subpoena requesting such documents.


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77. All agreements made and orders entered during the course of this Action relating to the confidentiality of information shall survive this Settlement.

78. No opinion or advice concerning the tax consequences of the proposed Settlement to individual Settlement Class Members is being given or will be given by the Settling Parties or their counsel; nor is any representation or warranty in this regard made by virtue of this Settlement Agreement. Each Settlement Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Settlement Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member.

**IN WITNESS WHEREOF**, the Settling Parties have caused this Settlement Agreement to be executed, by their duly authorized attorneys, as of October 11, 2018.

**ENTWISTLE & CAPPUCCI LLP**

By:  \_\_\_\_\_  
Andrew J. Entwistle  
Vincent R. Cappucci  
299 Park Avenue, 20th Floor  
New York, NY 10171  
Telephone: (212) 894-7200  
Facsimile: (212) 894-7272

***Lead Counsel for Plaintiffs and the Certified Class***

**BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**

By: \_\_\_\_\_  
David R. Stickney  
Jonathan D. Uslander  
12481 High Bluff Drive, Suite 300  
San Diego, CA 92130-3582  
Telephone: (858) 793-0070  
Facsimile: (858) 793-0323

***Lead Counsel for Plaintiffs and the Certified Class***

**EXECUTION VERSION**

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78. No opinion or advice concerning the tax consequences of the proposed Settlement to individual Settlement Class Members is being given or will be given by the Settling Parties or their counsel; nor is any representation or warranty in this regard made by virtue of this Settlement Agreement. Each Settlement Class Member’s tax obligations, and the determination thereof, are the sole responsibility of the Settlement Class Member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Settlement Class Member.


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New York, NY 10171  
Telephone: (212) 894-7200  
Facsimile: (212) 894-7272

*Lead Counsel for Plaintiffs and the Certified Class*

**BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**

By:  \_\_\_\_\_  
David R. Stickney  
Jonathan D. Uslander  
12481 High Bluff Drive, Suite 300  
San Diego, CA 92130-3582  
Telephone: (858) 793-0070  
Facsimile: (858) 793-0323

*Lead Counsel for Plaintiffs and the Certified Class*

**EXECUTION VERSION**

**GREENBERG TRAURIG, LLP**

By:  \_\_\_\_\_

Shari L. Heyen  
David B. Kurzweil  
1000 Louisiana, Suite 1700  
Houston, TX 77002  
Telephone: (713) 374-3500  
Facsimile: (713) 374-3505

*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.*

**BAKER BOTTS LLP**

By: \_\_\_\_\_

David D. Sterling  
Russell Lewis  
910 Louisiana Street  
Houston, TX 77002  
Telephone: (713) 229-1234  
Facsimile: (713) 229-1522

*Counsel for the Former Directors and Officers of the Debtors and the Debtors*

**QUINN EMANUEL URQUHART & SULLIVAN, LLP**

By: \_\_\_\_\_

Karl Stern  
Emily Smith  
Pennzoil Place  
711 Louisiana St., Suite 500  
Houston, TX 77002  
Telephone: (713) 221-7000  
Facsimile: (713) 221-7100

*Counsel for Joseph H. Bryant*



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**GREENBERG TRAURIG, LLP**

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David B. Kurzweil  
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David B. Kurzweil  
1000 Louisiana, Suite 1700  
Houston, TX 77002  
Telephone: (713) 374-3500  
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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.*

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*Counsel for the Former Directors and Officers of the Debtors and the Debtors*

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By: \_\_\_\_\_

Karl Stern  
Emily Smith  
Pennzoil Place  
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Houston, TX 77002  
Telephone: (713) 221-7000  
Facsimile: (713) 221-7100

*Counsel for Joseph H. Bryant*

Exhibit A

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE COBALT INTERNATIONAL  
ENERGY, INC. SECURITIES LITIGATION

Lead Case No. 1:14-cv-3428 (NFA)

**[PROPOSED] ORDER PRELIMINARILY APPROVING  
SETTLEMENT AMONG THE PLAINTIFFS, COBALT INDIVIDUAL  
DEFENDANTS, AND NADER TAVAKOLI, SOLELY ACTING AS PLAN  
ADMINISTRATOR ON BEHALF OF THE COBALT DEBTORS  
AND PROVIDING FOR NOTICE**

WHEREAS, a consolidated class action is pending in this Court entitled *In re Cobalt International Energy, Inc. Securities Litigation*, Lead Case No. 1:14-cv-3428-NFA (the “Action”);

WHEREAS, the Court certified a class in its June 15, 2017 Memorandum and Order (ECF No. 244);

WHEREAS, (a) lead plaintiffs GAMCO Global Gold, Natural Resources & Income Trust and GAMCO Natural Resources, Gold & Income Trust (together, the “GAMCO Funds” or “Lead Plaintiffs”), St. Lucie County Fire District Firefighters’ Pension Trust Fund, Fire and Police Retiree Health Care Fund, San Antonio, Sjunde AP-Fonden, and Universal Investment Gesellschaft m.b.H. (collectively, with Lead Plaintiffs, “Plaintiffs”), on behalf of themselves and the Settlement Class; (b) Cobalt International

Energy, Inc. (“Cobalt”) and its debtor affiliates (collectively, the “Debtors”) in the Debtors’ Chapter 11 cases (the “Chapter 11 Cases”), by and through 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”); and (c) defendants Joseph Bryant, James W. Farnsworth, Jack E. Golden, Jon A. Marshall, Myles W. Scoggins, William P. Utt, John P. Wilkirson, and Martin H. Young, Jr. (the “Cobalt Individual Defendants,” together with Cobalt, the “Cobalt Settling Defendants,” and collectively with Plaintiffs, the “Settling Parties”), have determined to settle all claims asserted against the Cobalt Settling Defendants in this Action with prejudice (the “Settlement”) on the terms and conditions set forth in the Stipulation and Agreement of Settlement Among Plaintiffs, Cobalt Individual Defendants, and Nader Tavakoli, Solely Acting as Plan Administrator on Behalf of the Cobalt Debtors, dated October 11, 2018 (the “Stipulation”), subject to approval of this Court and the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”);

WHEREAS, Plaintiffs have made an application, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for an order preliminarily approving the Settlement in accordance with the Stipulation, certifying the Settlement Class for purpose of the Settlement only, and authorizing notice to Settlement Class Members as more fully described herein;

WHEREAS, the Court has read and considered: (a) Plaintiffs’ motion for preliminary approval of the Settlement, and the papers filed and arguments made in connection therewith; and (b) the Stipulation and the exhibits attached thereto; and

WHEREAS, unless otherwise defined herein, all capitalized words contained herein shall have the same meanings as they have in the Stipulation;

NOW THEREFORE, IT IS HEREBY ORDERED:

1. **Class Certification for Settlement Purposes** – Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, the Court certifies, solely for purposes of effectuating the proposed Settlement, a class consisting of all persons and entities who purchased or otherwise acquired Cobalt Securities between March 1, 2011 and November 3, 2014, inclusive, and were damaged thereby (the “Settlement Class”). Included within the Settlement Class are all persons and entities who purchased or otherwise acquired shares of Cobalt common stock on the open market and/or pursuant or traceable to the registered public offerings on or about (i) February 23, 2012; (ii) January 16, 2013; and (iii) May 8, 2013. Also included within the Settlement Class are all persons and entities who purchased or otherwise acquired Cobalt convertible senior notes on the open market and/or pursuant or traceable to registered public offerings on or about (i) December 12, 2012; and (ii) May 8, 2014. Excluded from the Settlement Class are Defendants; the officers and directors of Defendants during the Class Period (the “Excluded Officers and Directors”); members of the Immediate Family of the Individual Defendants and of the Excluded Officers and Directors; any entity in which any Defendant, any Excluded Officer or Director, or any of their respective Immediate Family Members has, and/or had during the Class Period, a controlling interest; Defendants’ liability insurance carriers; any affiliates, parents, or subsidiaries of the corporate Defendants; all corporate Defendants’ plans that are covered by ERISA; and the legal representatives, heirs, agents,

affiliates, successors-in-interest or assigns of any excluded person or entity, in their respective capacity as such. Also excluded from the Settlement Class are any persons and entities who or which exclude themselves by submitting a request for exclusion that is accepted by the Court.

2. **Class Findings** – Solely for purposes of the proposed Settlement of this Action, the Court finds that each element required for certification of the Settlement Class pursuant to Rule 23 of the Federal Rules of Civil Procedure has been met: (a) the members of the Settlement Class are so numerous that their joinder in the Action would be impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over any individual questions; (c) the claims of Plaintiffs in the Action are typical of the claims of the Settlement Class; (d) Plaintiffs and Lead Counsel have and will fairly and adequately represent and protect the interests of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the Action.

3. The Court hereby finds and concludes that pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, Plaintiffs GAMCO Global Gold, Natural Resources & Income Trust, GAMCO Natural Resources, Gold & Income Trust, St. Lucie County Fire District Firefighters' Pension Trust Fund, Fire and Police Retiree Health Care Fund, San Antonio, Sjunde AP-Fonden, and Universal Investment Gesellschaft m.b.H. are adequate class representatives and certifies them as Class Representatives for the Settlement Class. The Court also appoints Lead

Counsel as Class Counsel for the Settlement Class, pursuant to Rule 23(g) of the Federal Rules of Civil Procedure.

4. **Preliminary Approval of the Settlement** – The Court hereby preliminarily approves the Settlement, as embodied in the Stipulation, as being fair, reasonable, and adequate to the Settlement Class, subject to further consideration at the Settlement Hearing to be conducted as described below.

5. **Settlement Hearing** – The Court will hold a settlement hearing (the “Settlement Hearing”) on January 28, 2019 at 10:00 a.m. in Courtroom 9-F of the United States District Court for the Southern District of Texas, 515 Rusk Avenue, Houston, Texas 77002, for the following purposes: (a) to determine whether the proposed Settlement on the terms and conditions provided for in the Stipulation is fair, reasonable, and adequate to the Settlement Class, and should be approved by the Court; (b) to determine whether a Judgment substantially in the form attached as Exhibit B to the Stipulation should be entered dismissing the Action with prejudice as against the Cobalt Settling Defendants; (c) to determine whether the proposed Plan of Allocation should be approved as fair and reasonable; (d) to determine whether Lead Counsel’s application for an award of attorneys’ fees and reimbursement of expenses should be approved; and (e) to consider any other matters that may properly be brought before the Court in connection with the Settlement. Notice of the Settlement and the Settlement Hearing shall be given to Settlement Class Members as set forth in paragraph 8 of this Order.

6. The Court may adjourn the Settlement Hearing without further notice to the Settlement Class, and may approve the proposed Settlement with such modifications as

the Settling Parties may agree to, if appropriate, without further notice to the Settlement Class.

7. **CAFA Notice** – As provided in the Stipulation, the Cobalt Settling Defendants are required to serve the notice required under the Class Action Fairness Act, 28 U.S.C. § 1715 et seq. (“CAFA”) no later than ten (10) calendar days following the filing of the Stipulation with the Court. The Cobalt Settling Defendants shall be solely responsible for the costs of the CAFA notice and administering the CAFA notice. At least seven (7) calendar days before the Settlement Hearing, the Cobalt Settling Defendants shall cause to be served on Lead Counsel and filed with the Court proof, by affidavit or declaration, of compliance with CAFA § 1715(b).

8. **Retention of Claims Administrator and Manner of Giving Notice** – Lead Counsel are hereby authorized to retain Epiq Class Action & Mass Tort Solutions, Inc. (the “Claims Administrator”) to supervise and administer the notice procedure in connection with the proposed Settlement and any other settlements or other recoveries that may be achieved in this Action as well as the processing of Claims for the proceeds of the Settlement and any additional recoveries that may be achieved in this Action, as more fully set forth below. Notice of the Settlement and the Settlement Hearing shall be given by Lead Counsel as follows:

(a) within ten (10) business days of the date of entry of this Order, Cobalt shall provide or cause to be provided to the Claims Administrator in electronic format (at no cost to the Settlement Fund, Lead Counsel or the Claims Administrator) its

security lists (consisting of names and addresses) of the holders of Cobalt common stock and Cobalt convertible notes during the Settlement Class Period;

(b) not later than twenty (20) business days after the date of entry of this Order (the “Notice Date”), the Claims Administrator shall cause a copy of the Notice and the Claim Form, substantially in the forms attached hereto as Exhibits 1 and 2, respectively (the “Notice Packet”) to be mailed by first-class mail to potential Settlement Class Members at the addresses set forth in the records provided by Cobalt or in records which Cobalt causes to be provided, or who otherwise may be identified through further reasonable effort;

(c) contemporaneously with the mailing of the Notice Packet, the Claims Administrator shall cause copies of the Notice and Claim Form to be posted on a website to be developed for the Settlement, from which copies of the Notice and Claim Form can be downloaded;

(d) not later than ten (10) business days after the Notice Date, the Claims Administrator shall cause the Summary Notice, substantially in the form attached hereto as Exhibit 3, to be published once in *The Wall Street Journal* and to be transmitted once over the *PR Newswire*; and

(e) not later than seven (7) calendar days prior to the Settlement Hearing, Lead Counsel shall serve on the Cobalt Settling Defendants’ Counsel and file with the Court proof, by affidavit or declaration, of such mailing and publication.

9. **Approval of Form and Content of Notice** – The Court (a) approves, as to form and content, the Notice, Claim Form, and Summary Notice, attached hereto as



Exhibits 1, 2, and 3, respectively; and (b) finds that the mailing and distribution of the Notice and Claim Form and the publication of the Summary Notice in the manner and form set forth in paragraph 8 of this Order (i) is the best notice practicable under the circumstances; (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, of the effect of the proposed Settlement (including the Releases to be provided thereunder), of their right to object to the Settlement, of their right to exclude themselves from the Settlement Class, and of their right to appear at the Settlement Hearing; (iii) constitutes due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (iv) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §§ 77z-1, 78u-4, as amended, and all other applicable law and rules. The date and time of the Settlement Hearing shall be included in the Notice and Summary Notice before they are mailed and published, respectively.

10. **Nominee Procedures** – Brokers and other nominees who purchased or otherwise acquired Cobalt Securities between March 1, 2011 and November 3, 2014, including those who purchased or otherwise acquired Cobalt common stock pursuant or traceable to the registered public offerings on or about February 23, 2012, January 16, 2013, and May 8, 2013, and/or purchased or otherwise acquired Cobalt convertible senior notes pursuant or traceable to the registered public offerings on or about December 12, 2012 and May 8, 2014, for the benefit of another person or entity shall (a) within ten (10)

business days of receipt of the Notice, request from the Claims Administrator sufficient copies of the Notice Packet to forward to all such beneficial owners and within ten (10) business days of receipt of those Notice Packets forward them to all such beneficial owners; or (b) within ten (10) business days of receipt of the Notice, send a list of the names and addresses of all such beneficial owners to the Claims Administrator in which event the Claims Administrator shall promptly mail the Notice Packet to such individuals or entities. Upon full compliance with this Order, such nominees may seek reimbursement of their reasonable expenses actually incurred in complying with this Order by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Such properly documented expenses incurred by nominees in compliance with the terms of this Order shall be paid from the Settlement Fund, with any disputes as to the reasonableness or documentation of expenses incurred subject to review by the Court.

11. **Participation in the Settlement** – Settlement Class Members who wish to participate in the Settlement and to be eligible to receive a distribution from the Net Settlement Fund must complete and submit a Claim Form in accordance with the instructions contained therein. Unless the Court orders otherwise, all Claim Forms must be postmarked no later than one hundred twenty (120) calendar days after the Notice Date. Notwithstanding the foregoing, Lead Counsel may, at their discretion, accept for processing late Claims provided such acceptance does not delay the distribution of the Net Settlement Fund to the Settlement Class. By submitting a Claim, a person or entity

shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her or its Claim and the subject matter of the Settlement.

12. Each Claim Form submitted must satisfy the following conditions: (a) it must be properly completed, signed and submitted in a timely manner in accordance with the provisions of the preceding paragraph; (b) it must be accompanied by adequate supporting documentation for the transactions and holdings reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional and holding information found in a broker confirmation slip or account statement, or such other documentation as is deemed adequate by Lead Counsel or the Claims Administrator; (c) if the person executing the Claim Form is acting in a representative capacity, a certification of his, her or its current authority to act on behalf of the Claimant must be included in the Claim Form to the satisfaction of Lead Counsel or the Claims Administrator; and (d) the Claim Form must be complete and contain no material deletions or modifications of any of the printed matter contained therein and must be signed under penalty of perjury.

13. Any Settlement Class Member that does not timely and validly submit a Claim Form or whose Claim is not otherwise approved by the Court: (a) shall be deemed to have waived his, her, or its right to share in the Net Settlement Fund; (b) shall be forever barred from participating in any distributions therefrom; (c) shall be bound by the provisions of the Stipulation and the Settlement and all proceedings, determinations, orders, and judgments in the Action relating thereto, including, without limitation, the Judgment or Alternate Judgment, if applicable, and the Releases provided for therein,

whether favorable or unfavorable to the Settlement Class; and (d) will be barred from commencing, maintaining, or prosecuting any of the Released Plaintiffs' Claims against each and all of the Settling Defendants' Releasees, as more fully described in the Stipulation and Notice. Notwithstanding the foregoing, late Claim Forms may be accepted for processing as set forth in paragraph 11 above.

14. **Exclusion From the Settlement Class** – Any Settlement Class Member who wishes to exclude himself, herself, or itself from the Settlement Class must request exclusion in writing within the time and in the manner set forth in the Notice, which shall provide that: (a) any such request for exclusion from the Settlement Class must be mailed or delivered such that it is received no later than twenty-one (21) calendar days prior to the Settlement Hearing, to: *In re Cobalt International Energy, Inc. Securities Litigation*, EXCLUSIONS, c/o Epiq, P.O. Box 4109, Portland, OR 97208-4109; and (b) each request for exclusion must (i) state the name, address, and telephone number of the person or entity requesting exclusion, and in the case of entities, the name and telephone number of the appropriate contact person; (ii) state that such person or entity “requests exclusion from the Cobalt Defendant Settlement Class in *In re Cobalt International Energy, Inc. Securities Litigation*, Lead Case No. 1:14-cv-3428-NFA”; (iii) state the number or face value of Cobalt Securities purchased/acquired and/or sold during the Class Period, including the number of shares of Cobalt common stock purchased in or traceable to the registered public offerings on or about February 23, 2012, January 16, 2013, and May 8, 2013 and/or the face value of Cobalt convertible senior notes purchased in or traceable to the registered public offerings on or about

December 12, 2012 and May 8, 2014 that the person or entity requesting exclusion purchased/acquired and/or sold during the Class Period, as well as the dates, number of shares/face value, and prices of each such purchase/acquisition and sale; and (iv) be signed by the person or entity requesting exclusion or an authorized representative. A request for exclusion shall not be effective unless it provides all the required information and is received within the time stated above, or is otherwise accepted by the Court.

15. Any person or entity who or which timely and validly requests exclusion in compliance with the terms stated in this Order and is excluded from the Settlement Class shall not be a Settlement Class Member, shall not be bound by the terms of the Settlement or any orders or judgments in the Action relating to the Settlement, and shall not receive any payment out of the Net Settlement Fund.

16. Any Settlement Class Member who or which does not timely and validly request exclusion from the Settlement Class in the manner stated in this Order: (a) shall be deemed to have waived his, her, or its right to be excluded from the Settlement Class; (b) shall be forever barred from requesting exclusion from the Settlement Class in this or any other proceeding; (c) shall be bound by the provisions of the Stipulation, the Settlement, and all proceedings, determinations, orders, and judgments in the Action relating to the Settlement, including, but not limited to, the Judgment, and the Releases provided for therein whether favorable or unfavorable to the Settlement Class; and (d) shall be barred from commencing, maintaining, or prosecuting any of the Released Plaintiffs' Claims against any of the Settling Defendants' Releasees, as more fully described in the Stipulation and Notice.

17. **Appearance and Objections at Settlement Hearing** – Any Settlement Class Member who does not request exclusion from the Settlement Class may enter an appearance in the Action, at his, her, or its own expense, individually or through counsel of his, her, or its own choice, by filing with the Clerk of Court and delivering a notice of appearance to both Lead Counsel and Representative Settling Defendants’ Counsel, at the addresses set forth in ¶ 18 below, such that it is received no later than twenty-one (21) calendar days prior to the Settlement Hearing, or as the Court may otherwise direct. Any Settlement Class Member who does not enter an appearance will be represented by Lead Counsel.

18. Any Settlement Class Member who does not request exclusion from the Settlement Class may file a written objection to the proposed Settlement, the proposed Plan of Allocation, and/or Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of Litigation Expenses and show cause, if he, she, or it has any cause, why the proposed Settlement, the proposed Plan of Allocation, and/or Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of Litigation Expenses should not be approved; *provided, however*, that no Settlement Class Member shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, the proposed Plan of Allocation, and/or Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of Litigation Expenses unless that person or entity has filed a written objection with the Court and served copies of such objection on Lead Counsel and Representative Settling Defendants’ Counsel at the addresses set forth below such

that they are received no later than twenty-one (21) calendar days prior to the Settlement Hearing.

**Lead Counsel**

Entwistle & Cappucci LLP  
Andrew J. Entwistle, Esq.  
299 Park Avenue, 20th Floor  
New York, NY 10171

Bernstein Litowitz Berger & Grossmann  
LLP  
David R. Stickney, Esq.  
12481 High Bluff Drive, Suite 300  
San Diego, CA 92130-3582

**Representative  
Settling Defendants' Counsel**

Greenberg Traurig, LLP  
Shari L. Heyen, Esq.  
1000 Louisiana, Suite 1700  
Houston, TX 77002

Baker Botts LLP  
David D. Sterling, Esq.  
One Shell Plaza  
910 Louisiana Street  
Houston, TX 77002

Quinn Emanuel Urquhart & Sullivan,  
Karl Stern, Esq.  
Pennzoil Place  
711 Louisiana St., Suite 500  
Houston, TX 77002

19. Any objections, filings, and other submissions by the objecting Settlement Class Member: (a) must state the name, address, and telephone number of the person or entity objecting and must be signed by the objector; (b) must contain a statement of the Settlement Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Settlement Class Member wishes to bring to the Court's attention; and (c) must include documents sufficient to prove membership in the Settlement Class, including the number of shares of Cobalt common stock and/or the face value of Cobalt 2.625% Convertible Senior Notes due 2019 and/or Cobalt 3.125% Convertible Senior Notes due 2024 that the objecting Settlement Class Member purchased/acquired and/or sold during the Class Period, as well

as the dates, number of shares/face value, and prices of each such purchase/acquisition and sale. Objectors who enter an appearance and desire to present evidence at the Settlement Hearing in support of their objection must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and any exhibits they intend to introduce into evidence at the hearing.

20. Any Settlement Class Member who or which does not make his, her, or its objection in the manner provided herein shall be deemed to have waived his, her, or its right to object to any aspect of the proposed Settlement, the proposed Plan of Allocation, and Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, and shall be forever barred and foreclosed from objecting to the fairness, reasonableness, or adequacy of the Settlement, the Plan of Allocation, or the requested attorneys' fees and Litigation Expenses, or from otherwise being heard concerning the Settlement, the Plan of Allocation, or the requested attorneys' fees and Litigation Expenses in this or any other proceeding.

21. **Stay and Temporary Injunction** – Until otherwise ordered by the Court, the Court stays all proceedings in the Action as between the Settling Parties other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation. Pending final determination of whether the Settlement should be approved, the Court bars and enjoins Plaintiffs, and all other members of the Settlement Class, from commencing or prosecuting any and all of the Released Plaintiffs' Claims against each and all of the Settling Defendants' Releasees.



22. **Settlement Administration Fees and Expenses** – All reasonable costs incurred in identifying Settlement Class Members and notifying them of the Settlement as well as in administering the Settlement shall be paid as set forth in the Stipulation without further order of the Court.

23. **Settlement Fund** – The contents of the Settlement Fund held by City National Bank (which the Court approves as the Escrow Agent), shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as they shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

24. **Taxes** – Lead Counsel are authorized and directed to prepare any tax returns and any other tax reporting form for or in respect to the Settlement Fund, to pay from the Settlement Fund any Taxes owed with respect to the Settlement Fund, and to otherwise perform all obligations with respect to Taxes and any reporting or filings in respect thereof without further order of the Court in a manner consistent with the provisions of the Stipulation.

25. **Termination of Settlement** – If the Settlement is terminated as provided in the Stipulation, the Settlement is not approved by this Court or the Bankruptcy Court, or the Effective Date of the Settlement otherwise fails to occur, this Order (including the certification of the Settlement Class) shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Stipulation, and this Order shall be without prejudice to the rights of Plaintiffs, the other Settlement Class Members, and the Cobalt Settling Defendants, and the Settling Parties shall revert to their

respective positions in the Action as of immediately prior to the execution of the Stipulation on October 11, 2018, as provided in the Stipulation.

26. **Use of this Order** – Neither this Order, the Stipulation (whether or not consummated), including the exhibits thereto, the plan of allocation contained therein (or any other plan of allocation that may be approved by the Court), the negotiations leading to the execution of the Stipulation, nor any proceedings taken pursuant to or in connection with the Stipulation and/or approval of the Settlement (including any arguments proffered in connection therewith): (a) shall be offered against any of the Settling Defendants’ Releasees as evidence of, or construed as, or deemed to be evidence of, any presumption, concession, or admission by any of the Settling Defendants’ Releasees with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Settling Defendants’ Releasees or in any way referred to for any other reason as against any of the Settling Defendants’ Releasees, in any civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; (b) shall be offered against any of the Plaintiffs’ Releasees, as evidence of, or construed as, or deemed to be evidence of, any presumption, concession, or admission by any of the Plaintiffs’ Releasees that any of their claims are without merit, that any of the Settling Defendants’ Releasees had meritorious defenses, or that damages recoverable under the Operative Complaint would not have exceeded the Settlement Amount or with

respect to any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Plaintiffs' Releasees, in any civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Stipulation; or (c) shall be construed against any of the Releasees as an admission, concession, or presumption that the consideration to be given under the Stipulation represents the amount which could be or would have been recovered after trial; *provided, however*, that if the Stipulation is approved by the Court, the Settling Parties and the Releasees and their respective counsel may refer to it to effectuate the protections from liability granted under thereunder or otherwise to enforce the terms of the Settlement, or in connection with the AIG Litigation or D&O Coverage Litigation.

27. **Supporting Papers** – Lead Counsel shall file and serve the opening papers in support of the proposed Settlement, the proposed Plan of Allocation and lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses no later than thirty-five (35) calendar days prior to the Settlement Hearing; and reply papers, if any, shall be filed and served no later than seven (7) calendar days prior to the Settlement Hearing.

28. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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The Honorable Nancy F. Atlas  
United States District Judge

Exhibit A-1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE COBALT INTERNATIONAL  
ENERGY, INC. SECURITIES LITIGATION

Lead Case No. 4:14-cv-3428 (NFA)

**NOTICE OF (I) PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT  
AMONG PLAINTIFFS, COBALT INDIVIDUAL DEFENDANTS, AND NADER  
TAVAKOLI, SOLELY ACTING AS PLAN ADMINISTRATOR ON BEHALF OF  
COBALT DEBTORS (II) SETTLEMENT FAIRNESS HEARING AND (III) MOTION  
FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT  
OF LITIGATION EXPENSES**

***This Notice Relates to a Proposed Settlement with Cobalt International Energy, Inc. and  
Certain Former Officers and Directors of the Company***

**A Federal Court authorized this Notice. This is not a solicitation from a lawyer.**

**NOTICE OF PENDENCY OF CLASS ACTION:** Please be advised that your rights may be affected by the above-captioned securities class action (the “Action”) pending in the United States District Court for the Southern District of Texas (the “Court”) if, during the period from March 1, 2011 through November 3, 2014, inclusive (the “Class Period”), you purchased or otherwise acquired the common stock of Cobalt International Energy, Inc. (“Cobalt”), Cobalt 2.625% Convertible Senior Notes due 2019, and/or Cobalt 3.125% Convertible Senior Notes due 2024 (collectively, “Cobalt Securities”), and were damaged thereby.<sup>1</sup>

**NOTICE OF SETTLEMENT:** Please also be advised that the Court-appointed lead plaintiffs GAMCO Global Gold, Natural Resources & Income Trust and GAMCO Natural Resources, Gold & Income Trust (together, the “GAMCO Funds” or “Lead Plaintiffs”), and additional named plaintiffs St. Lucie County Fire District Firefighters’ Pension Trust Fund, Fire and Police Retiree Health Care Fund, San Antonio, Sjunde AP-Fonden, and Universal Investment Gesellschaft m.b.H. (collectively, with Lead Plaintiffs, “Plaintiffs”), on behalf of themselves and the Settlement Class (as defined in ¶ 28 below), have reached a proposed settlement (the “Settlement”) with defendants (i) Cobalt International Energy, Inc. (“Cobalt”) and its debtor

<sup>1</sup> Any capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings ascribed to them in the Stipulation and Agreement of Settlement Among Plaintiffs, Cobalt Individual Defendants, and Nader Tavakoli, Solely Acting as Plan Administrator on Behalf of Cobalt Debtors, dated October 11, 2018 (the “Stipulation”), which is available at [www.CobaltSecuritiesLitigation.com](http://www.CobaltSecuritiesLitigation.com).

affiliates (collectively, the “Debtors”) in the Debtors’ Chapter 11 cases (the “Chapter 11 Cases”), by and through 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”); and (c) defendants Joseph Bryant, James W. Farnsworth, Jack E. Golden, Jon A. Marshall, Myles W. Scoggins, William P. Utt, John P. Wilkison, and Martin H. Young, Jr. (the “Cobalt Individual Defendants,” together with Cobalt, the “Cobalt Settling Defendants,” and collectively with Plaintiffs, the “Settling Parties”).

The Settlement, if approved, will resolve all claims asserted against the Cobalt Settling Defendants in the Action. The Cobalt Settling Defendants have agreed to settle for \$220,000,000, that is payable exclusively from (a) at least \$4,200,000 in existing proceeds (the “Cobalt Settlement Existing Proceeds”), and (b) future proceeds of ongoing litigation by the Cobalt Settling Defendants against insurance carriers that issued directors and officers liability policies on their behalf (together with the Cobalt Settlement Existing Proceeds, the “Cobalt Settlement Fund”).

**Please Note:** Because the Cobalt Settling Defendants’ insurance carriers are disputing coverage under the applicable policies, litigation of the coverage disputes may reduce available insurance proceeds to fund the Cobalt Settlement Fund. Available insurance proceeds are also reduced by: (i) prior settlements with certain insurance carriers that funded the Cobalt Settlement Existing Proceeds, and (ii) claims settled in connection with the creditors in the Debtors’ Chapter 11 cases which will further reduce insurance proceeds available to fund the Cobalt Settlement Fund to approximately \$161,500,000. While Lead Counsel believe strongly in the Cobalt Settling Defendants’ position in the insurance coverage dispute, the outcome of the coverage dispute is uncertain and it could materially impact the amount of insurance proceeds available to fund the Cobalt Settlement Fund.

The proposed Settlement does not resolve any claims against any of the Non-Settling Underwriter Defendants in the Action;<sup>2</sup> however, there is a related Sponsor Settlement<sup>3</sup> with the remaining Defendants in the Action who are not Non-Settling Underwriter Defendants which will be subject to a separate notice. Additionally, any Sponsor Designee Defendant who otherwise would be released through the Sponsor Settlement may opt to join this Settlement and be deemed a Cobalt Settling Defendant by sending written notice to Lead Counsel prior to the Effective Date of the Settlement.

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<sup>2</sup> The Non-Settling Underwriter Defendants are Morgan Stanley & Co. LLC, Credit Suisse Securities (USA) LLC, Citigroup Global Markets Inc., J.P. Morgan Securities LLC, Tudor, Pickering, Holt & Co. Securities, Inc., Deutsche Bank Securities Inc., RBC Capital Markets, LLC, UBS Securities LLC, Howard Weil Incorporated, Stifel, Nicolaus & Company, Incorporated, Capital One Southcoast, Inc., and Lazard Capital Markets LLC).

<sup>3</sup> The Sponsor Settling Defendants consist of (i) Sponsor Defendants The Goldman Sachs Group, Inc., Riverstone Holdings LLC, FRC Founders Corporation (f/k/a First Reserve Corporation), ACM Ltd. (f/k/a KERN Partners Ltd.), and The Carlyle Group, L.P., (ii) Sponsor Designee Defendants Peter R. Coneway, Henry Cornell, Michael G. France, N. John Lancaster, Scott L. Lebovitz, Kenneth W. Moore, J. Hardy Murchison, Kenneth A. Pontarelli, and D. Jeff van Steenberg, and (iii) Goldman Sachs & Co. LLC (f/k/a Goldman, Sachs & Co.).

**PLEASE READ THIS NOTICE CAREFULLY. This Notice explains important rights you may have, including the possible receipt of cash from the proposed Settlement. If you are a member of the Settlement Class, your legal rights will be affected whether or not you act.**

**If you have any questions about this Notice, the proposed Settlement, or your eligibility to participate in the proposed Settlement, please DO NOT contact the Court, the Settling Defendants, any other Defendants in the Action, or their counsel. All questions should be directed to Lead Counsel or the Claims Administrator (*see* ¶ 59 below).**

1. **Description of the Action and the Settlement Class:** This Notice relates to a proposed partial settlement in a pending securities class action brought by investors alleging that Defendants violated the federal securities laws by, among other things, making false and misleading statements regarding Cobalt's business partners and oil wells in Angola, were statutorily liable for false and misleading statements in offering materials for the offerings of Cobalt Securities during the Class Period, and/or violated insider trading laws by selling Cobalt common stock during the Class Period while in possession of material non-public information about Cobalt's Angolan operations. A more detailed description of the Action and the claims asserted against the Cobalt Settling Defendants (and the other Defendants) is set forth in ¶¶ 11-27 below. The proposed Settlement, if approved by the Court, will settle the claims of the Settlement Class, as defined in ¶ 28 below, as against the Cobalt Settling Defendants only.

2. **Statement of the Settlement Class's Recovery:** Subject to Court approval, Plaintiffs, on behalf of themselves and the other members of the Settlement Class, have agreed to settle with the Cobalt Settling Defendants in exchange for up to \$220,000,000 in the form of: (i) an upfront payment of at least \$4,200,000; and (ii) the right to future payments from proceeds of ongoing litigation against insurance carriers who issued insurance policies for the benefit of the Cobalt Settling Defendants (together, the "Cobalt Settlement Fund"). The Net Settlement Fund (*i.e.*, the Cobalt Settlement Fund, plus any and all interest earned thereon (the "Settlement Fund") less (a) any Taxes, (b) any Notice and Administration Costs, (c) any Litigation Expenses awarded by the Court, and (d) any attorneys' fees awarded by the Court) will be distributed in accordance with a plan of allocation that is approved by the Court, which will determine how the Net Settlement Fund shall be allocated among members of the Settlement Class. The proposed plan of allocation (the "Plan of Allocation") is set forth on pages 18-31 below.

3. **Estimate of Average Amount of Recovery Per Share or Note:** Based on the contingent nature of the Settlement Amount based on future recoveries in litigation against the Cobalt Settling Defendants' insurers, the multiple Cobalt Securities, and the multiple alleged violations of the federal securities law, Plaintiffs' counsel cannot currently estimate the average per share or per note recovery. Thus, some Settlement Class Members may recover more or less per share or note depending on, among other factors, which Cobalt Securities they purchased, when and at what prices they purchased/acquired or sold their Cobalt Securities, whether they purchased the Cobalt Securities in an offering or on the secondary market, and the total Recognized Claims of the valid Claim Forms submitted. Distributions to Settlement Class Members will be made based on the Plan of Allocation set forth herein (*see* pages 18-31 below) or such other plan of allocation as may be ordered by the Court.

4. **Statement of Potential Outcome of Case and Potential Damages:** The Settling Parties do not agree on the average amount of damages per share or note that would be recoverable if Plaintiffs were to prevail on the claims asserted against the Cobalt Settling Defendants in the Action. Among other things, the Cobalt Settling Defendants do not agree with Plaintiffs' assertions that: (i) they violated the federal securities laws; (ii) they made false or misleading statements or engaged in insider trading; or (iii) damages were suffered by members of the Settlement Class as a result of their alleged conduct.

5. **Attorneys' Fees and Expenses:** Plaintiffs' Counsel, which have been prosecuting the Action on a wholly contingent basis since its inception in 2014, have not received any payment of attorneys' fees for their representation of the Settlement Class and have advanced the funds to pay expenses necessarily incurred to prosecute this Action. Court-appointed Lead Counsel, Entwistle & Cappucci LLP and Bernstein Litowitz Berger & Grossmann LLP, will apply to the Court for an award of attorneys' fees for all Plaintiffs' Counsel in an amount not to exceed 25% of the Settlement Fund. In addition, Lead Counsel will apply for reimbursement of Litigation Expenses paid or incurred in connection with the institution, prosecution and resolution of the claims against the Defendants, in an amount not to exceed \$5,000,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by Plaintiffs directly related to their representation of the Settlement Class. Any fees and expenses awarded by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses. If the Court approves Lead Counsel's fee and expense application, the estimated average cost for these fees and expenses would be proportional to the allocation of recoveries among the various Cobalt Securities and claims, which Plaintiffs' counsel cannot currently estimate due to the contingent nature of aspects of the Cobalt Settlement Fund.

6. **Identification of Attorneys' Representatives:** The Settlement Class is represented by Andrew J. Entwistle, Esq. of Entwistle & Cappucci LLP, 299 Park Avenue, 20th Floor, New York, NY 10171, (212) 894-7200, aentwistle@entwistle-law.com; and David R. Stickney, Esq. of Bernstein Litowitz Berger & Grossmann LLP, 12481 High Bluff Drive, Suite 300, San Diego, CA 92130-3582, 1-800-380-8496, settlements@blbglaw.com.

7. **Reasons for the Settlement:** Plaintiffs' principal reason for entering into the Settlement is the: (i) the December 2017 Chapter 11 Cases of Debtors, including Cobalt, and related April 2018 Confirmation Order that provided Plaintiffs' claims against Cobalt were "preserved, provided that any recovery on such Claims shall be limited to available insurance"; and (ii) the immediate cash benefit and substantial potential future benefit, without the risk or the delays inherent in further litigation against the Cobalt Settling Defendants and potential collectability issues of any future settlement or judgment. Moreover, the current and future cash benefits provided under the proposed Settlement must be considered against the significant risk that a smaller recovery – or indeed no recovery at all – might be achieved after contested motions, a trial of the Action against the Cobalt Settling Defendants, and likely appeals that would follow a trial, a process that could be expected to last several years. The Cobalt Settling Defendants deny all allegations of wrongdoing or liability whatsoever and are entering into the Settlement solely to eliminate the uncertainty, burden, and expense of further protracted litigation.



<b>YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:</b>	
<b>SUBMIT A CLAIM FORM POSTMARKED NO LATER THAN _____, 2019.</b>	This is the only way to be eligible to receive a payment from the proceeds of the Settlement. If you are a Settlement Class Member and you remain in the Settlement Class, you will be bound by the Settlement as approved by the Court and you will give up any Released Plaintiffs' Claims (defined in ¶ 35 below) that you have against the Cobalt Settling Defendants and the other Settling Defendants' Releasees (defined in ¶ 36 below), so it is in your interest to submit a Claim Form.
<b>EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS BY SUBMITTING A WRITTEN REQUEST FOR EXCLUSION SO THAT IT IS <i>RECEIVED</i> NO LATER THAN JANUARY 8, 2019.</b>	If you exclude yourself from the Settlement Class, you will not be eligible to receive any payment from the Settlement Fund. This is the only option that allows you ever to be part of any other lawsuit against any of the Cobalt Settling Defendants or the other Settling Defendants' Releasees concerning the Released Plaintiffs' Claims. <b>Please note, however, if you decide to exclude yourself from the Settlement Class, you may be time-barred from asserting certain claims against the Settling Defendants by a statute of repose.</b>
<b>OBJECT TO THE SETTLEMENT BY SUBMITTING A WRITTEN OBJECTION SO THAT IT IS <i>RECEIVED</i> NO LATER THAN JANUARY 8, 2019.</b>	If you do not like the Settlement, the proposed Plan of Allocation, or the request for attorneys' fees and reimbursement of Litigation Expenses, you may write to the Court and explain why you do not like them. You cannot object to the Settlement, the Plan of Allocation or the fee and expense request unless you are a Settlement Class Member and do not exclude yourself from the Settlement Class.
<b>GO TO A HEARING ON JANUARY 28, 2019 AT 10:00 A.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS <i>RECEIVED</i> NO LATER THAN JANUARY 8, 2019.</b>	Filing a written objection and notice of intention to appear by January 8, 2019 allows you to speak in Court, at the discretion of the Court, about the fairness of the Settlement, the Plan of Allocation, and/or the request for attorneys' fees and expenses. If you submit a written objection, you may (but you do not have to) attend the hearing and, at the discretion of the Court, speak to the Court about your objection.
<b>DO NOTHING.</b>	If you are a member of the Settlement Class and you do not submit a valid Claim Form, you will not be eligible to receive any payment from the Settlement Fund. You will, however, remain a member of the Settlement Class, which means that you give up your right to sue about the claims that are resolved by the



	Settlement and you will be bound by any judgments or orders entered by the Court in the Action.
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**WHY DID I GET THIS NOTICE?**

8. The Court directed that this Notice be mailed to you because you or someone in your family or an investment account for which you serve as a custodian may have, during the Class Period, purchased or otherwise acquired Cobalt common stock, Cobalt 2.625% Convertible Senior Notes due 2019, and/or Cobalt 3.125% Convertible Senior Notes due 2024 during the Class Period (from March 1, 2011 through November 3, 2014, inclusive). The Court has directed us to send you this Notice because, as a potential Settlement Class Member, you have a right to know about your options before the Court rules on the Settlement. Additionally, you have the right to understand how this class action lawsuit may generally affect your legal rights.

9. The purpose of this Notice is to inform you of the existence of this case, that it is a class action, how you might be affected, and how to exclude yourself from the Settlement Class if you wish to so do. It is also being sent to inform you of the terms of the Settlement and of a hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement (the “Settlement Hearing”). See ¶¶ 50-51 below for details about the Settlement Hearing, including the date and location of the hearing.

10. The issuance of this Notice is not an expression of any opinion by the Court concerning the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlement.

## WHAT IS THIS CASE ABOUT?

11. Cobalt is a Houston-based oil and gas exploration company focused principally on off-shore drilling in Angola. This is a securities class action that alleges, among other things, that during the Class Period and in the offering materials for the offerings of Cobalt Securities that occurred during the Class Period, Defendants misled investors about Cobalt's operations in Angola, including concerning its business partners in Angola and the quality of its oil wells in that country. The action further alleges that investors in Cobalt Securities suffered economic harm when the truth about the nature of Cobalt's Angolan business partners and the quality of the oil wells was revealed through a series of disclosures.

12. Beginning on or about November 30, 2014, multiple putative securities class action complaints were filed in the Court by purchasers of Cobalt Securities. On March 3, 2015, the Court consolidated all similar putative class actions into the Action, appointed the GAMCO Funds as Lead Plaintiffs in the Action, and approved Lead Plaintiffs' selection of the law firms of Entwistle & Cappucci LLP and Bernstein Litowitz Berger & Grossmann LLP as Lead Counsel, and Ajamie LLP as Liaison Counsel for the putative class.

13. On May 1, 2015, Plaintiffs filed the Consolidated Amended Class Action Complaint (the "Amended Complaint"). The Amended Complaint asserted (a) claims under Section 11 of the Securities Act of 1933 (the "Securities Act") against Cobalt, the Underwriter Defendants, the Sponsor Designee Defendants, and certain of the Cobalt Individual Defendants; (b) claims under Section 12(a)(2) of the Securities Act against the Underwriter Defendants; (c) claims under Section 15 of the Securities Act against the Sponsor Defendants, GS&Co., the Sponsor Designee Defendants, and the Cobalt Individual Defendants; (d) claims under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Securities and Exchange Commission ("SEC") Rule 10b-5 promulgated thereunder, against Cobalt and certain of the Cobalt Individual Defendants; and (e) claims under Section 20(a) of the Exchange Act against certain of the Cobalt Individual Defendants. The Amended Complaint sought damages on behalf of a putative class of investors in Cobalt Securities during the Class Period.

14. On June 30, 2015, Defendants filed motions to dismiss the Amended Complaint. Following full briefing on the motions, on January 19, 2016, the Court entered a Memorandum and Order denying in part and granting in part Defendants' motions to dismiss the Amended Complaint. The Court further denied Defendants' interlocutory appeal motions on March 14, 2016, and Defendants answered the Amended Complaint on March 25, 2016, denying liability and the essential factual allegations therein.

15. Discovery in the Action commenced in February 2016. Through the date the agreement to settle with the Cobalt Settling Defendants was reached, Defendants and third parties had produced more than 1.3 million pages of documents to Plaintiffs, and Plaintiffs had produced over 130,000 pages of documents to Defendants in the Action. From December 2016 through August 2018, the parties to the Action conducted 31 depositions, including 10 representatives of Plaintiffs or their financial advisors, Plaintiffs' and Defendants' experts on market efficiency and damages in connection with class certification, and 19 fact witnesses, including former Cobalt employees and certain of the Cobalt Individual Defendants and Sponsor Designee Defendants. The parties also served 31 subpoenas on non-parties, served and responded to interrogatories, and exchanged numerous letters concerning discovery issues.

16. On November 2, 2016, Plaintiffs moved to certify the Action as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure. On March 22, 2017, Defendants filed their papers in opposition to the motion for class certification; and on May 26, 2017, Plaintiffs filed their reply papers on that motion. On June 15, 2017, the Court entered its Memorandum and Order granting Plaintiffs' motion for class certification, in which the Court certified the Action to proceed as a class action (on behalf of a class of purchasers of Cobalt Securities during the Class Period), appointed Plaintiffs as class representatives for that class, and appointed Lead Counsel as class counsel.

17. On January 30, 2017, Plaintiffs filed a motion for leave to file a second amended complaint to add a claim under Section 20A of the Exchange Act against the Sponsor Defendants, alleging that the Sponsor Defendants sold Cobalt common stock during the Class Period while in possession of material non-public information about Cobalt's business. On March 10, 2017, following briefing of this motion, the Court entered its Order granting Plaintiffs' motion for leave to amend.

18. On March 15, 2017, Plaintiffs filed their Second Consolidated Amended Class Action Complaint (the "Operative Complaint"). On April 14, 2017, the Sponsor Defendants filed motions to dismiss the newly-added claim under Section 20A of the Exchange Act. Following full briefing on the motion, on June 15, 2017, the Court entered its Memorandum and Order granting the motion to dismiss of The Carlyle Group, L.P. and denying the motion to dismiss of the other Sponsor Defendants. On July 17, 2017, the Sponsor Defendants, except for The Carlyle Group, L.P., answered the Operative Complaint, denying liability and the essential factual allegations therein.

19. On June 30, 2017, Defendants filed a petition in the United States Court of Appeals for the Fifth Circuit (the "Court of Appeals") pursuant to Federal Rule of Civil Procedure 23(f), seeking permission to take an interlocutory appeal of the Court's Class Certification Order. On August 4, 2017, the Court of Appeals granted Defendants' petition. At the time the Settlement was reached, the appeal of the Court's class certification order was fully briefed and the Court of Appeals had stayed the appeal as to all Defendants except the Non-Settling Underwriter Defendants, as to whom oral argument on the appeal occurred on October 1, 2018.

20. On December 14, 2017, Cobalt and the other Debtors filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101–1532, in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court"). Cobalt's Chapter 11 cases are captioned *In re Cobalt International Energy, Inc.*, Case No. 4:17-bk-36709 (Bankr. S.D. Tex.).

21. On January 4, 2018, Plaintiffs and Defendants agreed to stay all proceedings in the Action until April 21, 2018 in light of Cobalt's bankruptcy, and an order to that effect was entered in the Bankruptcy Court on that date. On May 22, 2018, after the expiration of the bankruptcy stay, the Court entered a revised Docket Control Order, establishing forthcoming deadlines in the case.

22. On June 22, 2018, after extensive arm's-length negotiations facilitated by former United States District Judge Layn R. Phillips, acting as mediator, Plaintiffs and the Sponsor Defendants reached an agreement in principle as to the monetary element of the Sponsor Settlement with respect to the Sponsor Defendants and Sponsor Designee Defendants.

23. On July 6, 2018, after extensive arm's-length negotiations facilitated by former United States District Judge Layn R. Phillips, acting as mediator, Plaintiffs and Underwriter Defendant GS&Co. also reached an agreement in principle as to an additional monetary element to include GS&Co. in the Sponsor Settlement.

24. On October 11, 2018, the Settling Parties entered into the Stipulation, which sets forth the terms and conditions of the Plaintiffs' separate Settlement with Cobalt, the Debtors and the Cobalt Individual Defendants. The Stipulation can be viewed at [www.CobaltSecuritiesLitigation.com](http://www.CobaltSecuritiesLitigation.com). Once again, this Settlement pursuant to the Stipulation is separate and apart from the Sponsor Settlement, which is the subject of a separate notice.

25. Based upon their investigation, prosecution, and settlement of the case, Plaintiffs and Lead Counsel have concluded that the terms and conditions of the Stipulation are fair, reasonable, and adequate to Plaintiffs and the Settlement Class, and in their best interests.

26. The Cobalt Settling Defendants are entering into the Stipulation solely to eliminate the uncertainty, burden, and expense of further protracted litigation. Each of the Cobalt Settling Defendants denies any wrongdoing.

27. On [\_\_\_\_\_], 2018, the Court preliminarily approved the Settlement, authorized this Notice to be disseminated to potential Settlement Class Members, and scheduled the Settlement Hearing to consider whether to grant final approval to the Settlement.

**HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT?  
WHO IS INCLUDED IN THE SETTLEMENT CLASS?**

28. If you are a member of the Settlement Class, you are subject to the terms of the Settlement, unless you timely request to be excluded. The "Settlement Class" consists of:

all persons and entities who purchased or otherwise acquired Cobalt common stock, Cobalt 2.625% Convertible Senior Notes due 2019, and/or Cobalt 3.125% Convertible Senior Notes due 2024 (collectively, "Cobalt Securities") between March 1, 2011 and November 3, 2014, inclusive, and were damaged thereby. Included within the Settlement Class are all persons and entities who purchased or otherwise acquired shares of Cobalt common stock on the open market and/or pursuant or traceable to the registered public offerings on or about (i) February 23, 2012; (ii) January 16, 2013; and (iii) May 8, 2013. Also included within the Settlement Class are all persons and entities who purchased or otherwise acquired Cobalt convertible senior notes on the open market and/or pursuant or traceable to registered public offerings on or about (i) December 12, 2012; and (ii) May 8, 2014.

Excluded from the Settlement Class are Defendants; the officers and directors of Defendants during the Class Period (the "Excluded Officers and Directors"); members of the Immediate Family of the Individual Defendants and of the Excluded Officers and Directors; any entity in which any Defendant, any Excluded Officer or Director, or any of their respective Immediate Family Members has, and/or had during the Class Period, a controlling interest; Defendants' liability insurance carriers; any affiliates, parents, or subsidiaries of the corporate Defendants; all corporate Defendants' plans that are covered by ERISA; and the legal representatives, heirs, agents, affiliates, successors-in-interest or assigns of any excluded person or entity, in their

respective capacity as such. Also excluded from the Settlement Class are any persons or entities who or which exclude themselves by submitting a request for exclusion from the Settlement Class in accordance with the requirements set forth in this Notice. See “What if I Do Not Want To Be A Member Of The Settlement Class? How Do I Exclude Myself,” page 13 below.

**RECEIPT OF THIS NOTICE DOES NOT MEAN THAT YOU ARE A SETTLEMENT CLASS MEMBER OR THAT YOU WILL BE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT.**

**IF YOU ARE A SETTLEMENT CLASS MEMBER AND YOU WISH TO BE ELIGIBLE TO PARTICIPATE IN THE DISTRIBUTION OF PROCEEDS FROM THE SETTLEMENT, YOU ARE REQUIRED TO SUBMIT THE CLAIM FORM THAT IS BEING DISTRIBUTED WITH THIS NOTICE AND THE REQUIRED SUPPORTING DOCUMENTATION AS SET FORTH THEREIN POSTMARKED NO LATER THAN \_\_\_\_\_, 2019.**

#### **WHAT ARE PLAINTIFFS’ REASONS FOR THE SETTLEMENT?**

29. Plaintiffs and Lead Counsel believe that the claims asserted against the Cobalt Settling Defendants have merit. They recognize, however, the expense and length of continued proceedings necessary to pursue their claims against the Cobalt Settling Defendants through trial and appeals, as well as the very substantial risks they would face in establishing liability and damages. Such risks include the potential challenges associated with proving that there were material misstatements and omissions in the public securities offering documents at issue. Plaintiffs would have to prevail at several stages – motions for summary judgment, trial, and if they prevailed on those, on the appeals that were likely to follow. Thus, there were very significant risks attendant to the continued prosecution of the claims against the Cobalt Settling Defendants.

30. In light of these risks, the amount of the Settlement, and the certainty of recovery to the Settlement Class, Plaintiffs and Lead Counsel believe that the proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class. Plaintiffs and Lead Counsel believe that the Settlement provides substantial current and future benefits to the Settlement Class, as compared to the risk that the claims in the Action against the Cobalt Settling Defendants might produce a smaller, or no recovery, after summary judgment, trial, and appeals.

31. The Cobalt Settling Defendants have denied the claims asserted against them in the Action and deny having engaged in any wrongdoing or violation of law of any kind whatsoever. The Cobalt Settling Defendants have agreed to the Settlement solely to eliminate the burden and expense of continued litigation. Accordingly, the Settlement may not be construed as an admission of any wrongdoing by the Cobalt Settling Defendants.

#### **WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?**

32. If there were no Settlement and Plaintiffs failed to establish any essential legal or factual element of their claims against the Cobalt Settling Defendants, neither Plaintiffs nor the other members of the Settlement Class would recover anything from these Defendants. Also, if the Settling Defendants were successful in proving any of their defenses, either at summary



judgment, at trial, or on appeal, the Settlement Class could recover substantially less from the Cobalt Settling Defendants than the amount provided in the Settlement, or nothing at all.

**HOW ARE SETTLEMENT CLASS MEMBERS  
AFFECTED BY THE ACTION AND THE SETTLEMENT?**

33. If you are a Settlement Class Member, you are represented by Plaintiffs and Lead Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her appearance on the attorneys listed in the section entitled, “When And Where Will The Court Decide Whether To Approve The Settlement?,” below.

34. If you are a Settlement Class Member and you do not exclude yourself from the Settlement Class,<sup>4</sup> you will be bound by any orders issued by the Court relating to the Settlement. If the Settlement is approved, the Court will enter a judgment (the “Judgment”). The Judgment will provide that, upon the later of the Effective Date of the Settlement and the conclusion of any coverage litigation against the Cobalt Settling Defendants’ insurers, Plaintiffs and each of the other Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, will have fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs’ Claim (as defined in ¶ 35 below) against the Cobalt Settling Defendants and the other Settling Defendants’ Releasees (as defined in ¶ 36 below), and will forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs’ Claims against any of the Settling Defendants’ Releasees.

35. “Released Plaintiffs’ Claims” means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common or foreign law, that were or could have been asserted in any forum that relate to, arise out of, or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Operative Complaint or in any of the Prior Complaints and that relate to the purchase, acquisition, sale, or holding of Cobalt Securities during the Class Period. Released Plaintiffs’ Claims do not include: (i) any claims asserted, or that may be asserted, against any Sponsor Defendant or Non-Settling Underwriter Defendants; (ii) any claims of any person or entity who or that submits a request for exclusion from the Settlement Class that is accepted by the Court; and (iii) any claims relating to the enforcement of the Settlement.

36. “Settling Defendants’ Releasees” means (i) the Cobalt Settling Defendants; (ii) the current and former parents, affiliates, subsidiaries, successors, predecessors, assigns, and assignees of each of the Cobalt Settling Defendants; and (iii) the current and former officers, directors, agents, employees, attorneys, and advisors of each of the foregoing in (i) and (ii), in their capacities as such. Notwithstanding the foregoing, the Cobalt Settling Defendants’

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<sup>4</sup> If you are a Settlement Class Member and do not wish to remain a class member, you may exclude yourself from the Settlement Class by following the instructions in the section entitled, “What If I Do Not Want To Be A Member Of The Settlement Class? How Do I Exclude Myself?,” below.

Releasees do not include any Sponsor Defendant or Non-Settling Underwriter Defendants or Cobalt's liability insurance carriers, in their capacities as such.

37. "Unknown Claims" means any Released Plaintiffs' Claims (as defined in ¶ 35 above) which Plaintiffs or any other Settlement Class Member does not know or suspect to exist in his, her or its favor at the time of the release of such claims, and any Released Settling Defendants' Claims (as defined in ¶ 39 below) which any Cobalt Settling Defendant does not know or suspect to exist in his or its favor at the time of the release of such claims, which, if known by him, her, or it, might have affected his, her, or its decision as to this Settlement. As to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date of the Settlement, Plaintiffs and the Cobalt Settling Defendants shall expressly waive, and each of the other Settlement Class Members shall be deemed to have waived, and by operation of the Judgment or the Alternate Judgment, if applicable, shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code §1542, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Plaintiffs and the Cobalt Settling Defendants acknowledge, and each of the other Settlement Class Members shall be deemed by operation of law to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement.

38. The Judgment will also provide that, upon the later of the Effective Date of the Settlement and the conclusion of any coverage litigation against the Cobalt Settling Defendants' insurers, the Cobalt Settling Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, will have fully, finally and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Settling Defendants' Claim (as defined in ¶ 39 below) against Plaintiffs and the other Plaintiffs' Releasees (as defined in ¶ 40 below), and will forever be barred and enjoined from prosecuting any or all of the Released Settling Defendants' Claims against any of the Plaintiffs' Releasees.

39. "Released Settling Defendants' Claims" means all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common or foreign law, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims asserted in the Action against the Cobalt Settling Defendants. Released Settling Defendants' Claims do not include: (i) any claims against any person or entity who or that submits a request for exclusion from the Settlement Class that is accepted by the Court; and (ii) any claims relating to the enforcement of the Settlement.

40. "Plaintiffs' Releasees" means (i) Plaintiffs, their respective attorneys, and all other Settlement Class Members; (ii) the current and former parents, affiliates, subsidiaries, successors, predecessors, assigns, and assignees of each of the foregoing in (i); and (iii) the current and former officers, directors, agents, employees, attorneys, and advisors of the each of the foregoing in (i) and (ii), in their capacities as such.

**WHAT WILL I NEED TO DO TO PARTICIPATE IN THE SETTLEMENT?**

41. To be eligible for a payment from the proceeds of the Settlement, you must be a member of the Settlement Class and you must timely complete and return the Claim Form with adequate supporting documentation **postmarked no later than \_\_\_\_\_, 2019**. A Claim Form is included with this Notice, or you may obtain one from the website maintained by the Claims Administrator for the Settlement, [www.CobaltSecuritiesLitigation.com](http://www.CobaltSecuritiesLitigation.com), or you may request that a Claim Form be mailed to you by calling the Claims Administrator toll free at 1-877-440-0638. Please retain all records of your ownership of and transactions in Cobalt Securities, as they may be needed to document your Claim. If you request exclusion from the Settlement Class or do not submit a timely and valid Claim Form, you will not be eligible to share in the Net Settlement Fund.

**HOW MUCH WILL MY PAYMENT FROM THE SETTLEMENT BE?**

42. At this time, it is not possible to make any determination as to how much any individual Settlement Class Member may receive from the Settlement.

43. The proceeds of the Settlement will be distributed in accordance with the plan of allocation that is approved by the Court. The amounts to be distributed to individual Settlement Class Members will depend on a variety of factors, including: the number of other Settlement Class Members who submit valid Claim Forms; the number and type of Cobalt Securities the claimant purchased during the Class Period, the prices and dates of those purchases, whether the Cobalt Securities were purchased in an offering or on the open market; and the prices and dates of any sales of such Cobalt Securities.

44. The proposed Plan of Allocation, which is subject to Court approval, is attached as Appendix A to this Notice. Please review the Plan of Allocation carefully.

**WHAT PAYMENT ARE THE ATTORNEYS FOR THE SETTLEMENT CLASS SEEKING? HOW WILL THE LAWYERS BE PAID?**

45. Plaintiffs' Counsel have not received any payment for their services in pursuing claims against the Cobalt Settling Defendants on behalf of the Settlement Class, nor have Plaintiffs' Counsel been reimbursed for their out-of-pocket expenses. Before final approval of the Settlement, Lead Counsel will apply to the Court for an award of attorneys' fees for all Plaintiffs' Counsel in an amount not to exceed 25% of the Settlement Fund. At the same time, Lead Counsel also intends to apply for reimbursement of Litigation Expenses in an amount not to exceed \$5,000,000, which may include an application for reimbursement of the reasonable costs and expenses incurred by Plaintiffs directly related to their representation of the Settlement Class. The Court will determine the amount of any award of attorneys' fees or reimbursement of Litigation Expenses. Such sums as may be approved by the Court will be paid from the Settlement Fund. Settlement Class Members are not personally liable for any such fees or expenses.



**WHAT IF I DO NOT WANT TO BE A MEMBER OF THE SETTLEMENT CLASS?  
HOW DO I EXCLUDE MYSELF?**

46. Each Settlement Class Member will be bound by the determinations, orders, and judgments in this Action relating to the Settlement, whether favorable or unfavorable, unless such person or entity mails or delivers a written Request for Exclusion from the Settlement Class, addressed to *In re Cobalt International Energy, Inc. Securities Litigation*, EXCLUSIONS, c/o Epiq, P.O. Box 4109, Portland, OR 97208-4109. The exclusion request must be **received** no later than **January 8, 2019**. You will not be able to exclude yourself from the Settlement Class after that date. Each Request for Exclusion must: (a) state the name, address, and telephone number of the person or entity requesting exclusion, and in the case of entities, the name and telephone number of the appropriate contact person; (b) state that such person or entity “requests exclusion from the Cobalt Defendant Settlement Class in *In re Cobalt International Energy, Inc. Securities Litigation*, Lead Case No. 4:14-cv-3428 (NFA)”; (c) state the number of shares of Cobalt common stock and/or the face value of Cobalt 2.625% Convertible Senior Notes due 2019 and/or Cobalt 3.125% Convertible Senior Notes due 2024 that the person or entity requesting exclusion purchased/acquired and/or sold during the Class Period (*i.e.*, from March 1, 2011 through November 3, 2014, inclusive), including the number of shares of Cobalt common stock purchased in or traceable to the registered public offerings on or about February 23, 2012, January 16, 2013, and May 8, 2013 and/or the face value of Cobalt convertible senior notes purchased in or traceable to the registered public offerings on or about December 12, 2012 and May 8, 2014 that the person or entity requesting exclusion purchased/acquired and/or sold during the Class Period, as well as the dates, number of shares/face value, and prices of each such purchase/acquisition and sale; and (d) be signed by the person or entity requesting exclusion or an authorized representative. A Request for Exclusion shall not be valid and effective unless it provides all the information called for in this paragraph and is received within the time stated above, or is otherwise accepted by the Court.

47. If you do not want to be part of the Settlement Class, you must follow these instructions for exclusion even if you have pending, or later file, another lawsuit, arbitration, or other proceeding relating to any Released Plaintiffs’ Claim against any of the Settling Defendants’ Releasees. Excluding yourself from the Settlement Class is the only option that allows you to be part of any other lawsuit against any of the Cobalt Settling Defendants or the other Settling Defendants’ Releasees concerning the Released Plaintiffs’ Claims. **Please note, however, if you decide to exclude yourself from the Settlement Class, you may be time-barred from asserting certain claims against the Cobalt Settling Defendants by a statute of repose.**

48. If you exclude yourself from the Settlement Class, you will not be able to request a payment from this Settlement, and you cannot object to this Settlement. You will not be bound by anything that happens in this lawsuit with respect to the Cobalt Settling Defendants, and you may be able to sue the Cobalt Settling Defendants on your own in the future. Excluding yourself from the Settlement Class will not automatically exclude you from any other, or subsequent, settlement class relating to any future settlement with other Defendants, including the Sponsor Settlement.

49. The Cobalt Settling Defendants have the right to terminate the Settlement if valid requests for exclusion are received from persons and entities entitled to be members of the

Settlement Class in an amount that exceeds an amount agreed to by Plaintiffs and the Cobalt Settling Defendants.

**WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT? DO I HAVE TO COME TO THE HEARING? HOW DO I OBJECT? MAY I SPEAK AT THE HEARING IF I DON'T LIKE THE SETTLEMENT?**

50. **Settlement Class Members do not need to attend the Settlement Hearing. The Court will consider any submission made in accordance with the provisions below even if a class member does not attend the hearing. Settlement Class Members can participate in the Settlement without attending the Settlement Hearing. Please Note: The date and time of the Settlement Hearing may change without further written notice to the Settlement Class. You should monitor the Court's docket and the website maintained by the Claims Administrator, [www.CobaltSecuritiesLitigation.com](http://www.CobaltSecuritiesLitigation.com), before making plans to attend the Settlement Hearing. You may also confirm the date and time of the Settlement Hearing by contacting Lead Counsel.**

51. The Settlement Hearing will be held on **January 28, 2019 at 10:00 a.m.**, before the Honorable Nancy F. Atlas at the United States District Court for the Southern District of Texas, United States Courthouse, 515 Rusk Street, Houston, TX 77002. The Court reserves the right to approve the Settlement, the Plan of Allocation, Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses, and/or any other matter related to the Settlement at or after the Settlement Hearing without further notice to the members of the Settlement Class.

52. Any Settlement Class Member who or which does not request exclusion may object to the Settlement, the proposed Plan of Allocation, or Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. Objections must be in writing. You must file any written objection, together with copies of all other papers and briefs supporting the objection, with the Clerk's Office at the United States District Court for the Southern District of Texas at the address set forth below on or before **January 8, 2019**. You must also mail the papers to Lead Counsel and Cobalt Settling Defendants' Counsel at the addresses set forth below so that the papers are *received* on or before **January 8, 2019**.

<u>Clerk's Office</u>	<u>Lead Counsel</u>	<u>Representative Settling Defendants' Counsel</u>
U.S. District Court Southern District of Texas United States Courthouse 515 Rusk Street Houston, TX 77002	<b>Entwistle &amp; Cappucci LLP</b> Andrew J. Entwistle, Esq. 299 Park Avenue, 20th Floor New York, NY 10171	<b>Greenberg Traurig, LLP</b> Shari L. Heyen, Esq. 1000 Louisiana, Suite 1700 Houston, TX 77002
	<b>Bernstein Litowitz Berger &amp; Grossmann LLP</b> David R. Stickney, Esq. 12481 High Bluff Drive, Suite 300 San Diego, CA 92130-3582	<b>Baker Botts LLP</b> David D. Sterling, Esq. One Shell Plaza 910 Louisiana Street Houston, TX 77002
		<b>Quinn Emanuel Urquhart &amp; Sullivan, LLP</b> Karl Stern, Esq. Pennzoil Place 711 Louisiana St., Suite 500 Houston, TX 77002

53. Any objection: (a) must state the name, address, and telephone number of the person or entity objecting and must be signed by the objector; (b) must contain a statement of the Settlement Class Member's objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Settlement Class Member wishes to bring to the Court's attention; and (c) must include documents sufficient to prove membership in the Settlement Class, including the number of shares of Cobalt common stock and/or the face value of Cobalt 2.625% Convertible Senior Notes due 2019 and/or Cobalt 3.125% Convertible Senior Notes due 2024 that the objecting Settlement Class Member purchased/acquired and/or sold during the Class Period (*i.e.*, from March 1, 2011 through November 3, 2014, inclusive), as well as the dates, number of shares/face value, and prices of each such purchase/acquisition and sale. You may not object to the Settlement, the Plan of Allocation, or Lead Counsel's motion for attorneys' fees and reimbursement of Litigation Expenses if you exclude yourself from the Settlement Class or if you are not a member of the Settlement Class.

54. You may file a written objection without having to appear at the Settlement Hearing. You may not, however, appear at the Settlement Hearing to present your objection unless you first filed and served a written objection in accordance with the procedures described above, unless the Court orders otherwise.

55. If you wish to be heard orally at the hearing, you must also file a notice of appearance with the Clerk's Office and serve it on Lead Counsel and Representative Settling Defendants' Counsel at the addresses set forth in ¶ 52 above so that the notice is *received* on or before **January 8, 2019**. Persons who intend to object and desire to present evidence at the Settlement Hearing must include in their written objection or notice of appearance the identity of any

witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing. Such persons may be heard orally at the discretion of the Court.

56. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Court and serve it on Lead Counsel and Cobalt Settling Defendants' Counsel at the addresses set forth in ¶ 52 above so that the notice is *received* on or before **January 8, 2019**.

**57. Unless the Court orders otherwise, any Settlement Class Member who does not object in the manner described above will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the Settlement, the proposed Plan of Allocation or Lead Counsel's motion for an award of attorneys' fees and reimbursement of Litigation Expenses. Settlement Class Members do not need to appear at the Settlement Hearing or take any other action to indicate their approval.**

#### WHAT IF I BOUGHT SHARES ON SOMEONE ELSE'S BEHALF?

58. If during the period from March 1, 2011 through November 3, 2014, inclusive (the "Class Period"), you purchased or otherwise acquired Cobalt common stock, Cobalt 2.625% Convertible Senior Notes due 2019, and/or Cobalt 3.125% Convertible Senior Notes due 2024 for the beneficial interest of persons or organizations other than yourself, you must either (a) within ten (10) business days of receipt of this Notice, request from the Claims Administrator sufficient copies of the Notice to forward to all such beneficial owners and within seven (7) calendar days of receipt of those Notices forward them to all such beneficial owners; or (b) within ten (10) business days of receipt of this Notice, provide a list of the names and addresses of all such beneficial owners to *In re Cobalt International Energy, Inc. Securities Litigation*, c/o Epiq, P.O. Box 4109, Portland, OR 97208-4109. If you choose the first option, you must send a statement to the Claims Administrator confirming that the mailing was made and **you must retain your mailing records for use in connection with any further notices that may be provided in the Action**. If you choose the second option, the Claims Administrator will send a copy of the Notice to the beneficial owners. Upon full compliance with these directions, such nominees may seek reimbursement of their reasonable expenses actually incurred, by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Copies of this Notice may also be obtained from the website maintained by the Claims Administrator, [www.CobaltSecuritiesLitigation.com](http://www.CobaltSecuritiesLitigation.com), by calling the Claims Administrator toll-free at 1-877-440-0638, or by emailing the Claims Administrator at [info@CobaltSecuritiesLitigation.com](mailto:info@CobaltSecuritiesLitigation.com).

#### CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?

59. This Notice contains only a summary of the terms of the proposed Settlement. For more detailed information about the matters involved in this Action, you are referred to the papers on file in the Action, including the Stipulation, which may be inspected during regular office hours at the Office of the Clerk, United States District Court for the Southern District of Texas, United States Courthouse, 515 Rusk Street, Houston, TX 77002. Additionally, copies of the Stipulation

and any related orders entered by the Court will be posted on the website maintained by the Claims Administrator, [www.CobaltSecuritiesLitigation.com](http://www.CobaltSecuritiesLitigation.com).

**Requests for the Notice or to be added to the mailing list for future notices in the Action should be made to:**

*In Cobalt International Energy, Inc.  
Securities Litigation  
c/o Epiq  
P.O. Box 4109  
Portland, OR 97208-4109  
1-877-440-0638  
info@CobaltSecuritiesLitigation.com  
[www.CobaltSecuritiesLitigation.com](http://www.CobaltSecuritiesLitigation.com)*

**Inquiries, other than requests for the Notice, should be made to Lead Counsel:**

Andrew J. Entwistle, Esq.  
ENTWISTLE & CAPPUCCI LLP  
299 Park Avenue, 20th Floor  
New York, NY 10171  
(212) 894-7200  
aentwistle@entwistle-law.com

David R. Stickney, Esq.  
BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP  
12481 High Bluff Drive, Suite 300  
San Diego, CA 92130-3582  
1-800-380-8496  
settlements@blbglaw.com

**DO NOT CALL OR WRITE THE COURT, THE OFFICE OF THE CLERK OF THE COURT, DEFENDANTS OR THEIR COUNSEL REGARDING THIS NOTICE.**

Dated: \_\_\_\_\_, 2018

By Order of the Court  
United States District Court  
Southern District of Texas

## Appendix A

### Proposed Plan of Allocation of Net Settlement Fund(s)

#### I. GENERAL ISSUES

60. The Sponsor Settlement and Cobalt Settlement (each as defined below) (together, the “Settlements”) apply to Class Members who purchased or otherwise acquired Cobalt International Energy, Inc. (“Cobalt”) securities (“Cobalt Securities”) during the period from March 1, 2011 through November 3, 2014, inclusive (the “Class Period”). The Cobalt Securities are Cobalt’s: (i) Common Stock, (ii) 2.625% Convertible Senior Notes due 2019, issued in December 2012 (the “2019 Notes”), and (iii) 3.125% Convertible Senior Notes due 2024, issued in May 2014 (the “2024 Notes”).

61. This Plan of Allocation applies to Class Members who elect to participate as Settlement Class Members in either or both of the Settlements, consisting of:

- (i) Plaintiffs’ settlement with the Sponsor Defendants, Sponsor Designee Defendants, and Goldman Sachs & Co., LLC (the “Sponsor Settlement”), in which the Sponsor Settling Defendants<sup>5</sup> have agreed to pay \$146,850,000 in cash (the “Sponsor Settlement Amount”); and
- (ii) Plaintiffs’ Settlement with Cobalt, its affiliated Debtors, the Plan Administrator, and the Cobalt Individual Defendants (the “Cobalt Settlement”), in which the Cobalt Settling Defendants<sup>6</sup> have agreed to settle for \$220,000,000, that is payable exclusively from (a) at least \$4,200,000 in existing proceeds (the “Cobalt Settlement Existing Proceeds”), and (b) future recoveries of up to \$161.5 million (or more in the case of insurance bad faith) in proceeds related to insurance policies that currently are (or are likely to become) the subject of ongoing litigation by the Cobalt Settling Defendants against insurance carriers that issued directors and officers liability policies on their behalf (together with the Cobalt Settlement Existing Proceeds, the “Cobalt Settlement Fund”).

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<sup>5</sup> The Sponsor Settling Defendants consist of (i) Sponsor Defendants The Goldman Sachs Group, Inc., Riverstone Holdings LLC, FRC Founders Corporation (f/k/a First Reserve Corporation), ACM Ltd. (f/k/a KERN Partners Ltd.), and The Carlyle Group, L.P., (ii) Sponsor Designee Defendants Peter R. Coneway, Henry Cornell, Michael G. France, N. John Lancaster, Scott L. Lebovitz, Kenneth W. Moore, J. Hardy Murchison, Kenneth A. Pontarelli, and D. Jeff van Steenberg, and (iii) Goldman Sachs & Co. LLC (f/k/a Goldman, Sachs & Co.).

<sup>6</sup> The Cobalt Settling Defendants consist of: (i) Cobalt, (ii) its Debtor affiliates in the Debtors’ Chapter 11 cases, by and through 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”); (iii) Cobalt Individual Defendants Joseph Bryant, James W. Farnsworth, Jack E. Golden, Jon A. Marshall, Myles W. Scoggins, William P. Utt, John P. Wilkerson, and Martin H. Young, Jr.; and (iv) any Sponsor Designee Defendant that has provided written notice to Lead Counsel prior to the Effective Date of the Settlement.



**Please Note:** Because the Cobalt Settling Defendants’ insurance carriers are disputing coverage under the applicable policies, litigation of the coverage disputes may reduce available insurance proceeds to fund the Cobalt Settlement Fund. Available insurance proceeds are also reduced by: (i) prior settlements with certain insurance carriers that funded the Cobalt Settlement Existing Proceeds, and (ii) claims settled in connection with the creditors in the Debtors’ Chapter 11 cases which will further reduce insurance proceeds available to fund the Cobalt Settlement Fund to approximately \$161,500,000. Those amounts may be increased by claims of bad faith against the carriers. While Lead Counsel believe strongly in the Cobalt Settling Defendants’ position in the insurance coverage dispute, the outcome of the coverage dispute is uncertain and it could materially impact the amount of insurance proceeds available to fund the Cobalt Settlement Fund.

62. This Plan of Allocation will also govern future settlements, if any, with any the Non-Settling Underwriter Defendants<sup>7</sup> who are not among the Sponsor Settling Defendants funding the Sponsor Settlement and Cobalt Settling Defendants funding the Cobalt Settlement.

63. The: (i) Sponsor Settling Defendants have agreed to pay the Sponsor Settlement Amount; and (ii) Cobalt Settling Defendants have agreed to pay the Cobalt Settlement Fund, to be deposited into an escrow account for the benefit of Class Members who suffered losses from purchases of Cobalt Securities during the Class Period. The Sponsor Settlement Amount and Cobalt Settlement Fund and interest earned thereon while they are held in escrow from time to time before distribution, is referred to as the “Settlement Fund.” If one or both of the Sponsor and Cobalt Settlements are approved by the Court and the Effective Date of either Settlement occurs, the Settlement Fund, less all Taxes, Tax Expenses, Notice and Administration Costs, and attorneys’ fees and Litigation Expenses of Lead Counsel (the “Net Settlement Fund”), shall be distributed to Class Members who submit valid Claim Forms (“Authorized Claimants”), in accordance with this proposed Plan of Allocation or such other plan of allocation as the Court may approve.

64. The Plan of Allocation has been prepared by Lead Plaintiffs. It reflects: (i) the allegations in the Complaint that Defendants committed various violations of the federal securities laws; and (ii) analyses by Lead Plaintiffs’ expert on damages to create a framework for equitable distribution of the Net Settlement Fund among Class Members who suffered economic losses as a result of Defendants’ alleged violations of the federal securities laws.

65. The Plan of Allocation is not a formal damage analysis. The calculations made pursuant to the Plan of Allocation are not intended to estimate the amounts Class Members might have recovered after a trial. Nor are the calculations intended to estimate the amounts that will be paid to Authorized Claimants pursuant to the Settlements or any future settlements or recovery in the

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<sup>7</sup> The Non-Settling Underwriter Defendants are Morgan Stanley & Co. LLC, Credit Suisse Securities (USA) LLC, Citigroup Global Markets Inc., J.P. Morgan Securities LLC, Tudor, Pickering, Holt & Co. Securities, Inc., Deutsche Bank Securities Inc., RBC Capital Markets, LLC, UBS Securities LLC, Howard Weil Incorporated, Stifel, Nicolaus & Company, Incorporated, Capital One Southcoast, Inc., and Lazard Capital Markets LLC. The Settling Defendants and the Non-Settling Defendants are collectively referred to as “Defendants”.

Action. The computations under the Plan of Allocation are only a method to weigh the claims of Authorized Claimants against one another for the purposes of making allocations of the available settlement funds among Authorized Claimants.

66. At this time, it is not possible to make any determination as to how much individual Class Members may receive from the Settlements. Your share of the Net Settlement Fund will depend on the number of valid and acceptable Claim Forms submitted by members of the Class and how many securities those forms represent relative to the Net Settlement Fund; how many securities you purchased and when you purchased them; what securities law violations by Defendants relate to your securities; whether you held or sold those securities; the date on which you sold those securities; and the price at which you sold them, among other factors.

67. Any payment to an Authorized Claimant that would amount to less than \$10.00 does not meet the minimum threshold set for distributions and no payments will be made to such Claimants.

68. The Net Settlement Fund will not be distributed unless and until the Court has approved one or both of the Settlements and a plan of allocation, and the time for any petition for rehearing, appeal or review, whether by certiorari or otherwise, has expired.

69. Approval of the Settlements is independent from approval of a plan of allocation. Any determination with respect to a plan of allocation will not affect the Settlements, if approved.

70. Unless the Court otherwise orders, any Class Member who fails to submit a Claim Form postmarked on or before \_\_\_\_\_, 2019 shall be fully and forever barred from receiving payments pursuant to the Settlements but will in all other respects remain a Class Member and be subject to the provisions of the respective Stipulations governing the Sponsor and Cobalt Settlements, including the terms of any Judgments entered and the releases given. This means that each Class Member releases the Released Plaintiffs' Claims (as defined in ¶ 35 above) against the Settling Defendants' Releasees (as defined in ¶ 36 above) and will be enjoined and prohibited from filing, prosecuting, or pursuing any of the Released Plaintiffs' Claims against any of the Settling Defendants' Releasees whether or not such Class Member submits a Claim Form.

71. Participants in and beneficiaries of any of employee benefit plan covered by ERISA that is affiliated with one of the corporate Defendants ("ERISA Plan") should NOT include any information relating to their transactions in Cobalt Securities held through the ERISA Plan in any Claim Form that they may submit in this Action. They should include ONLY those Cobalt Securities that they purchased outside of the ERISA Plan.

72. The Court has reserved jurisdiction to allow, disallow, or adjust on equitable grounds the Claim of any Class Member.

73. Each Claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her or its Claim Form.

74. Only Class Members or persons authorized to submit a claim on their behalf will be eligible to share in the distribution of the Net Settlement Fund. Persons and entities that are



excluded from the Class by definition or that exclude themselves from the Class pursuant to request will not be eligible to receive a distribution from the Net Settlement Fund and should not submit Claim Forms.

75. Defendants shall not have any liability, obligation, or responsibility for the administration of the Settlements, the disbursement of the Net Settlement Fund, or the plan of allocation.

## II. ALLOCATION OF SETTLEMENT AMOUNTS INTO SEPARATE FUNDS

76. The Net Settlement Fund for the currently proposed Sponsor and Cobalt Settlements, together with all future settlements and other recoveries in the Action from any of the Non-Settling Underwriter Defendants, less all Court-approved attorneys' fees, taxes, and expenses on those settlements and recoveries, will be divided into three (3) separate funds for purposes of making allocations to Authorized Claimants (Class Members who submit eligible Claim Forms). The division into these three funds is based on the identity of the Defendants contributing to each settlement or recovery and the types of claims asserted against each group of Defendants.

- a. The **Group 1 Fund** is intended to compensate Class Members who (i) purchased Cobalt common stock, 2019 Notes, and/or 2024 Notes during the Class Period at prices that Plaintiffs allege were artificially inflated as a result of material misstatements or omissions that certain Defendants made recklessly or with intent to defraud, and (ii) were injured when the alleged misstatements or omissions were revealed and the price of Cobalt Securities declined. Plaintiffs allege that Cobalt and Cobalt Individual Defendants Bryant, Farnsworth and Wilkirson made such alleged misstatements or omissions in violation of Section 10(b) of the Exchange Act.
- b. The **Group 2 Fund** is intended to compensate Class Members who purchased Cobalt common stock during the Class Period contemporaneously with sales in Cobalt common stock by the Sponsor Defendants, who were alleged to have sold the stock while in possession of material, adverse, non-public information about Cobalt's business in violation of Section 20A of the Exchange Act.
- c. The **Group 3 Fund** is intended to compensate Class Members who purchased Cobalt Common Stock, 2019 Notes, and/or 2024 Notes in or traceable to a public offering of one of those securities during the Class Period. These Class Members had asserted claims under Section 11, 12(a)(2) and/or 15 of the Securities Act based on alleged misrepresentations and material omissions in the offering documents for the offerings of these securities.

77. The Net Settlement Fund for the current Settlements will be allocated as follows:

- a. At least \$14.2 million, consisting of: (i) at least \$4,200,000 in Cobalt Settlement Existing Proceeds; (ii) \$10.0 million from the Sponsor Settlement Amount; and (iii) 100% of any additional future recoveries in the insurance coverage litigation, less all Court-approved attorneys' fees, taxes, and expenses on those settlements and recoveries, will be allocated to the **Group 1 Fund**;
- b. \$125.0 million of the Sponsor Settlement Amount will be allocated to the **Group 2 Fund**;

- c. At least \$11.85 million, consisting of: (i) \$11.85 million of the Sponsor Settlement Amount; and (ii) 100% of any future settlements or recoveries from the Non-Settling Underwriter Defendants, less all Court-approved attorneys' fees, taxes, and expenses on those settlements and recoveries, will be allocated to the **Group 3 Fund**; and
- d. All Court-approved attorneys' fees, Litigation Expenses, Taxes, and Notice and Administration Costs for the Cobalt and Sponsor Settlements will be deducted proportionally based on the relative size of the three funds.

78. 100% of any future settlements or recoveries from the Non-Settling Underwriter Defendants, less all Court-approved attorneys' fees, taxes, and expenses on those settlements and recoveries, will be allocated to the **Group 3 Fund**.

79. Depending on which Cobalt Securities a Class Member purchased and when, a Class Member may be eligible for recovery from more than one fund based on the same purchase. As detailed below, each separate purchase of one of the Cobalt Securities may result in either a **Group 1 Recognized Loss**, **Group 2 Recognized Loss**, or **Group 3 Recognized Loss**, or more than one of those types of Recognized Losses. The three separate funds will be allocated on a *pro rata* basis based on each Authorized Claimant's Recognized Loss applicable to that specific fund compared to the total Recognized Losses applicable to that specific fund for all Authorized Claimants.

### **III. CALCULATION OF RECOGNIZED LOSSES**

80. In all of the calculations below, the "purchase price" or "sale price" shall be the trade price exclusive of any commissions, taxes or fees. If the Cobalt Security was acquired in exchange for consideration, the "purchase price" shall also mean the acquisition price. If a Recognized Loss amount calculates to a negative number or zero under any of the formulas below, the Recognized Loss for that purchase will be zero.

#### **A. Cobalt Common Stock**

81. **PLEASE NOTE:** Depending on when you purchased or acquired your shares of Cobalt common stock, more than one of the following paragraphs (§§ 82 to 88) may apply to your claim.

**82. Purchases of Cobalt Common Stock from March 1, 2011 through November 3, 2014:** For each share of Cobalt Common Stock purchased or otherwise acquired for consideration from March 1, 2011 through November 3, 2014, inclusive, and:

- a. sold prior to April 16, 2012, the **Group 1 Recognized Loss** is \$0;
- b. sold from April 16, 2012 through November 3, 2014, the **Group 1 Recognized Loss** is *the lesser of*: (i) the artificial inflation per share on the date of purchase as stated in Table A *minus* the artificial inflation per share on the date of sale as stated in Table A; or (ii) the purchase price *minus* the sale price;

- c. sold from November 4, 2014 through January 30, 2015, the **Group 1 Recognized Loss** is *the least of*: (i) the amount of artificial inflation per share on the date of purchase as stated in Table A; (ii) the purchase price *minus* the average closing price between November 4, 2014 and the date of sale as stated in Table B; or (iii) the purchase price *minus* the sale price; or
- d. held as of the close of trading on January 30, 2015, the **Group 1 Recognized Loss** is *the lesser of*: (i) the artificial inflation per share on the date of purchase as stated in Table A; or (ii) the purchase price per share *minus* \$9.06.

**83. Purchases of Cobalt Common Stock in the February 23, 2012 Offering or from February 24, 2012 through March 1, 2012:** For every share of Cobalt Common Stock purchased within the seven-day period following the February 23, 2012 Offering (*i.e.*, in the offering or from February 24, 2012 through March 1, 2012), and

- a. sold prior to April 16, 2012, the **Group 2 Recognized Loss** is \$0;
- b. sold from April 16, 2012 through December 1, 2013, the **Group 2 Recognized Loss** is \$1.62 per share;
- c. sold on December 2, 2013, the **Group 2 Recognized Loss** is \$5.30 per share;
- d. sold from December 3, 2013 through August 4, 2014, the **Group 2 Recognized Loss** is \$6.28 per share;
- e. sold from August 5, 2014 through November 3, 2014, the **Group 2 Recognized Loss** is \$7.71 per share; or
- f. still held as of the close of trading on November 3, 2014, the **Group 2 Recognized Loss** is \$8.61 per share.

**84. Purchases of Cobalt Common Stock in the January 16, 2013 Offering or from January 16, 2013 through January 22, 2013:** For every share of Cobalt Common Stock purchased within the seven-day period following the January 16, 2013 Offering (*i.e.*, in the offering or from January 16, 2013 through January 22, 2013), and

- a. sold prior to December 2, 2013, the **Group 2 Recognized Loss** is \$0;
- b. sold on December 2, 2013, the **Group 2 Recognized Loss** is \$3.68;
- c. sold from December 3, 2013 through August 4, 2014, the **Group 2 Recognized Loss** is \$4.66 per share;
- d. sold from August 5, 2014 through November 3, 2014, the **Group 2 Recognized Loss** is \$6.09 per share; or
- e. still held as of the close of trading on November 3, 2014, the **Group 2 Recognized Loss** is \$6.99 per share.

**85. Purchases of Cobalt Common Stock in the May 8, 2013 Offering or from May 8, 2013 through May 14, 2013:** For every share of Cobalt Common Stock purchased within the

seven-day period following the May 8, 2013 Offering (*i.e.*, in the offering or from May 8, 2013 through May 14, 2013), and

- a. sold prior to December 2, 2013, the **Group 2 Recognized Loss** is \$0;
- b. sold on December 2, 2013, the **Group 2 Recognized Loss** is \$3.68;
- c. sold from December 2, 2013 through August 4, 2014, the **Group 2 Recognized Loss** is \$4.66 per share;
- d. sold from August 5, 2014 through November 3, 2014, the **Group 2 Recognized Loss** is \$6.09 per share; or
- e. still held as of the close of trading on November 3, 2014, the **Group 2 Recognized Loss** is \$6.99 per share.

**86. Purchases of Cobalt Common Stock In or Traceable to the February 2012 Offering:** For each share of Cobalt common stock either (a) purchased in the February 23, 2012 Offering, or (b) purchased after February 23, 2012 and for which the claimant provides records documenting those shares were issued pursuant to the February 23, 2012 Offering, and:

- a. sold prior to the close of trading on November 30, 2014, the **Group 3 Recognized Loss** is the purchase price per share (not to exceed \$28.00) *minus* the sale price per share;
- b. sold from December 1, 2014 through October 11, 2018, the **Group 3 Recognized Loss** is the purchase price per share (not to exceed \$28.00) *minus* the greater of (i) sale price per share or (ii) \$9.00 (the closing price on the date the lawsuit was filed);
- c. held as of the close of trading on October 11, 2018, the **Group 3 Recognized Loss** is the purchase price per share (not to exceed \$28.00) *minus* \$9.00 (the closing price on the date the lawsuit was filed).

**87. Purchases of Cobalt Common Stock In or Traceable to the January 2013 Offering:** For each share of Cobalt common stock either (a) purchased in the January 16, 2013 Offering, or (b) purchased after January 16, 2013 and for which the claimant provides records documenting those shares were issued pursuant to the January 16, 2013 Offering, and:

- a. sold prior to the close of trading on November 30, 2014, the **Group 3 Recognized Loss** is the purchase price per share (not to exceed \$25.15) *minus* the sale price per share;
- b. sold from December 1, 2014 through October 11, 2018, the **Group 3 Recognized Loss** is the purchase price per share (not to exceed \$25.15) *minus* the greater of (i) sale price per share or (ii) \$9.00 (the closing price on the date the lawsuit was filed);
- c. held as of the close of trading on October 11, 2018, the **Group 3 Recognized Loss** is the purchase price per share (not to exceed \$25.15) *less* \$9.00 (the closing price on the date the lawsuit was filed).

88. **Purchases of Cobalt Common Stock In or Traceable to the May 2013 Offering:** For each share of Cobalt Common Stock either (a) purchased in the May 8, 2013 Offering, or (b) purchased after May 8, 2013 and for which the claimant provides records documenting those shares were issued pursuant to the May 8, 2013 Offering, and:

- a. sold prior to the close of trading on November 30, 2014, the **Group 3 Recognized Loss** is the purchase price per share (not to exceed \$26.62) *less* the sale price per share;
- b. sold from December 1, 2014 through October 11, 2018, the **Group 3 Recognized Loss** is the purchase price per share (not to exceed \$26.62) *minus* the greater of (i) sale price per share or (ii) \$9.00 (the closing price on the date the lawsuit was filed);
- c. held as of the close of trading on October 11, 2018, the **Group 3 Recognized Loss** is the purchase price per share (not to exceed \$26.62) *minus* \$9.00 (the closing price on the date the lawsuit was filed).

89. **Effect of June 2017 Reverse Stock Split on Calculations:** Cobalt common stock had a 1-for-15 reverse stock split on June 19, 2017. All per-share prices for Cobalt common stock used in this Plan of Allocation are based on unadjusted values prior to the June 2017 split.

**B. Cobalt 2.625% Convertible Senior Notes due 2019, issued in December 2012 (the “2019 Notes”)**

90. For each \$100 face value of 2019 Notes purchased or otherwise acquired for consideration from the date of the offering of 2019 Notes in December 2012 (including in that offering) through November 3, 2014, inclusive, and:

- a. sold prior to December 2, 2013,
  - (1) the **Group 1 Recognized Loss** is \$0, and
  - (2) the **Group 3 Recognized Loss** is the purchase price (not to exceed \$99.25) *minus* the sale price;
- b. sold from December 2, 2013 through November 3, 2014,
  - (1) the **Group 1 Recognized Loss** is *the lesser of*: (i) the artificial inflation per \$100 face value on the date of purchase as stated in Table A *minus* the amount of artificial inflation per \$100 face value on the date of sale as stated in Table A; or (ii) the purchase price *minus* the sale price; and
  - (2) the **Group 3 Recognized Loss** is the purchase price (not to exceed \$99.25) *minus* the sales price
- c. sold from November 4, 2014 through November 30, 2014,
  - (1) the **Group 1 Recognized Loss** is *the least of*: (i) the amount of artificial inflation per \$100 face value on the date of purchase as stated in Table A; (ii) the purchase price *minus* the average closing price between November 4, 2014 and

the date of sale as stated in Table B below; or (iii) the purchase price *minus* the sale price; and

(2) the **Group 3 Recognized Loss** is the purchase price (not to exceed \$99.25) *minus* the sale price;

d. sold from December 1, 2014 through January 30, 2015,

(1) the **Group 1 Recognized Loss** is *the least of*: (i) the amount of artificial inflation per \$100 face value on the date of purchase as stated in Table A; (ii) the purchase price *minus* the average closing price between November 4, 2014 and the date of sale as stated in Table B below; or (iii) the purchase price *minus* the sale price; and

(2) the **Group 3 Recognized Loss** is the purchase price (not to exceed \$99.25) *minus* the greater of (i) sale price or (ii) \$69.67 (the price on the date the lawsuit was filed);

e. sold from January 31, 2015 through October 11, 2018,

(1) the **Group 1 Recognized Loss** is *the lesser of*: (i) the amount of artificial inflation per \$100 face value on the date of purchase as stated in Table A; or (ii) the purchase price *minus* \$64.82; and

(2) the **Group 3 Recognized Loss** is the purchase price (not to exceed \$99.25) *minus* the greater of (i) sale price or (ii) \$69.67 (the price on the date the lawsuit was filed);

f. held as of the close of trading on October 11, 2018,

(1) the **Group 1 Recognized Loss** is *the lesser of*: (i) the amount of artificial inflation per \$100 face value on the date of purchase as stated in Table A; or (ii) the purchase price *minus* \$64.82; and

(2) the **Group 3 Recognized Loss** is the purchase price (not to exceed \$99.25) *minus* \$69.67 (the price on the date the lawsuit was filed);

g. Any Debt Exchange of 2019 Notes before October 11, 2018 will be treated as sales in the formulas above. The relevant “sales price” will be the TRACE price reported by Bloomberg as of the date of the Debt Exchange. Therefore, for Debt Exchanges occurring on December 6, 2016, January 30, 2017 and April 24, 2017, per \$100 par value the “sales prices” shall be \$44.88, \$38.50, and \$38.00, respectively.

h. No **Group 2 Recognized Loss** will be calculated for any purchases of 2019 Notes.

**C. Cobalt 3.125% Convertible Senior Notes due 2024, issued in May 2014 (the “2024 Notes”)**

91. For each \$100 face value of 2024 Notes purchased or otherwise acquired for consideration from the date of the offering of 2024 Notes in May 2014 (including in that offering) through November 3, 2014, inclusive, and:



- a. sold prior to August 5, 2014,
  - (1) the **Group 1 Recognized Loss** is \$0, and
  - (2) the **Group 3 Recognized Loss** is the purchase price (not to exceed \$100) *minus* the sale price;
- b. sold from August 5, 2014 through November 3, 2014,
  - (1) the **Group 1 Recognized Loss** is *the lesser of*: (i) the artificial inflation per \$100 face value on the date of purchase as stated in Table A *minus* \$3.16; or (ii) the purchase price *minus* the sale price; and
  - (2) the **Group 3 Recognized Loss** is the purchase price (not to exceed \$100) *minus* the sale price;
- c. sold from November 4, 2014 through November 30, 2014,
  - (1) the **Group 1 Recognized Loss** is *the least of*: (i) the amount of artificial inflation per \$100 face value on the date of purchase as stated in Table A; (ii) the purchase price *minus* the average closing price between November 4, 2014 and the date of sale as stated in Table B below; or (iii) the purchase price *minus* the sale price; and
  - (2) the **Group 3 Recognized Loss** is the purchase price (not to exceed \$100) *minus* the sale price;
- d. sold from December 1, 2014 through January 30, 2015,
  - (1) the **Group 1 Recognized Loss** is *the least of*: (i) the amount of artificial inflation per \$100 face value on the date of purchase as stated in Table A; (ii) the purchase price *minus* the average closing price between November 4, 2014 and the date of sale as stated in Table B below; or (iii) the purchase price *minus* the sale price; and
  - (2) the **Group 3 Recognized Loss** is the purchase price (not to exceed \$100) *minus* the greater of (i) sale price or (ii) \$74.66 (the price on the date the lawsuit was filed);
- e. sold from January 31, 2015 through October 11, 2018,
  - (1) the **Group 1 Recognized Loss** is *the lesser of*: (i) the amount of artificial inflation per \$100 face value on the date of purchase as stated in Table A; or (ii) the purchase price *minus* \$68.87; and
  - (2) the **Group 3 Recognized Loss** is the purchase price (not to exceed \$100) *minus* the greater of (i) sale price or (ii) \$74.66 (the price on the date the lawsuit was filed);
- f. held as of the close of trading on October 11, 2018,

- (1) the **Group 1 Recognized Loss** is *the lesser of*: (i) the amount of artificial inflation per \$100 face value on the date of purchase as stated in Table A; or (ii) the purchase price *minus* \$68.87; and
- (2) the **Group 3 Recognized Loss** is the purchase price (not to exceed \$100) *minus* \$74.66 (the price on the date the lawsuit was filed);
- g. Any Debt Exchange of 2024 Notes before October 11, 2018 will be treated as sales in the formulas above. The relevant “sales price” will be the TRACE price reported by Bloomberg as of the date of the Debt Exchange. Therefore, for Debt Exchanges occurring on December 6, 2016, January 30, 2017, April 24, 2017, and May 18, 2017, per \$100 par value the “sales prices” shall be \$34.95, \$25.25, \$28.38, and \$29.13, respectively.
- h. No **Group 2 Recognized Loss** will be calculated for any purchases of 2024 Notes.

### ADDITIONAL PROVISIONS

92. **FIFO Matching:** All purchases/acquisitions and sales of Cobalt Securities in the Class Period shall be matched on a First-In-First-Out (“FIFO”) basis with like securities. Sales of Cobalt Common Stock during the Class Period and any time thereafter will be matched first against any holdings of Cobalt Common Stock at the beginning of the Class Period, and then against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisition made during the Class Period. Sales of 2019 Notes or 2024 Notes during the Class Period and any time thereafter will be matched against purchases/acquisitions in chronological order, beginning with the earliest purchase/acquisitions made during the Class Period.

93. **Purchase/Sale Dates:** A purchase/acquisition or sale of Cobalt Securities shall be deemed to have occurred on the “contract” or “trade” date as opposed to the “settlement” or “payment” date. The receipt or grant by gift, devise or inheritance of a Cobalt Security during the Class Period shall not be deemed to be a purchase, acquisition or sale of a Cobalt Security for the calculation of an Authorized Claimant’s Recognized Loss amounts, nor shall the receipt or grant be deemed an assignment of any claim relating to the purchase/sale of the Cobalt Security unless (i) the donor or decedent purchased the security during the Class Period; (ii) the instrument of gift or assignment specifically provides that it is intended to transfer such rights; and (iii) no Claim was submitted by or on behalf of the donor, on behalf of the decedent, or by anyone else with respect to those share or notes.

94. **Short Sales:** The date of covering a “short sale” is deemed to be the date of purchase or acquisition of Cobalt Common Stock. The date of a “short sale” is deemed to be the date of sale of Cobalt Common Stock. Under the Plan of Allocation, however, the Recognized Loss Amount on all “short sales” is zero. In the event that there is an opening short position in Cobalt Common Stock, the earliest Class Period purchases of Cobalt Common Stock shall be matched against such opening short position, and not be entitled to a recovery, until that short position is fully covered.



95. **Common Stock Purchased/Sold Through the Exercise of Options:** Option contracts are not securities eligible to participate in the Settlement. With respect to Cobalt Common Stock purchased or sold through the exercise of an option, the purchase/sale date of the Cobalt Common Stock is the exercise date of the option and the purchase/sale price of the Cobalt Common Stock is the exercise price of the option.

96. **Determination of Distribution Amount:** The total funds available for distribution in this Action as a result of all settlements or other recoveries in the Action (the “Total Net Settlement Fund”) will be allocated on a *pro rata* basis based on each Authorized Claimant’s proportional share of each of the three allocation funds – the **Group 1 Fund**, **Group 2 Fund**, and **Group 3 Fund**, discussed above in ¶¶ 76-79. Specifically, each Authorized Claimant’s Distribution Amount will be *the sum of*:

- a. the Authorized Claimant’s *pro rata* share of the **Group 1 Fund** based on his, her, or its **Group 1 Recognized Losses** (*i.e.*, the sum of all of that Authorized Claimant’s **Group 1 Recognized Losses** for all purchases of Cobalt Securities during the Class Period divided by the total of **Group 1 Recognized Losses** of all Authorized Claimants, multiplied by the total amount in the **Group 1 Fund**);
- b. the Authorized Claimant’s *pro rata* share of the **Group 2 Fund** based on his, her, or its **Group 2 Recognized Losses** (*i.e.*, the sum of all of that Authorized Claimant’s **Group 2 Recognized Losses** for all eligible purchases of Cobalt common stock during the Class Period divided by the total of **Group 2 Recognized Losses** of all Authorized Claimants, multiplied by the total amount in the **Group 2 Fund**); *and*
- c. the Authorized Claimant’s *pro rata* share of the **Group 3 Fund** based on his, her, or its **Group 3 Recognized Losses** (*i.e.*, the sum of all of that Authorized Claimant’s **Group 3 Recognized Losses** for all eligible purchases of Cobalt Securities during the Class Period divided by the total of **Group 3 Recognized Losses** of all Authorized Claimants, multiplied by the total amount in the **Group 3 Fund**);

97. **Distribution Amount Capped by Market Loss.** To the extent that a Claimant had a market gain with respect to all of his, her, or its purchases or acquisitions of Cobalt common stock, 2019 Notes or 2024 Notes during the Class Period, that Claimant will not be eligible for any payment under the Plan of Allocation (their Distribution Amount will be set at \$0 notwithstanding the calculations under ¶ 90). Such Claimants will in any event be bound by the Settlement. To the extent that a Claimant suffered an overall market loss with respect to his, her, or its purchases or acquisitions of Cobalt common stock, 2019 Notes, or 2024 Notes during the Class Period, but that market loss was less than the Distribution Amount calculated under ¶ 91 above, then the Claimant’s Distribution Amount shall be limited to the amount of the actual market loss and the Claimant’s Recognized Loss with respect to each fund will be reduced proportionally.

98. For purposes of determining whether a Claimant had a market gain with respect to his, her, or its purchases/acquisitions of Cobalt Common Stock, 2019 Notes, or 2024 Notes during the Class Period or suffered a market loss, the Claims Administrator shall determine the

difference between (i) the Total Purchase Amount<sup>8</sup> and (ii) the sum of the Total Sales Proceeds<sup>9</sup> and Total Holding Value.<sup>10</sup> This difference will be deemed a Claimant's market gain or loss with respect to his, her, or its overall purchases/acquisitions of Cobalt Common Stock, 2019 Notes, or 2024 Notes during the Class Period.

99. If an Authorized Claimant's Distribution Amount calculates to less than \$10.00, no distribution will be made to that Authorized Claimant. Those funds will be included in the distribution to other Authorized Claimants.

100. If the total amount available for distribution in any of the three allocation funds exceeds the total Recognized Losses for all Authorized Claimants with respect to that fund, then after payment of the full Recognized Loss amounts applicable to that fund, any remaining amounts will be reallocated to the other two funds in proportion to the relative amount of the unpaid Recognized Losses of the other two funds. As an example, based on purely hypothetical numbers, if the total amount available for distribution in each fund was \$100 million, Group 1 Recognized Losses were \$500 million, Group 2 Recognized Losses were \$200 million, and Group 3 Recognized Losses were \$80 million, then the \$20 million in the Group 3 Fund in excess of Group 3 Recognized Losses would be reallocated on a 4:1 basis among the Group 1 Fund and the Group 2 Fund, with \$16 million reallocated to the Group 1 Fund and \$4 million reallocated to the Group 2 Fund.

101. If any funds remain in the Total Net Settlement Fund after the final distribution of recoveries in the Action because of uncashed distributions or other reasons, then, after the Claims Administrator has made reasonable and diligent efforts to have Authorized Claimants cash their distribution checks, any balance remaining in the Total Net Settlement Fund nine months after the final distribution of such funds shall be redistributed to Authorized Claimants who have cashed their initial distribution and who would receive at least \$10 from such redistribution, after payment of any unpaid costs or fees incurred in administering the funds, including for such redistribution. Additional redistributions to Authorized Claimants who have cashed their prior distribution checks and who would receive at least \$10 on such additional redistributions, subject to the conditions previously noted, may occur thereafter if Lead Counsel, in consultation with the Claims Administrator, determine that additional redistribution, after the deduction of any additional fees and expenses that would be incurred with respect to such redistributions, is cost-effective. At such time as it is determined that the redistribution of funds

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<sup>8</sup> The "Total Purchase Amount" is the total amount the Claimant paid (excluding commissions and other charges) for Cobalt common stock, 2019 Notes or 2024 Notes purchased or acquired during the Class Period.

<sup>9</sup> The Claims Administrator shall match any sales of Cobalt common stock during the Class Period, first against the Claimant's opening position in Cobalt common stock (the proceeds of those sales will not be considered for purposes of calculating market gains or losses). The total amount received (excluding commissions and other charges) for sales of Cobalt common stock, 2019 Notes or 2024 Notes during the Class Period shall be the "Total Sales Proceeds."

<sup>10</sup> When calculating Total Holding Value, the Claims Administrator shall ascribe a holding value of \$10.07 per share of Cobalt common stock, \$68.50 per \$100 par value of 2019 Notes, and \$70.76 per \$100 par value of 2024 Notes purchased or acquired during the Class Period and still held as of the close of trading on November 3, 2014.

remaining in the Total Net Settlement Fund is not cost-effective, the remaining balance of the Total Net Settlement Fund shall be contributed to non-sectarian, not-for-profit 501(c)(3) organizations recommended by Lead Counsel and approved by the Court.

102. Payment pursuant to the Plan of Allocation, or such other plan as may be approved by the Court, shall be conclusive against all Authorized Claimants. No person shall have any claim against Plaintiffs, Lead Counsel, Liaison Counsel for Plaintiffs, Settling Defendants and their respective counsel or any of the other Released Defendant Parties, or the Claims Administrator or other agent designated by Lead Counsel arising from distributions made substantially in accordance with the Stipulations, the plan of allocation approved by the Court, or further Orders of the Court. Plaintiffs, Settling Defendants and their respective counsel, and all other Settling Defendants' Releasees shall have no responsibility or liability whatsoever for the investment or distribution of the Settlement Fund, the Net Settlement Fund, the Plan of Allocation, the Total Net Settlement Fund, or the determination, administration, calculation, or payment of any Claim Form or nonperformance of the Claims Administrator, the payment or withholding of taxes owed by the Settlement Fund, or any losses incurred in connection therewith.

103. The Plan of Allocation set forth herein is the plan that is being proposed by Lead Plaintiff and Lead Counsel to the Court for approval. The Court may approve this plan as proposed or it may modify the Plan of Allocation without further notice to the Class. Any Orders regarding a modification of the Plan of Allocation will be posted on the settlement website, [www.CobaltSecuritiesLitigation.com](http://www.CobaltSecuritiesLitigation.com).

#### TABLE A

##### Estimated Artificial Inflation in Cobalt Securities During the Class Period

Transaction Date	<u>Cobalt</u>	<u>2019 Notes</u>	<u>2024 Notes</u>
	<u>Common Stock</u>		
	Artificial Inflation Per Share	Artificial Inflation Per \$100 Par Value	Artificial Inflation Per \$100 Par Value
March 1, 2011 – April 15, 2012	\$8.61		
April 16, 2012 – December 1, 2013	\$6.99	\$11.94	
December 2, 2013	\$3.31	\$6.30	
December 3, 2013 – August 4, 2014	\$2.33	\$4.10	\$9.10
August 5, 2014 – November 3, 2014	\$0.90	\$1.88	\$3.16
November 4, 2014 and after	\$0.00	\$0.00	\$0.00

TABLE B

**Average Closing Price from November 4, 2014 Through the Date Listed per Share of  
Cobalt Common Stock and \$100 Par Value of 2019 Notes and 2024 Notes**

Average Closing Price from 11/4/2014 Through Date Listed				Average Closing Price from 11/4/2014 Through Date Listed			
	Common Stock	2019 Notes (\$100 par value)	2024 Notes (\$100 par value)		Common Stock	2019 Notes (\$100 par value)	2024 Notes (\$100 par value)
Date				Date			
11/4/2014	\$10.07	\$68.50	\$70.76	12/17/2014	\$9.47	\$66.17	\$69.86
11/5/2014	\$10.29	\$68.87	\$71.95	12/18/2014	\$9.45	\$66.07	\$69.74
11/6/2014	\$10.40	\$68.77	\$72.42	12/19/2014	\$9.44	\$65.99	\$69.74
11/7/2014	\$10.54	\$69.30	\$73.40	12/22/2014	\$9.43	\$65.87	\$69.74
11/10/2014	\$10.47	\$69.46	\$73.60	12/23/2014	\$9.42	\$65.76	\$69.74
11/11/2014	\$10.48	\$69.50	\$73.60	12/24/2014	\$9.40	\$65.63	\$69.74
11/12/2014	\$10.46	\$69.60	\$73.89	12/26/2014	\$9.39	\$65.53	\$69.74
11/13/2014	\$10.39	\$69.59	\$73.68	12/29/2014	\$9.38	\$65.46	\$69.74
11/14/2014	\$10.38	\$69.55	\$73.59	12/30/2014	\$9.36	\$65.35	\$69.65
11/17/2014	\$10.32	\$69.51	\$73.59	12/31/2014	\$9.35	\$65.24	\$69.65
11/18/2014	\$10.29	\$69.50	\$73.42	1/2/2015	\$9.34	\$65.19	\$69.65
11/19/2014	\$10.28	\$69.58	\$73.42	1/5/2015	\$9.32	\$65.11	\$69.65
11/20/2014	\$10.33	\$69.67	\$73.42	1/6/2015	\$9.30	\$65.01	\$69.65
11/21/2014	\$10.39	\$69.82	\$73.83	1/7/2015	\$9.28	\$64.96	\$69.48
11/24/2014	\$10.43	\$69.95	\$74.15	1/8/2015	\$9.26	\$64.91	\$69.38
11/25/2014	\$10.45	\$70.02	\$74.30	1/9/2015	\$9.25	\$64.87	\$69.30
11/26/2014	\$10.43	\$70.02	\$74.32	1/12/2015	\$9.23	\$64.82	\$69.08
11/28/2014	\$10.36	\$70.00	\$74.32	1/13/2015	\$9.20	\$64.77	\$69.08
12/1/2014	\$10.28	\$69.68	\$73.69	1/14/2015	\$9.19	\$64.72	\$68.96
12/2/2014	\$10.21	\$69.40	\$73.23	1/15/2015	\$9.16	\$64.70	\$68.89
12/3/2014	\$10.16	\$69.17	\$73.02	1/16/2015	\$9.14	\$64.70	\$68.84
12/4/2014	\$10.10	\$68.89	\$72.71	1/20/2015	\$9.12	\$64.67	\$68.75
12/5/2014	\$10.03	\$68.60	\$72.41	1/21/2015	\$9.10	\$64.66	\$68.72
12/8/2014	\$9.93	\$68.25	\$71.90	1/22/2015	\$9.09	\$64.67	\$68.70
12/9/2014	\$9.86	\$67.91	\$71.48	1/23/2015	\$9.08	\$64.67	\$68.70
12/10/2014	\$9.78	\$67.57	\$71.09	1/26/2015	\$9.07	\$64.68	\$68.70
12/11/2014	\$9.70	\$67.26	\$70.71	1/27/2015	\$9.06	\$64.70	\$68.70
12/12/2014	\$9.63	\$66.96	\$70.33	1/28/2015	\$9.06	\$64.74	\$68.75
12/15/2014	\$9.56	\$66.61	\$70.33	1/29/2015	\$9.06	\$64.78	\$68.81
12/16/2014	\$9.50	\$66.37	\$70.02	1/30/2015	\$9.06	\$64.82	\$68.87

*In re Cobalt International Energy, Inc. Securities Litigation*  
c/o Epiq  
P.O. Box 4109  
Portland, OR 97208-3770

**Toll-Free Number: 1-877-440-0638**  
**Email: [info@CobaltSecuritiesLitigation.com](mailto:info@CobaltSecuritiesLitigation.com)**  
**Website: [www.CobaltSecuritiesLitigation.com](http://www.CobaltSecuritiesLitigation.com)**

## **PROOF OF CLAIM AND RELEASE FORM**

To be eligible to receive a share of the Net Settlement Fund in connection with the Settlement of this Action, you must complete and sign this Proof of Claim and Release Form (“Claim Form”) and mail it by first-class mail to the above address, **postmarked no later than \_\_\_\_\_, 2019.**

Failure to submit your Claim Form by the date specified will subject your claim to rejection and may preclude you from being eligible to receive any money in connection with the Settlement.

**Do not mail or deliver your Claim Form to the Court, the parties to the Action, or their counsel.**

**SUBMIT YOUR CLAIM FORM ONLY TO THE CLAIMS ADMINISTRATOR  
AT THE ADDRESS SET FORTH ABOVE.**

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## **PART I – GENERAL INSTRUCTIONS**

1. It is important that you completely read and understand the Notice of (I) Pendency of Class Action and Proposed Settlement with Cobalt, its affiliated Debtors, the Cobalt Individual Defendants, the Sponsor Defendants, the Sponsor Designee Defendants and Goldman Sachs & Co. LLC; (II) Settlement Hearing; and (III) Motion for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses (the “Notice”) that accompanies this Claim Form, including the Plan of Allocation set forth in the Notice. The Notice describes the proposed Settlement, how Settlement Class Members are affected by the Settlement, and the manner in which the Net Settlement Fund will be distributed if the Settlement and Plan of Allocation are approved by the Court. The Notice also contains the definitions of many of the defined terms (which are indicated by initial capital letters) used in this Claim Form. By signing and submitting this Claim Form, you will be certifying that you have read and that you understand the Notice, including the terms of the releases described therein and provided for herein.

2. This Claim Form is directed to all persons and entities who purchased or otherwise acquired Cobalt common stock, Cobalt 2.625% Convertible Senior Notes due 2019, and/or Cobalt 3.125% Convertible Senior Notes due 2024 (collectively, “Cobalt Securities”) between March 1, 2011 and November 3, 2014, inclusive (the “Class Period”), and were damaged thereby. Included within the Settlement Class are all persons and entities who purchased or otherwise acquired shares of Cobalt common stock on the open market and/or pursuant or traceable to the registered public offerings on or about (i) February 23, 2012; (ii) January 16, 2013; and (iii) May 8, 2013. Also included within the Settlement Class are all persons and entities who purchased or otherwise acquired Cobalt convertible senior notes on the open market and/or pursuant or traceable to registered public offerings on or about (i) December 12, 2012; and (ii) May 8, 2014. Certain persons and entities are excluded from the Settlement Class by definition as set forth in Paragraph 28 of the Notice.

3. **Submission of this Claim Form does not guarantee that you will share in the proceeds of the Settlement. The distribution of the Net Settlement Fund will be governed by the Plan of Allocation set forth in the Notice, if it is approved by the Court, or by such other plan of allocation as the Court approves.**

4. Use the Schedule of Transactions in Part III of this Claim Form to supply all required details of your transaction(s) (including free transfers and deliveries) in and holdings of Cobalt Securities. On this schedule, please provide all of the requested information with respect to your holdings, purchases, acquisitions, and sales of Cobalt Securities, whether such transactions resulted in a profit or a loss. **Failure to report all transaction and holding information during the requested time periods may result in the rejection of your claim.**

5. **Please note:** Only Cobalt Securities purchased or acquired during the Class Period (*i.e.*, from March 1, 2011 through November 3, 2014, inclusive), are eligible under the Settlement. However, your sales of Cobalt Securities from November 4, 2014 through October 11, 2018 may be used for purposes of calculating your recognized loss under the Plan of Allocation. Therefore, in order for the Claims Administrator to be able to balance your claim, the requested information on purchases during that time period must also be provided. **Failure to report all transaction and holding information during the requested time periods may result in the rejection of your claim.**

6. You are required to submit genuine and sufficient documentation for all of your transactions in and holdings of Cobalt common stock, Cobalt 2.625% Convertible Senior Notes due 2019, and Cobalt 3.125%



Convertible Senior Notes due 2024 set forth in the Schedule of Transactions in Part III of this Claim Form. Documentation may consist of copies of brokerage confirmation slips or monthly brokerage account statements, or an authorized statement from your broker containing the transactional and holding information found in a broker confirmation slip or account statement. The Parties and the Claims Administrator do not independently have information about your investments in the Cobalt Securities. **IF SUCH DOCUMENTS ARE NOT IN YOUR POSSESSION, PLEASE OBTAIN COPIES OF THE DOCUMENTS OR EQUIVALENT DOCUMENTS FROM YOUR BROKER. FAILURE TO SUPPLY THIS DOCUMENTATION MAY RESULT IN THE REJECTION OF YOUR CLAIM. DO NOT SEND ORIGINAL DOCUMENTS. Please keep a copy of all documents that you send to the Claims Administrator. Also, do not highlight any portion of the Claim Form or any supporting documents.**

7. **Traceability of Cobalt Common Stock to a Public Offering in the Class Period.** Public offerings of Cobalt common stock occurred during the Class Period on or about (i) February 23, 2012; (ii) January 16, 2013; and (iii) May 8, 2013. Claimants who purchased shares of Cobalt common stock directly in one of these offerings or who purchased shares “traceable” to one of the offerings (as opposed to generally on the open market) may be entitled to additional compensation under the Plan of Allocation. If you purchased Cobalt common stock after these offerings but believe that your shares are specifically traceable to shares of common stock issued in one of the offerings, you must submit documents with your Claim Form showing that the specific shares you purchased were shares issued in the offering. For example, acceptable documents might show that the person you purchased the shares from had previously purchased those shares in the offering.

8. All joint beneficial owners each must sign this Claim Form and their names must be listed in Part II of this Claim Form. The complete name(s) of the beneficial owner(s) must be entered. If you purchased Cobalt Securities during the Class Period and held the shares or notes in your name, you are the beneficial owner as well as the record owner. If you purchased Cobalt Securities during the Class Period and the shares or notes were registered in the name of a third party, such as a nominee or brokerage firm, you are the beneficial owner of these shares, but the third party is the record owner. The beneficial owner(s), not the record owner, must sign this Claim Form.

9. **One Claim should be submitted for each separate legal entity.** Separate Claim Forms should be submitted for each separate legal entity (*e.g.*, a claim from joint owners should not include separate transactions of just one of the joint owners, and an individual should not combine his or her IRA transactions with transactions made solely in the individual’s name). Conversely, a single Claim Form should be submitted on behalf of one legal entity including all transactions made by that entity on one Claim Form, no matter how many separate accounts that entity has (*e.g.*, a corporation with multiple brokerage accounts should include all transactions made in all accounts on one Claim Form).

10. Agents, executors, administrators, guardians, and trustees must complete and sign the Claim Form on behalf of persons represented by them, and they must:

- (a) expressly state the capacity in which they are acting;
- (b) identify the name, account number, last four digits of the Social Security Number (or taxpayer identification number), address and telephone number of the beneficial owner of (or other person or entity on whose behalf they are acting with respect to) the Cobalt Securities; and
- (c) furnish herewith evidence of their authority to bind to the Claim Form the person or entity on whose behalf they are acting. (Authority to complete and sign a Claim Form

cannot be established by stockbrokers demonstrating only that they have discretionary authority to trade securities in another person's accounts.)

11. By submitting a signed Claim Form, you will be swearing that you:
  - (a) own(ed) the Cobalt Securities you have listed in the Claim Form; or
  - (b) are expressly authorized to act on behalf of the owner thereof.

12. By submitting a signed Claim Form, you will be swearing to the truth of the statements contained therein and the genuineness of the documents attached thereto, subject to penalties of perjury under the laws of the United States of America. The making of false statements, or the submission of forged or fraudulent documentation, will result in the rejection of your claim and may subject you to civil liability or criminal prosecution.

13. If the Court approves the Settlement, payments to eligible Authorized Claimants pursuant to the Plan of Allocation (or such other plan of allocation as the Court approves) will be made after any appeals are resolved, and after the completion of all claims processing. The claims process will take substantial time to complete fully and fairly. Please be patient.

14. **PLEASE NOTE:** If the payment calculated for any Authorized Claimant under the Plan of Allocation is less than \$10.00, no distribution will be made to that Authorized Claimant and those funds will be distributed to other Authorized Claimants.

15. If you have questions concerning the Claim Form, or need additional copies of the Claim Form or the Notice, you may contact the Claims Administrator, Epiq, at the address on the first page of this Claim Form, by email at [info@CobaltSecuritiesLitigation.com](mailto:info@CobaltSecuritiesLitigation.com), or by toll-free phone at 877-440-0638, or you can visit the Settlement website, [www.CobaltSecuritiesLitigation.com](http://www.CobaltSecuritiesLitigation.com), where copies of the Claim Form and Notice are available for downloading.

16. **NOTICE REGARDING ELECTRONIC FILES:** Certain claimants with large numbers of transactions may request, or may be requested, to submit information regarding their transactions in electronic files. To obtain the *mandatory* electronic filing requirements and file layout, you may visit the Settlement website at [www.CobaltSecuritiesLitigation.com](http://www.CobaltSecuritiesLitigation.com) or you may email the Claims Administrator's electronic filing department at [info@CobaltSecuritiesLitigation.com](mailto:info@CobaltSecuritiesLitigation.com). **Any file not in accordance with the required electronic filing format will be subject to rejection.** Only one claim should be submitted for each separate legal entity (*see* Paragraph 9 above) and the *complete* name of the beneficial owner of the securities must be entered where called for (*see* Paragraph 8 above). No electronic files will be considered to have been properly submitted unless the Claims Administrator issues an email to that effect. **Do not assume that your file has been received until you receive this email. If you do not receive such an email within 10 days of your submission, you should contact the Claims Administrator's electronic filing department at [info@CobaltSecuritiesLitigation.com](mailto:info@CobaltSecuritiesLitigation.com) to inquire about your file and confirm it was received.**



**IMPORTANT: PLEASE NOTE**

**YOUR CLAIM IS NOT DEEMED FILED UNTIL YOU RECEIVE AN ACKNOWLEDGEMENT POSTCARD. THE CLAIMS ADMINISTRATOR WILL ACKNOWLEDGE RECEIPT OF YOUR CLAIM FORM BY MAIL WITHIN 60 DAYS. IF YOU DO NOT RECEIVE AN ACKNOWLEDGEMENT POSTCARD WITHIN 60 DAYS, CALL THE CLAIMS ADMINISTRATOR TOLL FREE AT 1-877-440-0638.**



**PART III – SCHEDULE OF TRANSACTIONS IN COBALT SECURITIES**

Please be sure to include proper documentation with your Claim Form as described in detail in Part II – General Instructions, Paragraph 6, above.

**A. COBALT COMMON STOCK (CUSIP No. 19075F106, later 19075F304) (Ticker Symbol: CIE)**

<b>1. HOLDINGS AS OF MARCH 1, 2011</b> — State the total number of shares of Cobalt common stock held as of the opening of trading on March 1, 2011. (Must be documented.) If none, write “zero” or “0.” _____					Confirm Proof of Position Enclosed <input type="radio"/>
<b>2. PURCHASES/ACQUISITIONS FROM MARCH 1, 2011 THROUGH NOVEMBER 3, 2014</b> — Separately list each and every purchase or acquisition (including free receipts) of Cobalt common stock from after the opening of trading on March 1, 2011 through and including the close of trading on November 3, 2014. (Must be documented.)					
Date of Purchase/ Acquisition (List Chronologically) (Month/Day/Year)	Number of Shares Purchased/Acquired	Purchase/ Acquisition Price Per Share	Total Purchase/ Acquisition Price (excluding taxes, commissions, and fees)	Were these shares <b>traceable</b> to one of the Offerings during the Class Period?  See ¶ 7 of the Instructions and provide required documentation.	Confirm Proof of Purchase/ Acquisition Enclosed
/ /		\$	\$	<input type="radio"/> Y <input type="radio"/> N	<input type="radio"/> Y
/ /		\$	\$	<input type="radio"/> Y <input type="radio"/> N	<input type="radio"/> Y
/ /		\$	\$	<input type="radio"/> Y <input type="radio"/> N	<input type="radio"/> Y
/ /		\$	\$	<input type="radio"/> Y <input type="radio"/> N	<input type="radio"/> Y
<b>3. PURCHASES/ACQUISITIONS FROM NOVEMBER 4, 2014 THROUGH OCTOBER 11, 2018</b> — State the total number of shares of Cobalt common stock purchased or acquired (including free receipts) during each of the following periods below. <sup>2</sup> If none, write “zero” or “0.” <b>Note:</b> Cobalt common stock experienced a 1-for-15 reverse stock split on June 19, 2017. In each section, list the number of shares acquired as they were denominated at the time of their acquisition.					
A. Total shares purchased/acquired from November 4, 2014 through June 18, 2017: _____					
B. Total shares purchased/acquired from June 19, 2017 through October 11, 2018: _____					
<b>4. SALES FROM MARCH 1, 2011 THROUGH OCTOBER 11, 2018</b> — Separately list each and every sale or disposition (including free deliveries) of Cobalt common stock from after the opening of trading on March 1, 2011 through the close of trading on October 11, 2018. (Must be documented.) <b>Note:</b> Cobalt common stock experienced a 1-for-15 reverse stock split on June 19, 2017. In this section, list the number of shares sold as they were denominated at the time of their sale.					<b>IF NONE, CHECK HERE</b> <input type="radio"/>

<sup>2</sup> **Please note:** Information requested with respect to your purchases/acquisitions of Cobalt common stock from November 4, 2014 through October 11, 2018 is needed in order to balance your claim; but purchases during this period are not eligible transactions and will not be used for purposes of calculating Recognized Loss amounts under the Plan of Allocation.

Date of Sale (List Chronologically) (Month/Day/Year)	Number of Shares Sold	Sale Price Per Share	Total Sale Price (not deducting taxes, commissions, and fees)	Confirm Proof of Sale Enclosed
/ /		\$	\$	<input type="radio"/> Y
/ /		\$	\$	<input type="radio"/> Y
/ /		\$	\$	<input type="radio"/> Y
/ /		\$	\$	<input type="radio"/> Y
<b>5. HOLDINGS AS OF OCTOBER 11, 2018</b> – State the total number of shares of Cobalt common stock held as of the close of trading on October 11, 2018. (Must be documented.) If none, write “zero” or “0.” _____				Confirm Proof of Position Enclosed <input type="radio"/>

**B. COBALT 2.625% CONVERTIBLE SENIOR NOTES DUE 2019, ISSUED IN DECEMBER 2012 (CUSIP 19075FAA4) (THE “2019 NOTES”)**

<b>1. PURCHASES/ACQUISITIONS AT ANY TIME THROUGH NOVEMBER 3, 2014</b> — Separately list each and every purchase or acquisition, including free receipts, of Cobalt 2.625% Convertible Senior Notes Due 2019 (“2019 Notes”), at any time from the date of their initial offering in December 2012 (including in that offering) or thereafter through the close of trading on <b>November 3, 2014</b> .				
Date of Purchase/ Acquisition (List Chronologically) (Month/Day/Year)	Face value purchased/acquired	Purchase price per \$100 face value of notes	Total Purchase/ Acquisition Price (excluding taxes, commissions, and fees)	Confirm Proof of Purchase/ Acquisition Enclosed
/ /	\$	\$		<input type="radio"/> Y
/ /	\$	\$		<input type="radio"/> Y
/ /	\$	\$		<input type="radio"/> Y
/ /	\$	\$		<input type="radio"/> Y
<b>2. PURCHASES/ACQUISITIONS FROM NOVEMBER 4, 2014 THROUGH OCTOBER 11, 2018</b> — State the total face value of 2019 Notes purchased/acquired (including free receipts) from November 4, 2014 through the close of trading on October 11, 2018. <sup>3</sup> If none, write “zero” or “0.” _____				
<b>3. SALES AT ANY TIME THROUGH OCTOBER 11, 2018</b> — Separately list each and every sale, including free deliveries, or conversions or exchanges <sup>4</sup> of 2019 Notes at any time prior to the close of trading on October 11, 2018. (Must be documented.)				<b>IF NONE, CHECK HERE</b> <input type="radio"/>
Date of Sale (List Chronologically) (Month/Day/Year)	Face value sold or converted	Sale price per \$100 face value of note	Total Sale Price (not deducting taxes, commissions, and fees)	Confirm Proof of Sale Enclosed
/ /	\$	\$		<input type="radio"/> Y
/ /	\$	\$		<input type="radio"/> Y
/ /	\$	\$		<input type="radio"/> Y
/ /	\$	\$		<input type="radio"/> Y
<b>4. HOLDINGS AS OF OCTOBER 11, 2018</b> — State face value of 2019 Notes you held as of the close of trading on October 11, 2018. (Must be documented.) If none, write “zero” or “0.” _____				Confirm Proof of Position Enclosed <input type="radio"/>

<sup>3</sup> **Please note:** Information requested with respect to your purchases/acquisitions of 2019 Notes from November 4, 2014 through October 11, 2018 is needed in order to balance your claim, but purchases during this period are not eligible transactions and will not be used for purposes of calculating Recognized Loss amounts under the Plan of Allocation.

<sup>4</sup> Any conversion or exchange of 2019 Notes before October 11, 2018, including a debt exchange, will be treated as a sale. The relevant “sales price” will be the TRACE price reported by Bloomberg as of the date of the conversion or exchange. For debt exchanges of 2019 Notes occurring on December 6, 2016, January 30, 2017 and April 24, 2017, the “sale price” per \$100 par value shall be \$44.88, \$38.50, and \$38.00, respectively.

**C. COBALT 3.125% CONVERTIBLE SENIOR NOTES DUE 2024, ISSUED IN MAY 2014 (CUSIP 19075FAB2) (THE “2024 NOTES”).**

<b>1. PURCHASES/ACQUISITIONS AT ANY TIME THROUGH NOVEMBER 3, 2014</b> — Separately list each and every purchase or acquisition, including free receipts, of Cobalt 3.125% Convertible Senior Notes Due 2024 (“2024 Notes”), at any time from the date of their offering in May 2014 (including in that offering) or thereafter through the close of trading on <b>November 3, 2014</b> .				
Date of Purchase/ Acquisition (List Chronologically) (Month/Day/Year)	Face value purchased/acquired	Purchase price per \$100 face value of notes	Total Purchase/ Acquisition Price (excluding taxes, commissions, and fees)	Confirm Proof of Purchase/ Acquisition Enclosed
/ /	\$	\$		<input type="radio"/> Y
/ /	\$	\$		<input type="radio"/> Y
/ /	\$	\$		<input type="radio"/> Y
/ /	\$	\$		<input type="radio"/> Y
<b>2. PURCHASES/ACQUISITIONS FROM NOVEMBER 4, 2014 THROUGH OCTOBER 11, 2018</b> — State the total face value of 2024 Notes purchased/acquired (including free receipts) from November 4, 2014 through the close of trading on October 11, 2018. <sup>5</sup> If none, write “zero” or “0.” _____				
<b>3. SALES AT ANY TIME THROUGH OCTOBER 11, 2018</b> — Separately list each and every sale, including free deliveries, or conversions or exchanges <sup>6</sup> of 2024 Notes at any time prior to the close of trading on October 11, 2018. (Must be documented.)				<b>IF NONE, CHECK HERE</b> <input type="radio"/>
Date of Sale (List Chronologically) (Month/Day/Year)	Face value sold or converted	Sale price per \$100 face value of note	Total Sale Price (not deducting taxes, commissions, and fees)	Confirm Proof of Sale Enclosed
/ /	\$	\$		<input type="radio"/> Y
/ /	\$	\$		<input type="radio"/> Y
/ /	\$	\$		<input type="radio"/> Y
/ /	\$	\$		<input type="radio"/> Y
<b>4. HOLDINGS AS OF OCTOBER 11, 2018</b> — State face value of 2024 Notes you held as of the close of trading on October 11, 2018. (Must be documented.) If none, write “zero” or “0.” _____				Confirm Proof of Position Enclosed <input type="radio"/>

<sup>5</sup> **Please note:** Information requested with respect to your purchases/acquisitions of 2024 Notes from November 4, 2014 through October 11, 2018 is needed in order to balance your claim, but purchases during this period are not eligible transactions and will not be used for purposes of calculating Recognized Loss amounts under the Plan of Allocation.

<sup>6</sup> Any conversion or exchange of 2024 Notes before October 11, 2018, including a debt exchange, will be treated as a sale. The relevant “sales price” will be the TRACE price reported by Bloomberg as of the date of the conversion or exchange. For debt exchanges of 2024 Notes occurring on December 6, 2016, January 30, 2017, April 24, 2017, and May 18, 2017, the “sale price” per \$100 par value shall be \$34.95, \$25.25, \$28.38, and \$29.13, respectively.

IF YOU REQUIRE ADDITIONAL SPACE FOR THE SCHEDULES ABOVE, ATTACH EXTRA SCHEDULES IN THE SAME FORMAT. PRINT THE BENEFICIAL OWNER'S FULL NAME AND LAST FOUR DIGITS OF SOCIAL SECURITY/TAXPAYER IDENTIFICATION NUMBER ON EACH ADDITIONAL PAGE. IF YOU DO ATTACH EXTRA SCHEDULES, CHECK THIS BOX

**PART IV - RELEASE OF CLAIMS AND SIGNATURE**

**YOU MUST ALSO READ THE RELEASE AND CERTIFICATION BELOW AND SIGN ON PAGE 12 OF THIS CLAIM FORM.**

I (we) hereby acknowledge that, pursuant to the terms set forth in the Stipulation, without further action by anyone, upon the Effective Date of the Settlement, I (we), on behalf of myself (ourselves) and my (our) heirs, executors, administrators, predecessors, successors, and assigns, in their capacities as such, shall be deemed to have, and by operation of law and of the Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs' Claim (including Unknown Claims) against the Settling Defendants' Releasees, and shall forever be barred and enjoined from prosecuting any of the Released Plaintiffs' Claims against any of the Settling Defendants' Releasees.<sup>7</sup>

**CERTIFICATION**

By signing and submitting this Claim Form, the claimant(s) or the person(s) who represent(s) the claimant(s) agree(s) to the release above and certifies (certify) as follows:

1. that I (we) have read and understand the contents of the Notice and this Claim Form, including the releases provided for in the Settlement and the terms of the Plan of Allocation;
2. that the claimant(s) is a (are) Settlement Class Member(s), as defined in the Notice, and is (are) not excluded by definition from the Settlement Class as set forth in the Notice;
3. that the claimant has **not** submitted a request for exclusion from the Settlement Class;
4. that I (we) own(ed) the Cobalt Securities identified in the Claim Form and have not assigned the claim against the Settling Defendants or any of the other Settling Defendants' Releasees to another, or that, in signing and submitting this Claim Form, I (we) have the authority to act on behalf of the owner(s) thereof;
5. that the claimant(s) has (have) not submitted any other claim covering the same purchases of Cobalt Securities and knows (know) of no other person having done so on the claimant's (claimants') behalf;
6. that the claimant(s) submit(s) to the jurisdiction of the Court with respect to claimant's (claimants') claim and for purposes of enforcing the releases set forth herein;
7. that I (we) agree to furnish such additional information with respect to this Claim Form as Lead Counsel, the Claims Administrator, or the Court may require;

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<sup>7</sup> In the case of Cobalt, the Debtors and the Cobalt Individual Defendants, such release is not effective until the Plaintiffs execute the Settlement Release and deliver it to Cobalt, the Debtors and the Cobalt Individual Defendants following the final termination of all D&O Coverage Litigation involving the Insurers or D&O Liability Insurance Policies.

8. that the claimant(s) waive(s) the right to trial by jury, to the extent it exists, agree(s) to the determination by the Court of the validity or amount of this Claim and waives any right of appeal or review with respect to such determination;

9. that I (we) acknowledge that the claimant(s) will be bound by and subject to the terms of any judgment(s) that may be entered in the Action; and

10. that the claimant(s) is (are) NOT subject to backup withholding under the provisions of Section 3406(a)(1)(C) of the Internal Revenue Code because (a) the claimant(s) is (are) exempt from backup withholding or (b) the claimant(s) has (have) not been notified by the IRS that he, she or it is subject to backup withholding as a result of a failure to report all interest or dividends or (c) the IRS has notified the claimant(s) that he, she or it is no longer subject to backup withholding. **If the IRS has notified the claimant(s) that he, she, it or they is (are) subject to backup withholding, please strike out the language in the preceding sentence indicating that the claim is not subject to backup withholding in the certification above.**

UNDER THE PENALTIES OF PERJURY, I (WE) CERTIFY THAT ALL OF THE INFORMATION PROVIDED BY ME (US) ON THIS CLAIM FORM IS TRUE, CORRECT, AND COMPLETE, AND THAT THE DOCUMENTS SUBMITTED HEREWITH ARE TRUE AND CORRECT COPIES OF WHAT THEY PURPORT TO BE.

---

Signature of claimant

Date

---

Print claimant name here

---

Signature of joint claimant, if any

Date

---

Print joint claimant name here



***If the claimant is other than an individual, or is not the person completing this form, the following also must be provided:***

---

Signature of person signing on behalf of claimant

Date

---

Print name of person signing on behalf of claimant here

---

Capacity of person signing on behalf of claimant, if other than an individual, *e.g.*, executor, president, trustee, custodian, etc. (Must provide evidence of authority to act on behalf of claimant – see Paragraph 10 on page \_\_\_ of this Claim Form.)

**REMINDER CHECKLIST:**

1. Sign the above release and certification. If this Claim Form is being made on behalf of joint claimants, then both must sign.
2. Attach only **copies** of acceptable supporting documentation as these documents will not be returned to you.
3. Do not highlight any portion of the Claim Form or any supporting documents.
4. Keep copies of the completed Claim Form and documentation for your own records.
5. The Claims Administrator will acknowledge receipt of your Claim Form by mail, within 60 days. Your claim is not deemed filed until you receive an acknowledgement postcard. **If you do not receive an acknowledgement postcard within 60 days, please call the Claims Administrator toll-free at 1-877-440-0638.**
6. If your address changes in the future, or if this Claim Form was sent to an old or incorrect address, you must send the Claims Administrator written notification of your new address. If you change your name, inform the Claims Administrator.
7. If you have any questions or concerns regarding your claim, please contact the Claims Administrator at the address below, by email at [info@CobaltSecuritiesLitigation.com](mailto:info@CobaltSecuritiesLitigation.com), or by toll-free phone at 1-877-440-0638 or you may visit [www.CobaltSecuritiesLitigation.com](http://www.CobaltSecuritiesLitigation.com). **DO NOT** call Defendants or their counsel with questions regarding your claim.

THIS CLAIM FORM MUST BE MAILED TO THE CLAIMS ADMINISTRATOR BY FIRST-CLASS MAIL, **POSTMARKED NO LATER THAN \_\_\_\_\_, 2019**, ADDRESSED AS FOLLOWS:

*In re Cobalt International Energy, Inc. Securities Litigation*  
c/o Epiq  
P.O. Box 4109  
Portland, OR 97208-4109

A Claim Form received by the Claims Administrator shall be deemed to have been submitted when posted, if a postmark date on or before \_\_\_\_\_, 2019 is indicated on the envelope and it is mailed First Class, and addressed in accordance with the above instructions. In all other cases, a Claim Form shall be deemed to have been submitted when actually received by the Claims Administrator.

You should be aware that it will take a significant amount of time to fully process all of the Claim Forms. Please be patient and notify the Claims Administrator of any change of address.

Exhibit A-3

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE COBALT INTERNATIONAL  
ENERGY, INC. SECURITIES LITIGATION

Lead Case No. 4:14-cv-3428 (NFA)

**SUMMARY NOTICE OF (I) PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT AMONG THE PLAINTIFFS, COBALT INDIVIDUAL DEFENDANTS, AND NADER TAVAKOLI, SOLELY ACTING AS PLAN ADMINISTRATOR ON BEHALF OF THE COBALT DEBTORS; (II) SETTLEMENT FAIRNESS HEARING; AND (III) MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES**

***This Summary Notice Relates to a Proposed Settlement with Cobalt International Energy, Inc. and Certain Former Officers and Directors of the Company***

**TO:** All persons and entities who, during the period from March 1, 2011 through November 3, 2014, inclusive (the "Class Period") purchased or otherwise acquired the common stock of Cobalt International Energy, Inc. ("Cobalt"), Cobalt 2.625% Convertible Senior Notes due 2019, and/or Cobalt 3.125% Convertible Senior Notes due 2024 (collectively, "Cobalt Securities"), and were damaged thereby (the "Settlement Class"):

**PLEASE READ THIS NOTICE CAREFULLY, YOUR RIGHTS WILL BE AFFECTED BY A CLASS ACTION LAWSUIT PENDING IN THIS COURT.**

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the United States District Court for the Southern District of Texas, that the above-captioned litigation (the "Action") has been certified as a class action on behalf of the Settlement Class, except for certain persons and entities who are excluded from the Settlement Class by definition as set forth in the full printed Notice of (I) Pendency of Class Action and Proposed Settlement Among the Plaintiffs, Cobalt Individual Defendants, and Plan Administrator on Behalf of the Cobalt Debtors; (II) Settlement Fairness Hearing; and (III) Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice").

YOU ARE ALSO NOTIFIED that Plaintiffs in the Action have reached a proposed settlement (the "Settlement"), that, if approved, will resolve all claims in the Action against (i) Cobalt International Energy, Inc. ("Cobalt"); and (ii) defendants Joseph Bryant, James W. Farnsworth, Jack E. Golden, Jon A. Marshall, Myles W. Scoggins, William P. Utt, John P.

Wilkirson, and Martin H. Young, Jr. (the “Cobalt Individual Defendants,” collectively, with Cobalt and its Affiliated Debtors, the “Cobalt Settling Defendants”), for up to \$220,000,000, payable exclusively from: (i) existing insurance proceeds of at least \$4,200,000; and (ii) future proceeds of ongoing litigation against insurance carriers who issued insurance policies for the benefit of the Cobalt and the Cobalt Individual Defendants (subject to certain allocation of such proceeds to the Debtors up to \$28.5 million) (together, the “Settlement Fund”).

A hearing will be held on January 28, 2019 at 10:00 a.m., before the Honorable Nancy F. Atlas at the United States District Court for the Southern District of Texas, United States Courthouse, 515 Rusk Avenue, Houston, TX 77002, to determine (i) whether the proposed Settlement should be approved as fair, reasonable, and adequate; (ii) whether the Action should be dismissed with prejudice against the Cobalt Settling Defendants, and the Releases specified and described in the Stipulation and Agreement of Settlement dated October 11, 2018 (and in the Notice) should be granted; (iii) whether the proposed Plan of Allocation should be approved as fair and reasonable; and (iv) whether Lead Counsel’s application for an award of attorneys’ fees and reimbursement of expenses should be approved.

**If you are a member of the Settlement Class, your rights will be affected by the pending Action and the Settlement, and you may be entitled to share in the Settlement Fund.** If you have not yet received the Notice and Claim Form, you may obtain copies of these documents by contacting the Claims Administrator at *In re Cobalt International Energy, Inc. Securities Litigation*, c/o Epiq, P.O. Box 4109, Portland, OR 97208-4109, 1-877-440-0638. Copies of the Notice and Claim Form can also be downloaded from the website maintained by the Claims Administrator, <http://www.CobaltSecuritiesLitigation.com>.

If you are a member of the Settlement Class, in order to be eligible to receive a payment under the proposed Settlement, you must submit a Claim Form *postmarked* no later than \_\_\_\_\_, 2019. If you are a Settlement Class Member and do not submit a proper Claim Form, you will not be eligible to share in the distribution of the net proceeds of the Settlement but you will nevertheless be bound by any judgments or orders entered by the Court in the Action.

If you are a member of the Settlement Class and wish to exclude yourself from the Settlement Class, you must submit a request for exclusion such that it is *received* no later than January 8, 2019, in accordance with the instructions set forth in the Notice. If you properly exclude yourself from the Settlement Class, you will not be bound by any judgments or orders entered by the Court in the Action with respect to the Settling Defendants and you will not be eligible to share in the proceeds of the Settlement.

Any objections to the proposed Settlement, the proposed Plan of Allocation, or Lead Counsel’s motion for attorneys’ fees and reimbursement of expenses, must be filed with the Court and delivered to Lead Counsel and the Cobalt Settling Defendants’ Counsel such that they are *received* no later than January 8, 2019, in accordance with the instructions set forth in the Notice.

**Please do not contact the Court, the Clerk’s office, Cobalt, the other Defendants or their counsel regarding this notice. All questions about this notice, the proposed Settlement, or your eligibility to participate in the Settlement should be directed to Lead Counsel or the Claims Administrator.**

Inquiries, other than requests for the Notice and Claim Form, should be made to Lead Counsel:

Vincent R. Cappucci, Esq.  
ENTWISTLE & CAPPUCCI LLP  
299 Park Avenue, 20th Floor  
New York, NY 10171  
(212) 894-7200  
vcappucci@entwistle-law.com

David R. Stickney, Esq.  
BERNSTEIN LITOWITZ BERGER  
& GROSSMANN LLP  
12481 High Bluff Drive, Suite 300  
San Diego, CA 92130-3582  
1-800-380-8496  
settlements@blbglaw.com

Requests for the Notice and Claim Form should be made to:

*In re Cobalt International Energy, Inc. Securities Litigation*  
c/o Epiq  
P.O. Box 4109  
Portland, OR 97208-4109

877-440-0638  
[www.CobaltSecuritiesLitigation.com](http://www.CobaltSecuritiesLitigation.com)

By Order of the Court

Exhibit B

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

IN RE COBALT INTERNATIONAL  
ENERGY, INC. SECURITIES LITIGATION

Lead Case No. 1:14-cv-3428 (NFA)

**JUDGMENT APPROVING CLASS ACTION SETTLEMENT AMONG THE  
PLAINTIFFS, COBALT INDIVIDUAL DEFENDANTS, AND NADER  
TAVAKOLI, SOLELY ACTING AS PLAN ADMINISTRATOR ON  
BEHALF OF THE COBALT DEBTORS**

WHEREAS, a consolidated class action is pending in this Court entitled *In re Cobalt International Energy, Inc. Securities Litigation*, Lead Case No. 1:14-cv-3428-NFA (the “Action”);

WHEREAS, (a) lead plaintiffs GAMCO Global Gold, Natural Resources & Income Trust and GAMCO Natural Resources, Gold & Income Trust (together, the “GAMCO Funds” or “Lead Plaintiffs”), St. Lucie County Fire District Firefighters’ Pension Trust Fund, Fire and Police Retiree Health Care Fund, San Antonio, Sjunde AP-Fonden, and Universal Investment Gesellschaft m.b.H. (collectively, with Lead Plaintiffs, “Plaintiffs”), on behalf of themselves and the Settlement Class; (b) Cobalt International Energy, Inc. (“Cobalt”) and its debtor affiliates (collectively, the “Debtors”) in the Debtors’ Chapter 11 cases (the “Chapter 11 Cases”), by and through 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”); and (c) defendants Joseph Bryant, James W. Farnsworth, Jack E. Golden, Jon A. Marshall, Myles W. Scoggins, William P. Utt, John P. Wilkerson, and Martin H. Young, Jr. (the “Cobalt Individual Defendants,” together with Cobalt, the “Cobalt Settling Defendants,” and collectively with Plaintiffs, the “Settling Parties”), have determined to settle all claims asserted against the Cobalt Settling Defendants in this Action with prejudice (the “Settlement”) on the terms and conditions set forth in the Stipulation and Agreement of Settlement Among Plaintiffs, Cobalt Individual Defendants, and Nader Tavakoli, Solely Acting as Plan Administrator on Behalf of the Cobalt Debtors, dated October 11, 2018 (the “Stipulation”), subject to approval of this Court and the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”);

WHEREAS, unless otherwise defined in this Judgment, the capitalized terms herein shall have the same meaning as they have in the Stipulation;

WHEREAS, by Order dated \_\_\_\_\_, 2018 (the “Preliminary Approval Order”), this Court: (a) preliminarily approved the Settlement; (b) certified the Settlement Class solely for purposes of effectuating the Settlement; (c) ordered that notice of the proposed Settlement be provided to potential Settlement Class Members; (d) provided Settlement Class Members with the opportunity either to exclude themselves from the Settlement Class or to object to the proposed Settlement; and (e) scheduled a hearing regarding final approval of the Settlement;

WHEREAS, by Order dated \_\_\_\_\_, 2018, the Bankruptcy Court approved the Settlement;

WHEREAS, due and adequate notice has been given to the Settlement Class;

WHEREAS, the Court conducted a hearing on January 28, 2019 (the “Settlement Hearing”) to consider, among other things: (a) whether the terms and conditions of the Settlement are fair, reasonable, and adequate to the Settlement Class, and should therefore be approved; and (b) whether a judgment should be entered dismissing the Action with prejudice as against the Cobalt Settling Defendants; and

WHEREAS, the Court having reviewed and considered the Stipulation, all papers filed and proceedings held herein in connection with the Settlement, all oral and written comments received regarding the Settlement, and the record in the Action, and good cause appearing therefor;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. **Jurisdiction** – The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all of the Settling Parties and each of the Settlement Class Members.

2. **Incorporation of Settlement Documents** – This Judgment incorporates and makes a part hereof: (a) the Stipulation filed with the Court on \_\_\_\_\_, 2018; and (b) the Notice and the Summary Notice, both of which were filed with the Court on \_\_\_\_\_, 2018.

3. **Class Certification for Settlement Purposes** – The Court hereby affirms its determinations in the Preliminary Approval Order certifying, for the purposes of the



Settlement only, the Action as a class action pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure on behalf of a class consisting of all persons and entities who purchased or otherwise acquired Cobalt Securities between March 1, 2011 and November 3, 2014, inclusive, and were damaged thereby (the “Settlement Class”). Included within the Settlement Class are all persons and entities who purchased or otherwise acquired shares of Cobalt common stock on the open market and/or pursuant or traceable to the registered public offerings on or about (i) February 23, 2012; (ii) January 16, 2013; and (iii) May 8, 2013. Also included within the Settlement Class are all persons and entities who purchased or otherwise acquired Cobalt convertible senior notes on the open market and/or pursuant or traceable to registered public offerings on or about (i) December 12, 2012; and (ii) May 8, 2014. Excluded from the Settlement Class are Defendants; the officers and directors of Defendants during the Class Period (the “Excluded Officers and Directors”); members of the Immediate Family of the Individual Defendants and of the Excluded Officers and Directors; any entity in which any Defendant, any Excluded Officer or Director, or any of their respective Immediate Family Members has, and/or had during the Class Period, a controlling interest; Defendants’ liability insurance carriers; any affiliates, parents, or subsidiaries of the corporate Defendants; all corporate Defendants’ plans that are covered by ERISA; and the legal representatives, heirs, agents, affiliates, successors-in-interest or assigns of any excluded person or entity, in their respective capacity as such. [Also excluded from the Settlement Class are the persons and entities listed on Exhibit 1 hereto who or which are excluded pursuant to request.]

4. **Adequacy of Representation** – Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of the Settlement only, the Court hereby affirms its determinations in the Preliminary Approval Order certifying Plaintiffs GAMCO Global Gold, Natural Resources & Income Trust, GAMCO Natural Resources, Gold & Income Trust, St. Lucie County Fire District Firefighters’ Pension Trust Fund, Fire and Police Retiree Health Care Fund, San Antonio, Sjunde AP-Fonden, and Universal Investment Gesellschaft m.b.H. as Class Representatives for the Settlement Class and appointing Lead Counsel as Class Counsel for the Settlement Class. Plaintiffs and Lead Counsel have fairly and adequately represented the Settlement Class both in terms of litigating the Action and for purposes of entering into and implementing the Settlement and have satisfied the requirements of Federal Rules of Civil Procedure 23(a)(4) and 23(g), respectively.

5. **Notice** – The Court finds that the dissemination of the Notice and the publication of the Summary Notice: (a) were implemented in accordance with the Preliminary Approval Order; (b) constituted the best notice practicable under the circumstances; (c) constituted notice that was reasonably calculated, under the circumstances, to apprise Settlement Class Members of (i) the pendency of the Action; (ii) the effect of the proposed Settlement (including the Releases to be provided thereunder); (iii) their right to object to any aspect of the Settlement; (iv) their right to exclude themselves from the Settlement Class; and (v) their right to appear at the Settlement Hearing; (d) constituted due, adequate, and sufficient notice to all persons and entities entitled to receive notice of the proposed Settlement; and (e) satisfied the

requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Private Securities Litigation Reform Act of 1995, 15 U.S.C. §§ 77z-1, 78u-4, as amended, and all other applicable law and rules.

6. **Final Settlement Approval and Dismissal of Claims** – Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement set forth in the Stipulation in all respects (including, without limitation: the amount of the Settlement; the substance and timing of the Releases provided for therein, including the prospective release of the Released Plaintiffs' Claims as against the Settling Defendants' Releasees; and the dismissal with prejudice of the claims asserted against the Settling Defendants in the Action), and finds that the Settlement is, in all respects, fair, reasonable, and adequate to the Settlement Class. The Settling Parties are directed to implement, perform, and consummate the Settlement in accordance with the terms and provisions contained in the Stipulation.

7. All of the claims asserted against the Settling Defendants in the Action by Plaintiffs and the other Settlement Class Members are hereby dismissed with prejudice following the final termination of all D&O Coverage Litigation involving the Insurers or D&O Liability Insurance Policies. The Settling Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Stipulation.

8. **Binding Effect** – The terms of the Stipulation and of this Judgment shall be forever binding on the Settling Defendants, Plaintiffs, and all other Settlement Class Members (regardless of whether or not any individual Settlement Class Member submits

a Claim Form or seeks or obtains a distribution from the Net Settlement Fund), as well as their respective successors and assigns. [The persons and entities listed on Exhibit 1 hereto are excluded from the Settlement Class pursuant to request, and are, therefore, not bound by the terms of the Stipulation or this Judgment.]

9. **Releases** – The Releases set forth in paragraphs 20 and 21 of the Stipulation, together with the definitions contained in paragraph 1 of the Stipulation relating thereto, are expressly incorporated herein in all respects. The Releases are effective as of the later of the Effective Date of the Settlement or the final termination of all D&O Coverage Litigation involving the Insurers or D&O Liability Insurance Policies (the “Termination Date”). Accordingly, this Court orders that:

(a) Without further action by anyone, and subject to paragraph 10 below, upon the later of the Effective Date or the Termination Date, Plaintiffs and each of the other Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of this Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Plaintiffs’ Claim against the Cobalt Settling Defendants and the other Settling Defendants’ Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Plaintiffs’ Claims against any of the Settling Defendants’ Releasees.

(b) Without further action by anyone, and subject to paragraph 10 below, upon the later of the Effective Date or the Termination Date, the Settling

Defendants, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, shall be deemed to have, and by operation of law and of this Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged each and every Released Settling Defendants' Claim against Plaintiffs and the other Plaintiffs' Releasees, and shall forever be barred and enjoined from prosecuting any or all of the Released Settling Defendants' Claims against any of the Plaintiffs' Releasees.

10. Notwithstanding paragraphs 9(a)–(b) above, nothing in this Judgment shall bar any action by any of the Settling Parties to enforce or effectuate the terms of the Stipulation or this Judgment.

11. **Bar Order** – Pursuant to the PSLRA and common law, upon the later of the Effective Date or the Termination Date, the Court hereby bars all future claims and claims over by any individual or entity against any of the Settling Defendants' Releasees, and by the Settling Defendants' Releasees against any individual or entity, for (a) contribution or indemnity (or any other claim or claim over, however denominated on whatsoever theory) arising out of or related to the claims or allegations asserted by Plaintiffs in the Action, or (b) any other claim of any type, whether arising under state, federal, common, or foreign law, for which the injury claimed is that person's or entity's actual or threatened liability to Plaintiffs and/or members of the Settlement Class arising out of or related to the claims or allegations asserted by Plaintiffs in the Action (the "Bar Order"). For the avoidance of doubt, nothing in this Bar Order shall release any proofs of claim that any of the Cobalt Settling Defendants has filed in the Cobalt bankruptcy, or

any claims that the Cobalt Settling Defendants may have against Cobalt's liability insurance carriers or liability insurance policies. Moreover, nothing in this Bar Order shall be construed to impair, negate, diminish, or adversely affect any rights of the Cobalt Settling Defendants or their successors or assigns under or with respect to any insurance policies, including, but without limitation, any rights to seek to recover or to recover insurance proceeds or payments under any insurance policies with respect to amounts incurred pursuant to the Settlement or incurred in connection with the Action, or any other actual or alleged loss or liability.

12. **Judgment Reduction** – Pursuant to the PSLRA and common law, any final verdict or judgment that may be obtained by or on behalf of the Settlement Class or a Settlement Class Member against any individual or entity subject to the Bar Order shall be reduced by the greater of: (a) an amount that corresponds to the percentage of responsibility of the Cobalt Settling Defendants for common damages; or (b) the amount paid by or on behalf of the Cobalt Settling Defendants to the Settlement Class or Settlement Class Members for common damages.

13. **Rule 11 Findings** – The Court finds and concludes that the Settling Parties and their respective counsel have complied in all respects with the requirements of Rule 11 of the Federal Rules of Civil Procedure in connection with the institution, prosecution, defense, and settlement of the Action.

14. **No Admissions** – Neither this Judgment, the Stipulation (whether or not consummated), including the exhibits thereto, the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), the negotiations leading

to the execution of the Stipulation, nor any proceedings taken pursuant to or in connection with the Stipulation, and/or approval of the Settlement (including any arguments proffered in connection therewith):

(a) shall be offered against any of the Settling Defendants' Releasees as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Settling Defendants' Releasees with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of any of the Settling Defendants' Releasees or in any way referred to for any other reason as against any of the Settling Defendants' Releasees, in any arbitration proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation;

(b) shall be offered against any of the Plaintiffs' Releasees, as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Plaintiffs' Releasees that any of their claims are without merit, that any of the Settling Defendants' Releasees had meritorious defenses, or that damages recoverable from the Settling Defendants under the Operative Complaint would not have exceeded the Settlement Amount or with respect to any liability, negligence, fault, or wrongdoing of any kind, or in any way referred to for any other reason as against any of the Plaintiffs' Releasees, in any arbitration

proceeding or other civil, criminal, or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Stipulation; or

(c) shall be construed against any of the Releasees as an admission, concession, or presumption that the consideration to be given hereunder represents the amount which could be or would have been recovered after trial against the Cobalt Settling Defendants;

*provided, however,* that the Settling Parties and the Releasees and their respective counsel may refer to the Stipulation to effectuate the protections from liability granted thereunder or otherwise to enforce the terms of the Settlement, or in connection with the AIG Litigation or D&O Coverage Litigation.

15. **Retention of Jurisdiction** – Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over: (a) the Settling Parties for purposes of the administration, interpretation, implementation, and enforcement of the Settlement; (b) the disposition of the Settlement Fund; (c) any motion for an award of attorneys’ fees and/or Litigation Expenses by Lead Counsel in the Action that will be paid from the Settlement Fund; (d) any motion to approve a plan of allocation for the proceeds of the Settlement Fund; (e) any motion to approve the Class Distribution Order; and (f) the Settlement Class Members for all matters relating to the Settlement.

16. Separate orders shall be entered regarding approval of a plan of allocation and the motion of Lead Counsel for an award of attorneys’ fees and reimbursement of



Litigation Expenses. Such orders shall in no way affect or delay the finality of this Judgment and shall not affect or delay the Effective Date of the Settlement.

17. **Modification of the Agreement of Settlement** – Without further approval from the Court, Plaintiffs and the Cobalt Settling Defendants are hereby authorized to agree to and adopt such amendments or modifications of the Stipulation or any exhibits attached thereto to effectuate the Settlement that: (a) are not materially inconsistent with this Judgment; and (b) do not materially limit the rights of Settlement Class Members in connection with the Settlement. Without further order of the Court, Plaintiffs and the Cobalt Settling Defendants may agree to reasonable extensions of time to carry out any provisions of the Settlement.

18. **Termination of Settlement** – If the Settlement is terminated as provided in the Stipulation or the Effective Date of the Settlement otherwise fails to occur, the Judgment including (the Court’s certification of the Settlement Class) shall be vacated, rendered null and void, and be of no further force and effect, except as otherwise provided by the Stipulation, and this Judgment shall be without prejudice to the rights of Plaintiffs, the other Settlement Class Members, and the Cobalt Settling Defendants, and the Settling Parties shall revert to their respective positions in the Action as of immediately prior to the execution of the Stipulation on October 11, 2018, as provided in the Stipulation.

19. **Entry of Final Judgment** – There is no just reason to delay the entry of this Judgment as a final judgment in this Action as against the Cobalt Settling Defendants pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. Accordingly, the Clerk

of the Court is expressly directed to immediately enter this final judgment as against the Cobalt Settling Defendants.

SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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The Honorable Nancy F. Atlas  
United States District Judge

**Exhibit 1**

**[List of Persons and Entities Excluded from the Settlement Class Pursuant to Request]**

## Exhibit C

**Director and Officer Liability Policies****December 15, 2010-December 15, 2011 Policy Year**

<i>Layer</i>	<i>Insurer</i>	<i>Limit of Liability</i>	<i>Excess of</i>
Primary Carrier	XL Insurance (settled)	\$20,000,000	
1 <sup>st</sup> Excess Carrier	AXIS Insurance (settled)	\$10,000,000	\$20,000,000
2 <sup>nd</sup> Excess Carrier	Allied World	\$10,000,000	\$30,000,000
3 <sup>rd</sup> Excess Carrier	Arch Insurance	\$10,000,000	\$40,000,000
4 <sup>th</sup> Excess Carrier	Illinois National (AIG)	\$10,000,000	\$50,000,000
5 <sup>th</sup> Excess Carrier	Navigators Insurance	\$10,000,000	\$60,000,000
6 <sup>th</sup> Excess Carrier	Beazley Insurance	\$10,000,000	\$70,000,000
1 <sup>st</sup> Side A	Federal Insurance (Chubb)	\$20,000,000	\$80,000,000

**December 15, 2012-December 15, 2013 Policy Year**

<i>Layer</i>	<i>Insurer</i>	<i>Limit of Liability</i>	<i>Excess of</i>
Primary Carrier	Illinois National (AIG)	\$10,000,000	
1 <sup>st</sup> Excess Carrier	Continental Casualty (CNA)	\$10,000,000	\$10,000,000
2 <sup>nd</sup> Excess Carrier	Allied World	\$10,000,000	\$20,000,000
3 <sup>rd</sup> Excess Carrier	Navigators Insurance	\$10,000,000	\$30,000,000
4 <sup>th</sup> Excess Carrier	North American Specialty (Swiss Re)	\$10,000,000	\$40,000,000
5 <sup>th</sup> Excess Carrier	Starr Indemnity	\$10,000,000	\$50,000,000
6 <sup>th</sup> Excess Carrier	RSUI Indemnity	\$10,000,000	\$60,000,000
7 <sup>th</sup> Excess Carrier	Aspen American	\$10,000,000	\$70,000,000
8 <sup>th</sup> Excess Carrier	Alterra America	\$10,000,000	\$80,000,000
9 <sup>th</sup> Excess Carrier	Plaza Insurance	\$10,000,000	\$90,000,000
1 <sup>st</sup> Side A	Endurance American	\$20,000,000	\$100,000,000

**December 15, 2013-December 15, 2014 Policy Year**

<i>Layer</i>	<i>Insurer</i>	<i>Limit of Liability</i>	<i>Excess of</i>
Primary Carrier	Illinois National (AIG)	\$10,000,000	
1 <sup>st</sup> Excess Carrier	Continental Casualty (CNA)	\$10,000,000	\$10,000,000
2 <sup>nd</sup> Excess Carrier	Allied World	\$10,000,000	\$20,000,000
3 <sup>rd</sup> Excess Carrier	Navigators Insurance	\$10,000,000	\$30,000,000

<i>Layer</i>	<i>Insurer</i>	<i>Limit of Liability</i>	<i>Excess of</i>
4 <sup>th</sup> Excess Carrier	North American Specialty (Swiss Re)	\$10,000,000	\$40,000,000
5 <sup>th</sup> Excess Carrier	Starr Indemnity	\$10,000,000	\$50,000,000
6 <sup>th</sup> Excess Carrier	RSUI Indemnity	\$10,000,000	\$60,000,000
7 <sup>th</sup> Excess Carrier	Aspen American	\$10,000,000	\$70,000,000
8 <sup>th</sup> Excess Carrier	Alterra America	\$10,000,000	\$80,000,000
9 <sup>th</sup> Excess Carrier	Westchester Fire	\$10,000,000	\$90,000,000
1 <sup>st</sup> Side A	Endurance American	\$20,000,000	\$100,000,000
2 <sup>nd</sup> Side A	Freedom Specialty	\$10,000,000	\$120,000,000
3 <sup>rd</sup> Side A	Illinois National (AIG)	\$10,000,000	\$130,000,000

**Exhibit D**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

IN RE COBALT INTERNATIONAL  
ENERGY, INC. SECURITIES LITIGATION

Lead Case No. 1:14-cv-3428 (NFA)

**FULL AND FINAL JOINT RELEASE**

WHEREAS, a consolidated class action is pending in this Court entitled *In re Cobalt International Energy, Inc. Securities Litigation*, Lead Case No. 1:14-cv-3428-NFA (the “Action”);

WHEREAS, (a) lead plaintiffs GAMCO Global Gold, Natural Resources & Income Trust and GAMCO Natural Resources, Gold & Income Trust (together, the “GAMCO Funds” or “Lead Plaintiffs”), St. Lucie County Fire District Firefighters’ Pension Trust Fund, Fire and Police Retiree Health Care Fund, San Antonio, Sjunde AP-Fonden, and Universal Investment Gesellschaft m.b.H. (collectively, with Lead Plaintiffs, “Plaintiffs”), on behalf of themselves and the Settlement Class; (b) defendant Cobalt International Energy, Inc. (“Cobalt”) and its Debtor Affiliates (collectively, the “Debtors”) in the Debtors’ Chapter 11 cases (the “Chapter 11 Cases”), by and through 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”); and (c) defendants Joseph H. Bryant, James W. Farnsworth, Jack E. Golden, Jon A. Marshall, Myles W. Scoggins, William P. Utt, John P. Wilkirson, and Martin H. Young, Jr. (the “Cobalt Individual Defendants,” together with Cobalt, the “Cobalt Settling Defendants,” and collectively with Plaintiffs, the “Settling Parties”), settled all claims asserted against the Cobalt Settling Defendants in this Action with prejudice (the “Settlement”) on the terms and conditions set forth in the Stipulation and Agreement of Settlement Among the Plaintiffs, Cobalt Individual Defendants, and Plan Administrator on Behalf of the Cobalt Debtors, dated October 11, 2018 (the “Stipulation”), subject to approval of this Court and the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”);

WHEREAS, on \_\_\_\_\_, 2018, the Bankruptcy Court issued an order approving the Settlement;

WHEREAS, on \_\_\_\_\_, 2018, this Court issued an order approving the Settlement;

WHEREAS, on \_\_\_\_\_, 2018, this Court entered final judgment in the Action (the “Final Judgment”);

WHEREAS, on \_\_\_\_\_, 2019, all D&O Coverage Litigation involving the Insurers or D&O Liability Insurance Policies concluded;

ACCORDINGLY, pursuant to the Stipulation and Final Judgment:

1. The Plaintiffs and each of the other Settlement Class Members, on behalf of themselves, and their respective heirs, executors, administrators, predecessors, successors, and assigns in their capacities as such, hereby fully, finally, and forever

compromise, settle, release, resolve, relinquish, waive, and discharge (a) the Cobalt Settling Defendants; (b) the current and former parents, affiliates, subsidiaries, successors, predecessors, assigns, and assignees of the Cobalt Settling Defendants; (c) the current and former officers, directors, agents, employees, attorneys, and advisors of each of the foregoing in (a) and (b) in their capacities as such; and (d) the members of the Immediate Family of the Cobalt Individual Defendants, from any and all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common or foreign law, that were or could have been asserted in any forum that relate to, arise out of, or are based upon the allegations, transactions, facts, matters or occurrences, representations or omissions involved, set forth, or referred to in the Operative Complaint or in any of the Prior Complaints and that relate to the purchase, acquisition, sale, or holding of Cobalt Securities during the Class Period, *provided* that the foregoing release shall not apply to any claims against any of the Sponsor and Underwriter Defendants,<sup>1</sup> any Sponsor Designee Defendant who has not opted into the Settlement Agreement prior to the Effective Date, or Cobalt's liability insurance carriers, in their capacities as such, any claims of any person or entity who or that submits a request for exclusion from the

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<sup>1</sup> The "Sponsor and Underwriter Defendants" means The Goldman Sachs Group, Inc.; Riverstone Holdings LLC; FRC Founders Corporation; ACM Ltd.; Goldman Sachs & Co. LLC; Morgan Stanley & Co. LLC; Credit Suisse Securities (USA) LLC; Citigroup Global Markets Inc.; J.P. Morgan Securities LLC; Tudor, Pickering, Holt & Co. Securities, Inc.; Deutsche Bank Securities Inc.; RBC Capital Markets, LLC; UBS Securities LLC; Howard Weil Incorporated; Stifel, Nicolaus & Company, Incorporated; Capital One Southcoast, Inc.; Lazard Capital Markets LLC; and The Carlyle Group, L.P.



Settlement Class that is accepted by this Court, and any claims relating to the enforcement of the Settlement.

2. The Cobalt Settling Defendants hereby release (a) the Plaintiffs, their respective attorneys, and all other Settlement Class Members; (b) the current and former parents, affiliates, subsidiaries, successors, predecessors, assigns, and assignees of each of the foregoing in (a); and (c) the current and former officers, directors, agents, employees, attorneys, and advisors of each of the foregoing in (a) and (b), in their capacities as such, from any and all claims and causes of action of every nature and description, whether known claims or Unknown Claims, whether arising under federal, state, common or foreign law, that arise out of or relate in any way to the institution, prosecution, or settlement of the claims asserted in the Action against the Cobalt Settling Defendants, *provided* that the foregoing release shall not apply to any claims against any person or entity who or that submits a request for exclusion from the Settlement Class that is accepted by this Court, any claims against any Insurer, and any claims relating to the enforcement of the Settlement.

3. To ensure that the releases set forth in Paragraphs 1 and 2 are enforced fully and in accordance with their terms and the intent of the Stipulation and Final Judgment, the Settling Parties hereby waive any and all provisions, rights, and benefits of Section 1542 of the California Civil Code (and any other law of similar effect in any jurisdiction) which provides: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF

KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

4. Capitalized terms not defined herein shall have the meaning as set forth in the Stipulation.

IN WITNESS WHEREOF, the Settling Parties have caused this Full and Final Joint Release to be executed, by their duly authorized attorneys, as of \_\_\_\_\_, 2019.

**ENTWISTLE & CAPPUCCI LLP**

**BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP**

By: \_\_\_\_\_  
Andrew J. Entwistle  
Vincent R. Cappucci  
299 Park Avenue, 20th Floor  
New York, NY 10171  
Telephone: (212) 894-7200  
Facsimile: (212) 894-7272

By: \_\_\_\_\_  
David R. Stickney  
Jonathan D. Uslander  
12481 High Bluff Drive, Suite 300  
San Diego, CA 92130-3582  
Telephone: (858) 793-0070  
Facsimile: (858) 793-0323

*Lead Counsel for Plaintiffs and the Certified Class*

*Lead Counsel for Plaintiffs and the Certified Class*

**GREENBERG TRAURIG, LLP**

**BAKER BOTTS LLP**

By: \_\_\_\_\_  
Shari L. Heyen  
David B. Kurzweil  
1000 Louisiana, Suite 1700  
Houston, TX 77002  
Telephone: (713) 374-3500  
Facsimile: (713) 374-3505

By: \_\_\_\_\_  
David D. Sterling  
Russell Lewis  
910 Louisiana Street  
Houston, TX 77002  
Telephone: (713) 229-1234  
Facsimile: (713) 229-1522

*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.*

*Counsel for the Former Directors and Officers of the Debtors and the Debtors*

**QUINN EMANUEL URQUHART & SULLIVAN, LLP**

By: \_\_\_\_\_  
Karl Stern  
Emily Smith  
Pennzoil Place  
711 Louisiana St., Suite 500  
Houston, TX 77002  
Telephone: (713) 221-7000  
Facsimile: (713) 221-7100

*Counsel for Joseph H. Bryant*