

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

In re:

Canadian Overseas Petroleum Limited, *et al.*,¹

Debtors in a foreign proceeding.

Chapter 15

Case No. 24-10376 (JTD)

(Jointly Administered)

Objection Deadline: April 2, 2024 at 4:00 p.m. ET
Hearing Date: April 9, 2024 at 2:30 p.m. ET

**MOTION OF THE FOREIGN REPRESENTATIVE
FOR ENTRY OF AN ORDER (I) RECOGNIZING AND
ENFORCING THE SISF ORDER AND (II) GRANTING RELATED RELIEF**

Canadian Overseas Petroleum Limited (“COPL”), in its capacity as the duly-appointed foreign representative (the “Foreign Representative”) for the above-captioned debtors (collectively, the “Debtors”), in the proceedings (the “Canadian Proceedings”)² currently pending before the Court of King’s Bench of Alberta in Calgary (the “Canadian Court”), initiated under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the “CCAA”), by and through its undersigned counsel, respectfully submits this motion (the “Motion”) seeking entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), recognizing and giving effect in the United States to the Canadian Court’s order approving the

¹ The Debtors in these chapter 15 proceedings, together with the last four digits of their business identification numbers are: Canadian Overseas Petroleum Limited (8749); COPL Technical Services Limited (1656); Canadian Overseas Petroleum (Ontario) Limited (8319); Canadian Overseas Petroleum (UK) Limited (7063); Canadian Overseas Petroleum (Bermuda Holdings) Limited (N/A); Canadian Overseas Petroleum (Bermuda) Limited (N/A); COPL America Holding Inc. (1334); COPL America Inc. (9018); Atomic Oil and Gas LLC (8233); Southwestern Production Corporation (8694); and Pipeco LLC (0925). The location of the Debtors’ headquarters and the Debtors’ duly appointed foreign representative is 715 5 Avenue SW, Suite 3200, Calgary, Alberta T2P 2X6, Canada.

² Information on the Canadian Proceedings and documents filed in connection therewith, including reports from the Monitor (as defined herein) and motion materials, can be found at the website of the Monitor at <https://www.ksvadvisory.com/experience/case/canadian-overseas-petroleum>.

Debtors' Sale and Investment Solicitation Process (the "SISP Order").³ In support of this Motion, the Foreign Representative respectfully submits as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference of the United States District Court for the District of Delaware*, dated February 29, 2012.

2. The Foreign Representative has properly commenced these chapter 15 cases (the "Chapter 15 Cases") under sections 1504 and 1515 of title 11 of the United States Code (the "Bankruptcy Code"). This is a core proceeding under 28 U.S.C. § 157(b)(2).

3. Venue for these cases is proper in this Court under 28 U.S.C. § 1410 because COPL has its principal operating assets in the United States—its equity ownership in COPL America Holdings, Inc., a Delaware corporation—located in Delaware. Each Debtor also has an interest in a retainer on deposit with Potter Anderson & Corroon LLP, in which each Debtor has an ownership interest. These funds are held in a bank account at Wells Fargo Bank, N.A. in accordance with Delaware Rule of Professional Responsibility 1.5. *See* Kravitz Declaration (as defined below) ¶¶ 54.

4. Pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware ("Local Rules"), the Foreign Representative consents to the entry of final orders or judgments by the Court if it is later

³ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the SISP Order, the Sale Procedures (defined below), the RSA (defined below), and the Kravitz Declaration (as defined below), as applicable.

determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

5. The statutory predicates for the relief requested in this Motion are sections 105(a), 363, 1507, 1520, and 1521 of title 11 of the Bankruptcy Code.

RELIEF REQUESTED

6. By this Motion, the Foreign Representative seeks recognition and enforcement of the SISP Order, which is attached to the Proposed Order as **Exhibit 1** and approves, among other relief:

- (A) the sale and investment solicitation procedures (the “Sale Procedures”) and implementation thereof;
- (B) the Debtors’ entry into that certain asset purchase agreement substantially on the terms set forth in the Restructuring Support Agreement (the “RSA,” and such asset purchase agreement, the “Stalking Horse Purchase Agreement”) ⁴ attached to the Kravitz Declaration (as defined below); and
- (C) the Break-Up Fee (as defined below).

BACKGROUND

I. Events Leading to the Canadian Proceedings and Chapter 15 Cases

7. On March 11, 2024, the Foreign Representative commenced these Chapter 15 Cases by filing the Official Form 401 for each of the Debtors (the “Petitions”) and the *Verified Petition for (I) Recognition of Foreign Main Proceedings, or, in the Alternative, Foreign Non-Main Proceedings, (II) Recognition of Foreign Representative, and (III) Related Relief Under Chapter 15 of the Bankruptcy Code* (the “Verified Petition” and together with the Petitions, the “Chapter 15 Petition”) under chapter 15 of the Bankruptcy Code. On March 12, 2024, the Court

⁴ Pursuant to the SISP Order, the terms of the Stalking Horse Purchase Agreement set forth in the RSA are subject to “minor amendments as may be acceptable to each of the parties thereto, with the approval of the Monitor.” SISP Order ¶ 6. The Stalking Horse Purchase Agreement is subject to further approval by the Canadian Court in the event the Stalking Horse Purchase Agreement is the Successful Bid under the SISP.

entered an order [Docket No. 27] authorizing the joint administration and procedural consolidation of these chapter 15 cases under Bankruptcy Rule 1015(b) and Bankruptcy Local Rule 1015-1. Also on March 12, 2024, the Court entered an order [Docket No. 28] that, among other things and on a provisional basis, recognized and gave effect to the Initial Order and enjoined the commencement or continuation of any action or proceeding in the United States against the Debtors. A hearing to consider recognition of the Canadian Proceedings is scheduled for April 9, 2024 at 2:30 p.m. (prevailing Eastern Time).

8. As more fully described in the Verified Petition and in the *Declaration of Peter Kravitz in Support of the Debtors' Verified Petition for (I) Recognition of Foreign Main Proceedings, or, in the Alternative, Foreign Non-Main Proceedings, (II) Recognition of Foreign Representative, and (III) Related Relief Under Chapter 15 of the Bankruptcy Code* (the "Kravitz Declaration"), the Debtors comprise an international oil and gas exploration, development, and production company.

9. In March 2021, COPL, through its subsidiary COPL America, acquired (the "Atomic Acquisition") all of the membership interests in Atomic Oil and Gas LLC ("Atomic"), including its wholly owned subsidiary Pipeco LLC ("Pipeco") and the entire share capital of Southwestern Production Corporation ("SWP"). In July 2022, COPL America completed an acquisition (the "Cuda Acquisition", and together with the Atomic Acquisition, the "Acquisitions") of substantially all of the assets of Cuda Oil and Gas Inc. ("Cuda"). At the time of the Cuda Acquisition, Cuda had a 27% working interest in the BFSU, a 27.5% working interest in the BFDU and a 33.33% working interest in the CCU. Following closing of the Cuda Acquisition, COPL America acquired an 85-100% working interest across three oil-producing units in Wyoming, operating each unit through SWP.

10. Following the Acquisitions, the COPL Group set upon a strategy to optimize and increase oil production in the Wyoming Assets and embark on future development. Since that time, however, COPL Group's financial and operational performance has struggled. The COPL Group has failed to deliver free cash flow in any single quarter over the past 18 months and COPL America has labored to service its debt. This has led to repeated requests by COPL America for waivers and amendments and improved credit from the lender parties to the Senior Credit Facility (collectively, the "Lender") and repeated small equity and convertible debt "rescue" financing by COPL. In addition, over the past 12-18 months, a series of operational challenges and market conditions, as well as weather-related interruptions, combined with a challenging inflationary and high interest rate environment, the accumulation of hedging losses which, until recently, needed to be cash settled monthly, and the termination of a promising joint venture partnership, has led to significant financial challenges and liquidity constraints.

11. On March 7, 2024, to address these challenges, the COPL Group and the Lender executed the RSA. The RSA embodies a restructuring (the "Restructuring") by which the Debtors agreed to engage in a fulsome sale process for the Debtors' businesses to maximize value for all stakeholders.

12. On March 19, 2024, the Canadian Court granted the *Amended and Restated Initial Order* (the "ARIO"), which approved, among other things, the Debtors' entry into the RSA, the SISP Order, and entry into the Stalking Horse Purchase Agreement.

II. The Sale Procedures

13. The SISP, attached as Schedule B to the SISP Order, sets out the manner in which (i) the Debtors will canvass the market for the best possible transaction for the sale of substantially all of the Debtors' assets, (ii) any bids will be received, (iii) any Successful Bid will be selected,

and (iv) Court approval of any Successful Bid will be sought. Under the Sale Procedures, the terms of the stalking horse transaction (the “Stalking Horse Transaction”) will be subject to a full marketing process.

14. It is important to the Debtors’ Restructuring that the Sale Procedures be approved and that such approval occur expeditiously to protect against erosion of the Debtors’ value. Without approval of the Sale Procedures, the Debtors face potential harm due to the loss of critical business relationships with their employees and suppliers, among others, and the lack of support from their secured creditors. The Sale Procedures, together with the Stalking Horse Transaction, and with financing made available through the DIP Loan, will reduce liquidity constraints and allow the Debtors to market their assets and maximize their value, while also minimizing risks to the Debtors of undertaking the Sale Procedures without the certainty of a going concern transaction. The Foreign Representative submits that this process will reassure the Debtors’ employees, suppliers, and other interested parties that a going-concern solution will be achieved in the near term.

15. The key terms of the Stalking Horse Transaction,⁵ which shall be substantially on the terms set out in the Restructuring Term Sheet attached to the RSA, are as follows:

Term	Details
Sellers	The following entities, or a subset thereof: COPL, COPL America Holding Inc., COPL America Inc., Canadian Overseas Petroleum (UK) Limited, Canadian Overseas Petroleum (Ontario) Limited, COPL Technical Services Limited, Canadian Overseas Petroleum (Bermuda Holdings) Limited, Canadian Overseas Petroleum (Bermuda) Limited, SWP, Atomic, and Pipeco (collectively with COPL, the “ <u>COPL Entities</u> ” and each a “ <u>COPL Entity</u> ”)

⁵ While Local Rule 6004-1(b)(iv) contains certain provisions to be highlighted in a Sale Motion, since this motion seeks enforcement and recognition of the SISP Order this Local Rule should not apply; nonetheless, the summary of the Sale Procedures is set forth and this summary is qualified in full by reference to the SISP Order, the Sale Procedures, and the Stalking Horse Purchase Agreement.

Term	Details
Purchasers	Lenders under the Senior Credit Facility (in such capacity, the “ <u>Stalking Horse Purchaser</u> ”)
Purchase Price	<p>A credit bid of the DIP Loan for all or substantially all of the assets (excluding the “Excluded Assets”, as defined below) or equity, as applicable and as determined by the Bidder, of the COPL Entities, excluding COPL; provided that the Bidder may subsequently increase its credit bid to include a portion or all of the principal amount of debt outstanding under the Credit Agreement; and</p> <p>The assumption of the obligations under the Credit Agreement, to the extent not the subject of the credit bid.</p>
Transaction Structure	The Stalking Horse Purchase Agreement will include standard representations and warranties, covenants and conditions precedent for transactions of this nature, including as set forth under “ <i>Conditions Precedent</i> ”, and provide for an outside date of June 7, 2024.
Excluded Assets	Such assets as agreed upon by the COPL Entities and the Bidder and shall include an amount to be agreed to between the COPL Entities and the Bidder, each acting reasonably, to fund any professional fees incurred in connection with post-closing matters and/or to wind-up and terminate the Canadian Proceedings, the Chapter 15 proceedings, and any further proceedings involving the Filing Entities.

16. The Stalking Horse Purchase Agreement provides that COPL and various of its subsidiaries will pay \$350,000 from the proceeds of any Alternative Restructuring Proposal (the “Break-Up Fee”) and an expense reimbursement for the Stalking Horse Purchaser’s reasonable and documented legal and other costs incurred in connection with the transactions contemplated by the Stalking Horse Purchase Agreement (the “Expense Reimbursement”). The Break-Up Fee and Expense Reimbursement will be paid concurrently with the consummation of an Alternative Restructuring Proposal, following: (a) the Canadian Court approving an Alternative Restructuring Proposal that is not provided by the Stalking Horse Purchaser or any of their affiliates in accordance with the terms of the SISP Order, or (b) the Debtors terminating the RSA

following the COPL board of directors determining, upon the advice of outside counsel and financial advisors, that proceeding with the Stalking Horse Transaction would be inconsistent with the exercise of the Debtors' fiduciary duties or applicable law.

17. The key terms of the Stalking Horse Purchase Agreement, including the Break-Up Fee and the Expense Reimbursement, were approved by the Canadian Court in the SISP Order.

III. The RSA

18. The RSA, as extended by written agreement of the Lenders, provides that the Debtors will seek Court approval of the Sale Procedures by no later than March 18, 2024, subject to the Court's availability. The Canadian Court granted such approval on March 19, 2024 with the entry of the SISP Order.

19. The RSA establishes the following milestones (the "Milestones"), as extended by written agreement of the Lender:

Milestone	Date
The Debtors shall obtain an order from the Canadian Court approving the Sale Procedures	March 19, 2024
The Foreign Representative shall file a motion with the U.S. Bankruptcy Court for an order recognizing and enforcing the SISP Order	2 business days after entry of the SISP Order (March 21, 2024)
The Foreign Representative shall obtain an order recognizing and enforcing the Initial Order	April 9, 2024
The Foreign Representative shall obtain an order recognizing and enforcing the SISP Order	April 9, 2024
The Debtors shall obtain a vesting order (the " <u>Vesting Order</u> ") from the Canadian Court, subject to court availability	9 days after the selection of the Successful Bid
The Foreign Representative shall file a motion with the U.S. Bankruptcy Court for an order recognizing and enforcing the Vesting Order	2 business days after entry of the Vesting Order
The Foreign Representative shall obtain the Vesting Recognition Order	14 days after the entry of the Vesting Order
The Restructuring shall close, provided that to the extent the only condition to the closing of the Restructuring that remains	14 days after the date that the Foreign Representative obtains the Vesting

Milestone	Date
outstanding is the receipt of regulatory approval(s), the Outside Date shall automatically be extended for another 60 days	Recognition Order or such later dates as may be determined by the Required Consenting Lenders on written notice to the other Parties (the “ <u>Outside Date</u> ”)

20. Meeting the Milestones (a) is necessary to ensure compliance with the RSA and to preserve and facilitate the Stalking Horse Transaction, (b) will facilitate an expeditious resolution to the Debtors’ insolvency proceedings, and (c) will minimize expenses and additional employee loss.

21. The RSA does not contain any provisions restricting the ability of the Debtors to solicit superior offers to the Stalking Horse Transaction. Consequently, the Debtors have been and are actively soliciting bids and working to cultivate interest in the Sale Procedures from potential participants.

22. The Debtors can terminate the RSA in certain circumstances, including if the board of directors determines, upon the advice of outside legal counsel and financial advisors, that proceeding with the Restructuring would be inconsistent with the exercise of their fiduciary duties or applicable law (the “Fiduciary Termination Right”). The Fiduciary Termination Right ceases to apply if no other qualified bid is received by the applicable deadline or if the Stalking Horse Transaction is declared the Successful Bid.

23. Together, the protections under the RSA ensure that the sale process undertaken by the Debtors in accordance with the Sale Procedures is fair, provides the opportunity for interested parties to submit a bid, and positions the Debtors for the achievement of the best transaction possible in the circumstances for the benefit of all stakeholders.

24. The Canadian Court approved the RSA with the entry of the ARIO.

IV. The SISP Order

25. As set forth above, on March 19, 2024, the Canadian Court granted the SISP Order. The Sale Procedures are similar to bidding procedures approved in chapter 11 proceedings. The Sale Procedures establish a clear and transparent process for the solicitation, receipt, and evaluation of bids on a timeline that the Debtors and the Monitor believe is reasonable and will provide parties with sufficient time and information to submit competitive bids. The timeline under the Sale Procedures allows for a fair and reasonable process that will enable the Debtors to market their assets and maximize their value by both adequately testing the market and protecting against the significant risk of further market decline, while reducing liquidity constraints.

26. Generally, the Sale Procedures set out the parameters by which the Debtors, under the oversight of the Monitor and with the assistance of Province, will market their assets for sale, and contemplate the following timeline:

- a. **April 17, 2024, at 11:59 p.m. (Mountain Time):** Bidders must submit a letter of intent (“LOI”) to bid that identifies the potential purchaser and a general description of the assets and/or business(es) of the Debtors that would be the subject of the bid;
- b. **May 2, 2024, at 11:59 p.m. (Mountain Time):** Bidders to submit a binding offer meeting the requirements enumerated in the Sale Procedures, as determined by the Debtors in consultation with the Monitor;
- c. **May 6, 2024, at 5:00 p.m. (Mountain Time):** The Debtors, in consultation with the Monitor, will determine if any bid(s) submitted are Qualified Bids;
- d. **May 8, 2024, at 10:00 a.m. (Mountain Time):** the Debtors will hold an Auction, if applicable; and the Debtors will facilitate setting a hearing on the CCAA Implementation Order (as defined below) before the Canadian Court by no later than (subject to availability):
 - i. April 26, 2024, if no LOI is submitted;
 - ii. May 11, 2024, if there is no Auction; and
 - iii. Nine (9) days after completion of any Auction.

Sale Procedures, ¶ 6. The Sale Procedures are attached to the SISP Order as Schedule “B”.

27. This Court’s recognition of the SISP Order and enforcement of it within the territorial jurisdiction of the United States will provide material assistance to the Canadian Court and the Debtors by allowing the Debtors to comply with the Milestones through the execution of the Stalking Horse Transaction or a superior proposal, which is in the best interests of the Debtors and their estates.

28. Following the bidding procedures contemplated by the Sale Procedures, the Debtors will seek an order from this Court recognizing and enforcing the Successful Bid and consummation of any transactions approved by the Canadian Court in the Canadian Proceedings (the “CCAA Implementation Order”), whereby parties wishing to oppose the entry of the CCAA Implementation Order will have the opportunity to object and be heard in the Canadian Proceeding, similar to a sale hearing in a chapter 11 proceedings. At such time, the Foreign Representative will provide additional detail on the approved transactions and carry its burden for recognition thereof under applicable law.

BASIS FOR RELIEF

29. Chapter 15 of the Bankruptcy Code is designed to promote cooperation and comity between courts in the United States and foreign courts, protect and maximize the value of a debtor’s assets, and facilitate the rehabilitation and reorganization of businesses. 11 U.S.C. § 1501(a). It empowers courts with “broad, flexible rules to fashion relief appropriate for effectuating [chapter 15’s] objectives in accordance with comity.” *In re Vitro SAB de CV*, 701 F.3d 1031, 1053 (5th Cir. 2012); *see also Lavie v. Ran*, 406 B.R. 277, 282 (S.D. Tex. 2009), *aff’d sub nom. In re Ran*, 607 F.3d 1017 (5th Cir. 2010) (stating that post-recognition relief in a chapter 15 case involves weighing “‘flexible and pragmatic’ subjective considerations and comity”); *In re SPhinX, Ltd.*, 351 B.R. 103, 112 (Bankr. S.D.N.Y. 2006), *aff’d*, 371 B.R. 10 (S.D.N.Y. 2007)

(“[C]hapter 15 maintains—and in some respects enhances—the ‘maximum flexibility’ . . . that section 304 provided bankruptcy courts in handling ancillary cases considering principles of international comity and respect for the laws and judgments of other nations.”) (internal citations omitted).

30. The CCAA provides a comprehensive framework for reorganization, in which creditors participate in a centralized, collective judicial process, debtors operate under the supervision of the Canadian Court, and a stay of actions to recover on creditor claims is implemented.

31. Sections 1507 and 1521 of the Bankruptcy Code provide the statutory bases to provide relief to a foreign representative following the recognition of a foreign proceeding. Moreover, should the Court recognize the Canadian Proceedings as foreign main proceedings prior to consideration of this Motion, then under section 1520, the provisions of section 363 will apply to these Chapter 15 Cases. Granting the relief requested is consistent with, and permissible under, section 1520, incorporating section 363, 1507 and 1521 of the Bankruptcy Code. The Foreign Representative respectfully submits that it would be appropriate for the Court to exercise its discretion and power and recognize and enforce the SISP Order.

I. The Relief Requested Herein is Appropriate and Warranted Pursuant to Section 1521 of the Bankruptcy Code.

32. Under section 1521 of the Bankruptcy Code, upon recognition of a foreign proceeding, whether main or nonmain, and at the request of the foreign representative, the court may grant “any appropriate relief” to “effectuate the purpose of [chapter 15] and to protect the assets of the debtor or the interests of the creditors.” 11 U.S.C. § 1521(a). Additionally, pursuant to section 1521(a)(7) of the Bankruptcy Code, the Court may grant the Debtors “any additional relief available to a trustee” with certain limited exceptions. 11 U.S.C. § 1521(a)(7). Trustees,

including debtors in possession, frequently seek relief like that in the SISP Order in bidding procedures and sale motions. Relief under section 1521(a) of the Bankruptcy Code is conditioned on a determination that the interests of “the creditors and the other interested entities, including the debtor, are sufficiently protected.” 11 U.S.C. § 1522(a).

33. Recognizing and enforcing the SISP Order and the relief granted thereunder, including the Debtors’ entry into the RSA and the Stalking Horse Purchase Agreement, is “appropriate relief” under section 1521 of the Bankruptcy Code. Further, the relief granted by the SISP Order is relief that is routinely granted to debtors in possession in chapter 11 cases.

34. Recognition and enforcement of the SISP Order, which grants relief to the Debtors that would otherwise be available to them under chapter 11, is appropriate and within the Court’s authority pursuant to section 1521 of the Bankruptcy Code. To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and, therefore, are appropriate in the context of bankruptcy transactions. “The purpose of procedural bidding orders is to facilitate an open and fair public sale designed to maximize value for the estate.” *In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998); *In re Fin. News Network, Inc.*, 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991) (“[C]ourt-imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates”).

35. The use of a stalking horse bid in a public auction process for sales is a customary practice in chapter 11 cases, as the use of a stalking horse bid is, in many circumstances, the best way to maximize value in an auction process by “establish[ing] a framework for competitive bidding and facilitat[ing] a realization of that value.” *Off. Comm. of Unsecured Creditors of Renaissance Lafayette LLC v. Interforum Holding LLC (In re Interforum Holding LLC)*, No. 11-

CV-219, 2011 WL 2671254, at *1 n.1 (E.D. Wis. July 7, 2011). As a result, stalking horse bidders virtually always require break-up fees and, in many cases, other forms of bidding protections as an inducement for “setting the floor at auction, exposing [their] bid[s] to competing bidders, and providing other bidders with access to the due diligence necessary to enter into an asset purchase agreement.” *Id.* (citation omitted). Thus, the use of bidding protections, such as the Break-Up Fee, and the expense reimbursement, has become an established practice in chapter 11 cases. *See In re O’Brien Env’tl. Energy, Inc.*, 181 F.3d 527, 535 (3d Cir. 1999) (“In other words, the allowability of break-up fees, like that of other administrative expenses, depends upon the requesting party’s ability to show that the fees were actually necessary to preserve the value of the estate.”).

36. Parties in interest had an opportunity to object and be heard in the Canadian Proceeding with respect to the relief requested within the SISP Order, and entry thereof by the Canadian Court, after careful consideration, evidences that the Sale Procedures, the RSA, the Stalking Horse Purchase Agreement, and the other relief granted by the SISP Order is proper in light of the facts and circumstances. As such, the Court should grant recognition and enforcement of the SISP Order as a form of “appropriate relief” under section 1521(a) of the Bankruptcy Code. *See* 11 U.S.C. § 1521(a).

37. Recognizing and enforcing the SISP Order as appropriate relief satisfies the requirement under section 1522 of the Bankruptcy Code that the interests of creditors, the debtor, and other interested parties be “sufficiently protected.” 11 U.S.C. § 1522(a). As noted above, although the Bankruptcy Code does not define “sufficient protection,” it “requires a balancing of the interests of Debtors, creditors, and other interested parties.” *In re Petroforte Brasileiro de Petroleo Ltda.*, 542 B.R. 899, 909 (Bankr. S.D. Fla. 2015); *see also Jaffe v. Samsung Elecs. Co.*, 737 F.3d 14, 27-28 (4th Cir. 2013) (“The analysis required by [section] 1522(a) is therefore

logically best done by balancing the respective interests based on the relative harms and benefits in light of the circumstances presented.”); H.R. Rep. No. 109-31, pt. 1, at 116 (2005) (providing that such protection is lacking where “it is shown that the foreign proceeding is seriously and unjustifiably injuring United States creditors”).

38. Here, granting the requested relief is appropriate because the interests of all parties in interest are protected throughout the Canadian Proceedings, since creditors and other parties in interest have been given notice of the hearing to consider entry of the SISP Order and will be given a full and fair opportunity to be heard and present objections to approval of the Vesting Order for the Stalking Horse Transaction or, if applicable, a superior proposal. Recognizing and enforcing the SISP Order will protect the interests of both the Debtors and their stakeholders, as the relief granted in the SISP Order sets the necessary stage for the Debtors to find the best bid for some or all their assets, consummate a related transaction, and ultimately emerge from their insolvency proceedings. The relief requested herein will “assist in the efficient administration of [the] cross-border insolvency proceeding . . . [while] not harm[ing] the interest of the debtors or their creditors.” *In re Grant Forest Prods., Inc.*, 440 B.R. 616, 621 (Bankr. D. Del. 2010). Granting full force and effect to the SISP Order within the territorial jurisdiction of the United States will ensure the uniform and efficient administration of the Canadian Proceedings and these Chapter 15 Cases. Accordingly, recognizing and enforcing the SISP Order is consistent with the well-established principles underlying the Bankruptcy Code and is appropriate under the circumstances.

II. The Relief Requested Herein is Appropriate and Warranted Pursuant to Section 1507 of the Bankruptcy Code.

39. The Foreign Representative respectfully submits that the relief requested herein is also warranted as “additional assistance” under section 1507 of the Bankruptcy Code. 11 U.S.C. § 1507; *Vitro SAB de CV*, 701 F.3d at 1057 (explaining that section 1507’s “broad grant of

assistance is intended to be a catch-all”); *see also* H.R. Rep. No. 109-31, pt. 1, at 109 (2005) (noting that section 1507 authorizes “additional relief” beyond that available under section 1521 of the Bankruptcy Code).

40. In determining whether to exercise its discretion to grant additional relief under section 1507(a), the Court’s analysis should be guided by the principle of comity. *See* 11 U.S.C. § 1507(b). Additionally, section 1507(b) of the Bankruptcy Code, in relevant part, directs the court to consider “whether such additional assistance, consistent with the principles of comity, will reasonably assure” the:

- (1) just treatment of all holders of claims against or interests in the debtor’s property;
- (2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding; [and]
- (3) prevention of preferential or fraudulent dispositions of property of the debtor.

11 U.S.C. § 1507(b).

41. Recognition and enforcement of the SISP Order is available under section 1507 of the Bankruptcy Code, as all applicable factors are satisfied.

42. ***First***, reasonable assurance of “just treatment of all holders of claims” is met when “foreign insolvency law provides a comprehensive procedure for the orderly resolution of claims and the equitable distribution of assets among all of the estate’s creditors in one proceeding.” *In re Oi S.A.*, 587 B.R. 253, 267 (Bankr. S.D.N.Y. 2018).

43. As discussed above, the relief being granted by the SISP Order is substantially similar to relief routinely sought to debtors and approved by bankruptcy courts in chapter 11 cases. Further, the bidding procedures within the Sale Procedures are consistent with the goal of maximizing the value received by the Debtors for some or all their assets and, therefore, a fair and efficient resolution for all key stakeholders.

44. **Second**, requiring reasonable assurance of the “protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding” is satisfied where “creditors are given adequate notice of the timing and procedures for filing claims, and such procedures do not create additional procedures for a foreign creditor seeking to file a claim.” *Oi S.A.*, 587 B.R. at 268. The Debtors’ creditors and parties in interest have been treated fairly in the Debtors’ obtaining the SISP Order. Such parties have been provided proper and sufficient notice of, and had the opportunity to raise any objections to, the substantive relief requested in the SISP Order. Accordingly, the second factor in the section 1507(b) analysis is satisfied.

45. **Third**, section 1507(b) requires that the additional assistance reasonably assures “prevention of preferential or fraudulent dispositions of property of the debtor.” 11 U.S.C. § 1507(b)(3). Preferential or fraudulent transfers are not permitted under the CCAA, which provides for the recovery of such transfers. CCAA § 36.1(1) (incorporating by reference sections 38, 95, and 101 of Canada’s *Bankruptcy and Insolvency Act*, which allows for preferential or undervalued transactions made by a debtor to be set aside). In any event, the purpose of the Sale Procedures is to ensure that the assets being sold are being disposed of in a value maximizing transaction. Accordingly, the third factor in the section 1507(b) analysis is satisfied due to the CCAA’s prohibition against preferential and/or fraudulent transfers.

46. Recognition and enforcement of the SISP Order is also appropriate under section 1507 of the Bankruptcy Code and will provide the Debtors and parties in interest with certainty that the SISP Order will be enforceable not only in Canada, but also with respect to creditors beyond the jurisdiction of the Canadian Court and within the territorial jurisdiction of the United States. Therefore, recognition and enforcement of the SISP Order will protect and prevent

prejudice to creditors by ensuring uniform application of the SISP Order in Canada and the United States.

III. Section 363 is Applicable upon Recognition Pursuant to Section 1520(a).

47. Section 1520(a)(2) provides, in relevant part, that “[u]pon recognition of a foreign proceeding that is a foreign main proceeding . . . section[] 363 appl[ies] to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the section[] would apply to property of an estate.” 11 U.S.C. § 1520(a)(2). Moreover, section 1520(a)(3) provides that upon recognition of a foreign main proceeding “unless the court orders otherwise, the foreign representative may operate the debtor’s business and may exercise the rights and powers of a trustee under and to the extent provided by section[] 363.” 11 U.S.C. § 1520(a)(3); *In re Fairfield Sentry Ltd.*, 768 F.3d 239, 244 (2d Cir. 2014) (holding that section 363 applies to transfers of assets located within United States outside of ordinary course of business in connection with cases commenced under chapter 15); *see also In re Elpida Memory, Inc.*, No. 12-10947 CSS, 2012 WL 6090194, at *5 (Bankr. D. Del. Nov. 20, 2012) (same). Section 363(b) provides, in pertinent part, that “the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). As described above, the SISP Order sets forth the procedures through which the Debtors and the Monitor will solicit interest in a sale of the Debtors’ assets. Recognition and enforcement of the SISP Order, which grants relief to the Debtors that would otherwise be available to them under section 363, is therefore appropriate and within the Court’s authority pursuant to section 1520(a)(3).

IV. Approval of the SISP Order and the Entry into the Stalking Horse Purchase Agreement is Warranted under Section 363(b).

48. Although section 363 does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of the estate outside the ordinary course of business, courts in this Circuit and elsewhere have found that a debtor's sale or use of assets outside the ordinary course of business should be approved if the debtor can demonstrate a sound business justification for the proposed transaction. *See e.g., In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996); *In re Abbotts Dairies of Penn., Inc.*, 788 F.2d 143, 149-50 (3d Cir. 1986); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *Elpida Memory*, 2012 WL 6090194, at *5 (holding that section 1520(a) “clearly provides that section 363 and, by implication, its standards are applicable” when analyzing sales in chapter 15 cases. “The 363(b) standard is well settled. . . sound exercise of business judgment.”); *In re Grand Prix Assocs.*, No. 09-16545 (DHS), 2009 WL 1850966, at *4 (Bankr. D.N.J. June 26, 2009); *In re Summit Global Logistics, Inc.*, No. 08-11566, 2008 WL 819934, at *9-10 (Bankr. D.N.J. Mar. 26, 2008). Once the Foreign Representative, on behalf of the Debtors, articulates a valid business justification, “[t]he business judgment rule is a presumption that in making the business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.” *In re S.N.A. Nut Co.*, 186 B.R. 98, 102 (Bankr. N.D. Ill. 1995) (internal quotations omitted); *In re Johns-Manville Corp.*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“[A] presumption of reasonableness attaches to a debtor’s management decisions. . .”).

49. The “sound business judgment” test requires a proponent of a sale to establish four elements in order to justify the sale or lease of property outside the ordinary course of business. These factors are (a) that a “sound business purpose” justifies the sale of assets outside the ordinary

course of business, (b) that adequate and reasonable notice has been provided to interested persons, (c) that the trustee or debtor in possession has obtained a fair and reasonable price, and (d) that the purchaser has acted in good faith. *In re Exaeris Inc.*, 380 B.R. 741, 744 (Bankr. D. Del. 2008) (citing *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991)); *Elpida Memory*, 2012 WL 6090194, at *5 (citing same).

50. The Foreign Representative submits that entry into the Stalking Horse Purchase Agreement on the proposed terms set forth in the Restructuring Term Sheet attached to the RSA (including the bid protections set forth therein) and recognition of the SISP Order and the Sale Procedures attached thereto satisfy these four factors. First, sound business purposes justify the Stalking Horse Transaction contemplated under the Stalking Horse Purchase Agreement. The Foreign Representative believes that the Stalking Horse Transaction and the associated sale process pursuant to the Sale Procedures present the best opportunity for the Debtors to maximize the value of their assets. Second, the Foreign Representative believes that the sale process pursuant to the Sale Procedures will establish a fair and reasonable price for the assets. Third, fair and reasonable notice has been provided to interested parties. Pursuant to the sale process supervised by the Monitor and the Canadian Court, the Debtors and their advisors will have engaged in negotiations to solicit higher and better offers. Moreover, known creditors and parties in interest are being served with a copy of this Motion. Fourth, the Foreign Representative respectfully submits that the parties have acted in good faith when negotiating and entering in the Sale Procedures and the Stalking Horse Purchase Agreement.

V. Recognition and Enforcement of the SISP Order is Not Manifestly Contrary to United States Public Policy.

51. Nothing in chapter 15 of the Bankruptcy Code prevents a court from refusing to take an action governed by chapter 15 that would be “manifestly contrary to the public policy of

the United States.” 11 U.S.C. § 1506. Courts have emphasized that “public policy exception” in section 1506 of the Bankruptcy Code is narrow, and its application should be restricted to the most fundamental policies of the United States. *Vitro S.A.B de CV*, 701 F.3d at 1069; *In re Ran*, 607 F.3d at 1021; *see also Collins v. Oilsands Quest Inc.*, 484 B.R. 593, 597 (S.D.N.Y. 2012). A foreign judgment should be accorded comity if the foreign jurisdiction’s proceedings meet fundamental standards of fairness. *Vitro S.A.B de CV*, 701 F.3d at 1069. Notably, the Fifth Circuit has held that United States courts assessing the fairness of a foreign proceeding under the section 1506 public policy exception “need not engage in an independent determination about the propriety of individual acts of a foreign court,” and may not employ the public policy exception simply because some procedural or constitutional rights are absent from the foreign proceeding. *Id.* (noting, for example, that “[f]ederal courts have enforced against U.S. citizens foreign judgments rendered by foreign courts for whom the very idea of a jury trial is foreign”) (quoting *In re Ephedra Prods. Liab. Litig.*, 349 B.R. 333, 336 (S.D.N.Y. 2006)).

52. The recognition and enforcement of the SISP Order does not violate United States public policy. The Canadian Proceedings, operating within the parameters of the CCAA, comply with fundamental standards of fairness and due process, which require that each interested party has notice of proceedings and an opportunity to be heard by a neutral court that contends with each party’s arguments. The SISP Order was only granted after, and provided for procedures furthering, such compliance.

53. Recognition and enforcement of the SISP Order is not offensive to United States public policy, because the Sale Procedures, the RSA, and the Stalking Horse Purchase Agreement are like bidding procedures, support agreements, and stalking horse agreements respectively, frequently utilized in chapter 11 cases. Accordingly, recognizing and enforcing the SISP Order

does not contravene United States public policy, and the relief requested herein is therefore appropriate.

NOTICE

54. Notice of this Motion will be provided in accordance with the Court's *Order (A) Scheduling Hearing on Recognition of Chapter 15 Petition, (B) Specifying Form and Manner of Service of Notice, and (C) Authorizing Redaction of Certain Personally Identifiable Information of Individual Stakeholders* [Docket No. 29].

CONCLUSION

WHEREFORE, for the reasons set forth in this Motion, the Foreign Representative respectfully requests that this Court: (i) enter the proposed order attached to this Motion as **Exhibit A**, recognizing and enforcing the SISP Order; and (ii) grant such other and further relief as this Court determines to be fair and appropriate under the circumstances.

Dated: March 21, 2024
Wilmington, Delaware

Respectfully submitted,

/s/ Gregory J. Flasser

Christopher M. Samis (No. 4909)

L. Katherine Good (No. 5101)

Gregory J. Flasser (No. 6154)

Levi Akkerman (No. 7015)

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Counsel to the Foreign Representative

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

In re:

Canadian Overseas Petroleum Limited, *et al.*,¹

Debtors in a foreign proceeding.

Chapter 15

Case No. 24-10376 (JTD)

(Joint Administration Requested)

Objection Deadline: April 2, 2024 at 4:00 p.m. ET

Hearing Date: April 9, 2024 at 2:30 p.m. ET

**NOTICE OF MOTION OF THE FOREIGN REPRESENTATIVE
FOR ENTRY OF AN ORDER (I) RECOGNIZING AND
ENFORCING THE SISP ORDER AND (II) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that Canadian Overseas Petroleum Limited (“COPL”), in its capacity as the duly-appointed foreign representative (the “Foreign Representative”) for the above-captioned debtors (collectively, the “Debtors”), in the proceedings (the “Canadian Proceedings”)² currently pending before the Court of King’s Bench of Alberta in Calgary (the “Canadian Court”), initiated under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the “CCAA”), by and through its undersigned counsel, filed the *Motion of the Foreign Representative for Entry of an Order (I) Recognizing and Enforcing the SISP Order and (II) Granting Related Relief* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

¹ The Debtors in these chapter 15 proceedings, together with the last four digits of their business identification numbers are: Canadian Overseas Petroleum Limited (8749); COPL Technical Services Limited (1656); Canadian Overseas Petroleum (Ontario) Limited (8319); Canadian Overseas Petroleum (UK) Limited (7063); Canadian Overseas Petroleum (Bermuda Holdings) Limited (N/A); Canadian Overseas Petroleum (Bermuda) Limited (N/A); COPL America Holding Inc. (1334); COPL America Inc. (9018); Atomic Oil and Gas LLC (8233); Southwestern Production Corporation (8694); and Pipeco LLC (0925). The location of the Debtors’ headquarters and the Debtors’ duly appointed foreign representative is 715 5 Avenue SW, Suite 3200, Calgary, Alberta T2P 2X6, Canada.

² Information on the Canadian Proceedings and documents filed in connection therewith, including reports from the Monitor (as defined herein) and motion materials, can be found at the website of the Monitor at <https://www.ksvadvisory.com/experience/case/canadian-overseas-petroleum>.

PLEASE TAKE FURTHER NOTICE that objections to the Motion, if any, must be in writing, filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 N. Market Street, Wilmington, Delaware 19801, on or before **April 2, 2024 at 4:00 p.m. (ET)** (the “Objection Deadline”), and served upon and received by the undersigned counsel for the Foreign Representative.

PLEASE TAKE FURTHER NOTICE that, if any objections to the Motion are received, the Motion and such objections shall be considered at a hearing before the Honorable John T. Dorsey at the Bankruptcy Court, 824 N. Market Street, 5th Floor, Courtroom No. 5, Wilmington, Delaware 19801 on **April 9, 2024 at 2:30 p.m. (ET)**.

IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: March 21, 2024
Wilmington, Delaware

Respectfully submitted,

/s/ Gregory J. Flasser

Christopher M. Samis (No. 4909)

L. Katherine Good (No. 5101)

Gregory J. Flasser (No. 6154)

Levi Akkerman (No. 7015)

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Counsel to the Foreign Representative

Exhibit A

Proposed Order

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

In re:

Canadian Overseas Petroleum Limited, *et al.*,¹

Debtors in a foreign proceeding.

Chapter 15

Case No. 24-10376 (JTD)

(Jointly Administered)

Re: Docket No: __

**ORDER (I) RECOGNIZING AND ENFORCING
THE SISF ORDER AND (II) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)² filed by the Foreign Representative as the “foreign representative” of the Debtors, under sections 105, 363, 1507, 1520, and 1521 of the Bankruptcy Code, for entry of an order (this “Order”): (a) Recognizing and enforcing the SISF Order, attached hereto as **Exhibit 1**, approving, among other things, (i) the Sale Procedures, (ii) the Debtors’ entry into the Stalking Horse Purchase Agreement, and (iii) the Break-Up Fee; and (b) granting such other relief as the Court deems just and proper, all as more fully set forth in the Motion; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and 11 U.S.C. §§ 109 and 1501; and venue being proper before this Court pursuant to § 1410; and the Motion being a core proceeding pursuant to 28 U.S.C. § 157(b); and that this Court may enter a final order consistent with Article III of the United States Constitution; and adequate and sufficient notice of the filing of the Motion having been given by the Foreign Representative; and it appearing that the relief requested in the Motion is necessary and

¹ The Debtors in these chapter 15 proceedings, together with the last four digits of their business identification numbers are: Canadian Overseas Petroleum Limited (8749); COPL Technical Services Limited (1656); Canadian Overseas Petroleum (Ontario) Limited (8319); Canadian Overseas Petroleum (UK) Limited (7063); Canadian Overseas Petroleum (Bermuda Holdings) Limited (N/A); Canadian Overseas Petroleum (Bermuda) Limited (N/A); COPL America Holding Inc. (1334); COPL America Inc. (9018); Atomic Oil and Gas LLC (8233); Southwestern Production Corporation (8694); and Pipeco LLC (0925). The location of the Debtors’ headquarters and the Debtors’ duly appointed foreign representative is 715 5 Avenue SW, Suite 3200, Calgary, Alberta T2P 2X6, Canada.

² Capitalized terms used but not otherwise defined herein will have the meaning ascribed to them in the Motion.

beneficial to the Debtors; and this Court having held a hearing to consider the relief requested in the Motion; and there being no objections or other responses filed that have not been overruled, withdrawn, or otherwise resolved; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. On March 19, 2024, the Canadian Court granted the SISP Order, approving among other things, (a) the Sale Procedures, (b) the Debtors' entry into the Stalking Horse Purchase Agreement, and (c) the Break-Up Fee.

B. The relief granted hereby is necessary and appropriate to effectuate the objectives of chapter 15 of the Bankruptcy Code to protect the Debtors and the interests of their creditors and other parties in interest, and is consistent with the laws of the United States, international comity, public policy, and the policies of the Bankruptcy Code, and will not cause any hardship to any party in interest that is not outweighed by the benefits of the relief granted because the parties in interest in these cases are sufficiently protected by the provisions in the SISP Order and this Order.

C. Absent the requested relief, the efforts of the Debtors, the Canadian Court, and the Foreign Representative in conducting the Canadian Proceedings and effectuating the restructuring under Canadian law may be frustrated, a result contrary to the purposes of chapter 15 of the Bankruptcy Code.

D. Good, sufficient, appropriate, and timely notice of the filing of, and the hearing on, the Motion was given, which notice is adequate for all purposes, and no further notice need be given.

E. The Sale Procedures and the Stalking Horse Purchase Agreement were negotiated and entered into in good faith.

F. All creditors and other parties in interest, including the Debtors, are sufficiently protected by the grant of relief ordered hereby.

BASED ON THE FOREGOING FINDINGS OF FACT AND AFTER DUE DELIBERATION AND SUFFICIENT CAUSE APPEARING THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth in this Order.
2. All objections, if any, to the Motion or the relief requested in the Motion that have not been withdrawn, waived, or settled by stipulation filed with the Court, and all reservations of rights included therein, are hereby overruled on the merits.
3. The SISP Order, and all of its respective terms, including any immaterial or administrative amendments thereto, including those necessary to give effect to the substance of such order, either as provided in the SISP Order or as approved by the Canadian Court, are fully recognized and given full force and effect within the territorial jurisdiction of the United States.
4. The Sale Procedures, including all deadlines and requirements therein as set forth in the SISP Order, are hereby fully recognized and given full force and effect in the United States, including the bidding procedures for the sale of assets and/or equity of the Debtors located in the territorial jurisdiction of the United States, and shall apply with respect to parties located in the United States.
5. This Court retains jurisdiction to enforce the terms and provisions of the SISP Order in the territorial jurisdiction of the United States.
6. The portion of the SISP Order that authorized and approved the Debtors' entry into the Stalking Horse Purchase Agreement (including the Break-Up Fee and Expense Reimbursement), each on the terms set forth in the SISP Order is recognized by this Court and is enforceable within the territorial jurisdiction of the United States.

7. The failure specifically to include any particular provision of the SISP Order in this Order shall not diminish or impair the effectiveness of such provision.

8. The Debtors and any party to the RSA or the Stalking Horse Purchase Agreement may exercise the respective rights and remedies available to them under the RSA or the Stalking Horse Purchase Agreement in the territorial jurisdiction of the United States in accordance with the terms thereof and the SISP Order, but only to the extent approved by the SISP Order.

9. All persons and entities subject to the jurisdiction of the United States are permanently enjoined and restrained from taking any actions inconsistent with, or interfering with the enforcement and implementation of, the SISP Order or any documents incorporated by the foregoing.

10. Nothing in this Order ratifies, approves, and/or recognizes the sale and/or vesting of any property pursuant to the Stalking Horse Purchase Agreement, and all rights, claims, objections, and interests of any interested party, at law or in equity, with respect to the proposed sale and vesting of property pursuant to the Stalking Horse Purchase Agreement or Successful Bid (as defined in the Sale Procedures) are not waived and are expressly preserved and may be asserted in the Canadian Proceedings in accordance with the applicable rules and procedures applicable in the Canadian Court.

11. The Foreign Representative is authorized to take all actions it deems necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion and the SISP Order.

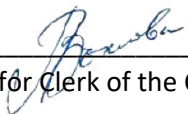
12. Notwithstanding any provisions in the Bankruptcy Rules to the contrary, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

13. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

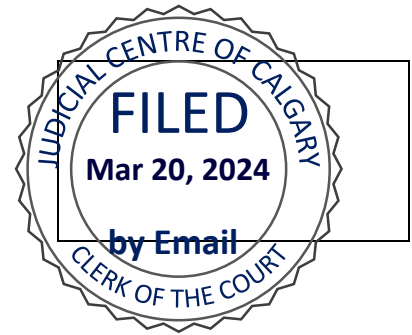
Exhibit 1

SISP Order

I hereby certify this to be a true copy of
the original SISP APPROVAL ORDER
Dated this 20 day of MARCH, 2024


for Clerk of the Court

Clerk's Stamp:



COURT FILE NUMBER
COURT
JUDICIAL CENTRE OF

2401-03404
COURT OF KING'S BENCH OF ALBERTA
CALGARY

APPLICANTS:

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

AND IN THE MATTER OF THE COMPROMISE OR
ARRANGEMENT OF CANADIAN OVERSEAS
PETROLEUM LIMITED AND THOSE ENTITIES
LISTED IN SCHEDULE "A"

DOCUMENT
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT:

SISP APPROVAL ORDER
OSLER, HOSKIN & HARCOURT LLP
6200 - 1 First Canadian Place
Toronto, Ontario M5X 1B8
Solicitor: Marc Wasserman / Shawn Irving / Dave
Rosenblat
Telephone: 416.862.4908 / 4733 / 5673
Facsimile: 416.862.6666
Email: mwasserman@osler.com / sirving@osler.com /
drosenblat@osler.com
File Number: 1252079

**DATE ON WHICH ORDER
WAS PRONOUNCED:**
**NAME OF JUDGE WHO
MADE THIS ORDER:**
LOCATION OF HEARING:

March 19, 2024
The Honourable Justice Johnston
Calgary, Alberta

UPON THE APPLICATION of CANADIAN OVERSEAS PETROLEUM LIMITED
and those entities listed in Schedule "A" hereto (collectively, the "**Applicants**"); **AND UPON**
having read the Application, the Affidavit of Peter Kravitz, sworn March 7, 2024 (the "**First**

Kravitz Affidavit”), the Affidavit of Peter Kravitz sworn March 14, 2024 (the “**Second Kravitz Affidavit**”); **AND UPON** reading the Pre-Filing Report of KSV Restructuring Inc. (“**KSV**”) dated March 8, 2024, the First Report of KSV in its capacity as monitor of the Applicants (the “**Monitor**”), dated March 15, 2024 (the “**First Report**”); **AND UPON** being advised that the secured creditors who are likely to be affected by the charges created herein have been provided notice of this application and either do not oppose or alternatively consent to the within Order; **AND UPON** hearing counsel for the Applicants, counsel for the Monitor, and counsel for any other party present at the application; **IT IS HEREBY ORDERED AND DECLARED THAT:**

SERVICE

1. The time for service of the notice of application for this order (the “**Order**”) is hereby abridged and deemed good and sufficient and this application is properly returnable today.

DEFINITIONS

2. Capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Sale and Investment Solicitation Process in respect of the business and assets of the Applicants, in the form attached hereto as Schedule “B” (the “**SISP**”), the Amended and Restated Initial Order of this Court dated March 19, 2024 (the “**ARIO**”) or the Second Kravitz Affidavit, as applicable.

SALE AND INVESTMENT SOLICITATION PROCESS

3. The SISP is hereby approved and the Applicants and the Monitor are hereby authorized and directed to implement the SISP pursuant to the terms thereof. The Applicants and the Monitor are hereby authorized and directed to perform their respective obligations and to do all things reasonably necessary to perform their obligations thereunder, subject to prior approval of the Court being obtained before completion of any transaction(s) under the SISP.
4. The Applicants and the Monitor and their respective affiliates, partners, directors, officers, employees, legal advisors, representatives, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the SISP, except to the extent of

losses, claims, damages or liabilities that arise or result from the gross negligence or wilful misconduct of the Applicants or the Monitor, as applicable, in performing their obligations under the SISP, as determined by this Court.

5. In conducting the SISP, the Monitor shall have all of the benefits and protections granted to it under the CCAA, the ARIO and any other Order of this Court in the within proceeding.

STALKING HORSE PURCHASE AGREEMENT

6. The Applicants are hereby authorized and empowered to enter into an agreement of purchase and sale with Summit Partners Credit Fund III, L.P.; Summit Investors Credit III, LLC; and Summit Investors Credit III (UK), L.P. and Summit Investors Credit Offshore Intermediate Fund III, L.P. (collectively, the “**Stalking Horse Purchaser**”), which shall be substantially on the terms set out in the Restructuring Term Sheet attached as Exhibit “B” to the Restructuring Support Agreement (“**RSA**”), with such minor amendments as may be acceptable to each of the parties thereto, with the approval of the Monitor; provided that, nothing herein approves the sale and the vesting of any Property to the Stalking Horse Purchaser (or any of its designees) pursuant to the Stalking Horse Purchase Agreement and that the approval of any sale and vesting of any such Property shall be considered by this Court on a subsequent application made to this Court if the transaction set out in the Stalking Horse Purchase Agreement is the Successful Bid pursuant to the SISP.
7. As soon as reasonably practicable following the Applicants and the Stalking Horse Purchaser executing the Stalking Horse Purchase Agreement, which shall occur no later than March 23, 2024, or such later date as consented to by the Monitor, the Monitor shall post a copy thereof on its website, and the Applicants shall:
 - (a) serve a copy thereof on the Service List; and
 - (b) provide a copy thereof to each SISP Participant (as hereinafter defined), excluding from the public record any confidential information that the Applicants and the Stalking Horse Purchaser, with the consent of the Monitor, agree should be redacted.

BID PROTECTIONS

8. The Bid Protections are hereby approved and, subject to the entry of the Stalking Horse Purchase Agreement, the Applicants are hereby authorized and directed to pay the Bid Protections to the Stalking Horse Purchaser (or to such other person as it may direct) in the manner and circumstances described in the RSA and the Stalking Horse Purchase Agreement.
9. The Stalking Horse Purchaser shall be entitled to the benefit of and is hereby granted a charge (the “**Bid Protections Charge**”) on the Property, which charge shall not exceed \$500,000 as security for payment of the Bid Protections in the manner and circumstances described in the Stalking Horse Purchase Agreement.
10. The filing, registration or perfection of the Bid Protections Charge shall not be required, and the Bid Protections Charge shall be valid and enforceable for all purposes, including against any right, title or interest filed, registered, recorded or perfected subsequent to the Bid Protections Charge, notwithstanding any such failure to file, register, record or perfect.
11. The Bid Protections Charge shall constitute a charge on the Property and the Bid Protections Charge shall rank in priority to all other Encumbrances in favour of any Person notwithstanding the order of perfection or attachment, other than the Charges.
12. Except for the Charges or as may be approved by this Court on notice to parties in interest, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, the Bid Protections Charge, unless the Applicants also obtain the prior written consent of the Monitor and the Stalking Horse Purchaser.
13. The Bid Protections Charge shall not be rendered invalid or unenforceable and the rights and remedies of the Stalking Horse Purchaser in respect of the Bid Protections Charge shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any

federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an “Agreement”) which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Bid Protections Charge nor the execution, delivery, perfection, registration or performance of the Stalking Horse Purchase Agreement shall create or be deemed to constitute a breach by any of the Applicants of any Agreement to which any of the Applicants is a party; and
 - (b) the payments made by the Applicants pursuant to this Order, the Stalking Horse Purchase Agreement and the granting of the Bid Protections Charge, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.
14. The Bid Protections Charge created by this Order over leases of real property shall only be a charge in the applicable Applicant 's interest in such real property lease.
15. The Stalking Horse Purchaser, with respect to the Bid Protections Charge only, shall be treated as unaffected in any plan of arrangement or compromise filed by the Applicants under the CCAA, or any proposal filed by the Applicants under the BIA.

PIPEDA

16. Pursuant to section 20(e) of the *Personal Information Protection Act* (Alberta), and any similar legislation in any other applicable jurisdictions, the Applicants or the Monitor and their respective advisors are hereby authorized and permitted to disclose and transfer to prospective SISP participants that are party to a non-disclosure agreement with the Applicants (each, a “**SISP Participant**”) and their respective advisors personal information of identifiable individuals, but only to the extent required to negotiate or attempt to complete a transaction pursuant to the SISP (a “**Transaction**”). Each SISP Participant to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to the SISP Participant's

evaluation for the purpose of effecting a Transaction, and, if a SISP Participant does not complete a Transaction, shall return all such information to the Applicants or the Monitor, or, in the alternative, destroy all such information and provide confirmation of its destruction if requested by the Applicants or the Monitor.

GENERAL

17. This Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States of America, or in any foreign jurisdiction, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants, and the Monitor and their respective agents in carrying out the terms of this Order.

18. This Order and all of its provisions are effective as of 12:01 a.m. Mountain Standard Time on the date of this Order.

BB Johnston

Justice of the Court of King's Bench of Alberta

SCHEDULE "A"

Applicants

Canadian Overseas Petroleum Limited

COPL Technical Services Limited

Canadian Overseas Petroleum (UK) Limited

Canadian Overseas Petroleum (Bermuda) Limited

Canadian Overseas Petroleum (Bermuda Holdings) Limited

Canadian Overseas Petroleum (Ontario) Limited

COPL America Holding Inc.

COPL America Inc.

Atomic Oil & Gas LLC

Southwestern Production Corp.

Pipeco LLC

SCHEDULE "B"

SISP

See attached.

Sale and Investment Solicitation Process

1. On March 19, 2024, the Alberta Court of King's Bench (the "**Court**") granted an order (the "**SISP Order**") that, among other things, (a) authorized the COPL Entities to implement a sale and investment solicitation process ("**SISP**") in accordance with the terms hereof, (b) approved the Support Agreement, (c) authorized and directed the COPL Entities to enter into the Stalking Horse Purchase Agreement, and (d) approved the Break-Up Fee. Capitalized terms that are not defined herein have the meanings ascribed thereto in the Amended & Restated Initial Order granted by the Court in the COPL Entities' proceedings under the *Companies' Creditors Arrangement Act* on March 19, 2024, as amended, restated or supplemented from time to time, or the SISP Order, as applicable.
2. This SISP sets out the manner in which (i) binding bids for executable transaction alternatives that are superior to the sale transaction provided for in the Stalking Horse Purchase Agreement involving the shares and/or the business and assets of the COPL Entities will be solicited from interested parties, (ii) any such bids received will be addressed, (iii) any Successful Bid (as defined below) will be selected, and (iv) Court approval of any Successful Bid will be sought. Such transaction alternatives may include, among other things, a sale of some or all of the COPL Entities' shares, assets and/or business and/or an investment in the COPL Entities, each of which shall be subject to all terms set forth in this SISP.
3. The SISP shall be conducted by the COPL Entities, with the assistance of the Financial Advisor and oversight of KSV Restructuring Inc., in its capacity as court-appointed monitor (the "**Monitor**").
4. Parties who wish to have their bids considered shall participate in the SISP in accordance with the terms herein.
5. The SISP will be conducted such that the COPL Entities will, with the assistance of the Financial Advisor and oversight of the Monitor:
 - a) prepare marketing materials and a process letter;
 - b) prepare and provide applicable parties with access to a data room containing diligence information;
 - c) solicit interest from parties to enter into non-disclosure agreements (parties shall only obtain access to the data room and be permitted to participate in the SISP if they execute a non-disclosure agreement that is in form and substance satisfactory to the COPL Entities); and
 - d) request that such parties (other than the Stalking Horse Bidder or its designee) submit (i) a letter of intent to bid that identifies the potential bidder (which, for the avoidance of doubt, may be a purchaser or an investor) and a general description of the assets and/or business(es) of the COPL Entities that would be the subject of the bid and that reflects a reasonable prospect of culminating in a Qualified Bid (as defined below), as determined by the COPL Entities in consultation with the Monitor and the Consenting Lenders (as defined in the Support Agreement) (a

“**LOI**”) by the LOI Deadline (as defined below) and, if applicable, (ii) a binding offer meeting at least the requirements set forth in Section 7 below, as determined by the COPL Entities in consultation with the Monitor (a “**Qualified Bid**”) by the Qualified Bid Deadline (as defined below).

6. The SISP shall be conducted subject to the terms hereof and the following key milestones:
 - a) Court approval of SISP and authorizing the applicable COPL Entities to enter into the Stalking Horse Purchase Agreement, and commencement by COPL Entities of solicitation process – March 19, 2024;
 - b) Deadline to submit LOI – 11:59 p.m. Mountain Time on April 17, 2024 (the “**LOI Deadline**”);
 - c) Deadline to submit a Qualified Bid – 11:59 p.m. Mountain Time on May 2, 2024 (the “**Qualified Bid Deadline**”);
 - d) Deadline to determine whether a bid is a Qualified Bid and, if applicable, to notify those parties who submitted a Qualified Bid of the Auction (as defined below) – 5:00 p.m. Mountain Time on May 6, 2024;
 - e) The COPL Entities to hold Auction (if applicable) – 10:00 a.m. Mountain Time on May 8, 2024; and
 - f) Implementation Order (as defined below) hearing:
 - o (if no LOI is submitted) – by no later than 9 days after the LOI Deadline subject to Court availability.
 - o (if there is no Auction) – by no later than 9 days after the Qualified Bid Deadline, subject to Court availability.
 - o (if there is an Auction) – by no later than 9 days after completion of the Auction, subject to Court availability.
7. In order to constitute a Qualified Bid, a bid must comply with the following:
 - a. it provides for (i) the payment in full in cash on closing of the DIP Financing (as defined in the Support Agreement), the Expense Reimbursement, and the Break-up Fee, plus cash consideration equal to at least \$250,000; (ii) payment in full in cash of all amounts outstanding under the Credit Agreement, unless otherwise agreed to by the lenders thereunder in their sole discretion; (iii) the payment in full in cash on closing of any claims ranking in priority to the foregoing, including any claims secured by Court-ordered charges, unless otherwise agreed to by the applicable holders thereof in their sole discretion (the proposal set out above, a “**Superior Proposal**”);
 - b. it provides a detailed sources and uses schedule that identifies, with specificity, the amount of cash consideration (the “**Cash Consideration Value**”) and any assumptions that could reduce the net consideration payable;

- c. it is reasonably capable of being consummated within 30 days after completion of the Auction if selected as the Successful Bid;
- d. it contains:
 - i. duly executed binding transaction document(s);
 - ii. the legal name and identity (including jurisdiction of existence) and contact information of the bidder, full disclosure of its direct and indirect principals, and the name(s) of its controlling equityholder(s);
 - iii. a redline to the Stalking Horse Purchase Agreement, unless the bid is in the form of a plan of arrangement, in which case copies of the plan of arrangement and all documentation that is contemplated to be executed in connection therewith shall be provided;
 - iv. evidence of authorization and approval from the bidder's board of directors (or comparable governing body) and, if necessary to complete the transaction, the bidder's equityholder(s);
 - v. disclosure of any connections or agreements with the COPL Entities or any of its affiliates, any known, potential, prospective bidder, or any officer, manager, director, or known equity security holder of the COPL Entities or any of its affiliates; and
 - vi. such other information reasonably requested by the COPL Entities or the Monitor;
- e. it includes a letter stating that the bid is submitted in good faith, is binding and is irrevocable until the selection of the Successful Bid; provided, however, that if such bid is selected as the Successful Bid, it shall remain irrevocable until the closing of the Successful Bid;
- f. it provides written evidence of a bidder's ability to fully fund and consummate the transaction and satisfy its obligations under the transaction documents, including binding equity/debt commitment letters and/or guarantees covering the full value of all cash consideration and the additional items (in scope and amount) covered by the guarantees provided by affiliates of the Purchaser in connection with the Stalking Horse Purchase Agreement;
- g. it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
- h. it is not conditional upon:
 - i. approval from the bidder's board of directors (or comparable governing body) or equityholder(s);
 - ii. the outcome of any due diligence by the bidder; or
 - iii. the bidder obtaining financing;
- i. it includes an acknowledgment and representation that the bidder has had an opportunity to conduct any and all required due diligence prior to making its bid, and that the transaction that is the subject of the bid shall be on an "as is, where is" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature or description by the COPL Entities, except to the extent set forth in a written agreement as between the Purchaser and the COPL Entities (as applicable).
- j. it specifies any regulatory or other third-party approvals the party anticipates would be required to complete the transaction (including the anticipated timing necessary

- to obtain such approvals and any approvals/authority to hold oil and gas licenses and permits);
- k. it includes full details of the bidder's intended treatment of the COPL Entities' employees under the proposed bid;
 - l. it is accompanied by a cash deposit (the "**Deposit**") by wire transfer of immediately available funds equal to 10% of the Cash Consideration Value, which Deposit shall be retained by the Monitor in a non-interest bearing trust account in accordance with this SISP;
 - m. a statement that the bidder will bear its own costs and expenses (including legal and advisor fees) in connection with the proposed transaction, and by submitting its bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis; and
 - n. it is received by the Qualified Bid Deadline.
8. The COPL Entities, in consultation with the Monitor, may waive compliance with any one or more of the requirements specified in Section 7 above and deem a non-compliant bid to be a Qualified Bid, provided that the COPL Entities shall not waive compliance with the requirements specified in Subsections 7(a), (b), (d), (e), (f), (g), (i) or (l) without the prior written consent of the Stalking Horse Bidder and Consenting Lenders.
 9. Notwithstanding the requirements specified in Section 7 above, the transaction contemplated by the Stalking Horse Purchase Agreement (the "**Stalking Horse Transaction**"), is deemed to be a Qualified Bid, provided that, for greater certainty, no Deposit shall be required to be submitted in connection with the Stalking Horse Transaction.
 10. If one or more Qualified Bids (other than the Stalking Horse Transaction) has been received by the COPL Entities on or before the Qualified Bid Deadline, the COPL Entities shall proceed with an auction process to determine the successful bid(s) (the "**Auction**"), which Auction shall be administered in accordance with Schedule "A" hereto. The successful bid(s) selected within the Auction shall constitute the "**Successful Bid**". Forthwith upon determining to proceed with an Auction, the COPL Entities shall provide written notice to each party that submitted a Qualified Bid (including the Stalking Horse Transaction), along with copies of all Qualified Bids and a statement by the COPL Entities specifying which Qualified Bid is the leading bid.
 11. If, by the LOI Deadline no LOI has been received, then the SISP shall be deemed to be terminated and the Stalking Horse Transaction shall be the Successful Bid and shall be consummated in accordance with and subject to the terms of the Support Agreement and the Stalking Horse Purchase Agreement. If no Qualified Bid (other than the Stalking Horse Transaction) has been received by the COPL Entities on or before the Qualified Bid Deadline, then the Stalking Horse Transaction shall be the Successful Bid and shall be consummated in accordance with and subject to the terms of the Support Agreement and the Stalking Horse Purchase Agreement.

12. Following selection of a Successful Bid, the COPL Entities, with the assistance of its advisors, shall seek to finalize any remaining necessary definitive agreement(s) with respect to the Successful Bid in accordance with the key milestones set out in Section 6. Once the necessary definitive agreement(s) with respect to a Successful Bid have been finalized, as determined by the COPL Entities, in consultation with the Monitor, the COPL Entities shall apply to the Court for an order or orders approving such Successful Bid and/or the mechanics to authorize the COPL Entities to complete the transactions contemplated thereby, as applicable, and authorizing the COPL Entities to (i) enter into any and all necessary agreements and related documentation with respect to the Successful Bid, (ii) undertake such other actions as may be necessary to give effect to such Successful Bid, and (iii) implement the transaction(s) contemplated in such Successful Bid (each, an **“Implementation Order”**).
13. All Deposits shall be retained by the Monitor in a non-interest bearing trust account. If a Successful Bid is selected and an Implementation Order authorizing the consummation of the transaction contemplated thereunder is granted, any Deposit paid in connection with such Successful Bid will be non-refundable and shall, upon closing of the transaction contemplated by such Successful Bid, be applied to the cash consideration to be paid in connection with such Successful Bid or be dealt with as otherwise set out in the definitive agreement(s) entered into in connection with such Successful Bid. Any Deposit delivered with a Qualified Bid that is not selected as a Successful Bid, will be returned to the applicable bidder as soon as reasonably practicable (but not later than ten (10) business days) after the date upon which the Successful Bid is approved pursuant to an Implementation Order or such earlier date as may be determined by the COPL Entities, in consultation with the Monitor.
14. The COPL Entities shall provide the Consenting Lenders with such information relating to the SISP as is required under the Support Agreement.
15. Any amendments to this SISP may only be made by: (a) the COPL Entities with the written consent of the Monitor and after consultation with the Consenting Lenders, provided that the COPL Entities shall not amend Subsections 7(a), (b), (d), (e), (f), (g), (i) or (l) or Section 13 without the prior written consent of the Stalking Horse Bidder and the Consenting Lenders.

SCHEDULE "A": AUCTION PROCEDURES

1. **Auction.** If the COPL Entities receive at least one Qualified Bid (other than the Stalking Horse Transaction), the Monitor will conduct and administer the Auction in accordance with the terms of the SISP. Instructions to participate in the Auction, which will take place via video conferencing, will be provided to Qualified Parties (as defined below) not less than 24 hours prior to the Auction.

2. **Participation.** Only parties that provided a Qualified Bid by the Qualified Bid Deadline, including the Stalking Horse Transaction (collectively, the "**Qualified Parties**"), shall be eligible to participate in the Auction. No later than 5:00 p.m. Mountain Time on the day prior to the Auction, each Qualified Party (other than the Stalking Horse Bidder) must inform the Monitor and the COPL Entities whether it intends to participate in the Auction. The Monitor will promptly thereafter inform in writing each Qualified Party who has expressed its intent to participate in the Auction of the identity of all other Qualified Parties that have indicated their intent to participate in the Auction. If no Qualified Party provides such expression of intent, the Stalking Horse Transaction shall be the Successful Bid.

3. **Auction Procedures.** The Auction shall be governed by the following procedures:

- a. **Attendance.** Only the COPL Entities, the Qualified Parties, the Monitor and each of their respective advisors will be entitled to attend the Auction, and only the Qualified Parties will be entitled to make any subsequent Overbids (as defined below) at the Auction;
- b. **Minimum Overbid.** The Auction shall begin with the Qualified Bid that represents the highest or otherwise best Qualified Bid as determined by the COPL Entities, in consultation with the Monitor (the "**Initial Bid**"), and any bid made at the Auction by a Qualified Party subsequent to the COPL Entities' announcement of the Initial Bid (each, an "**Overbid**"), must proceed in minimum additional cash increments of \$250,000;
- c. **Bidding Disclosure.** The Auction shall be conducted such that all bids will be made and received in one group video-conference, on an open basis, and all Qualified Parties will be entitled to be present for all bidding with the understanding that the true identity of each Qualified Party will be fully disclosed to all other Qualified Parties and that all material terms of each subsequent bid will be fully disclosed to all other Qualified Parties throughout the entire Auction; provided, however, that the Monitor, in its discretion, may establish separate video conference rooms to permit interim discussions between the COPL Entities and individual Qualified Parties with the understanding that all formal bids will be delivered in one group video conference, on an open basis;
- d. **Bidding Conclusion.** The Auction shall continue in one or more rounds and will conclude after each participating Qualified Party has had the

opportunity to submit one or more additional bids with full knowledge and written confirmation of the then-existing highest bid(s); and

- e. **No Post-Auction Bids.** No bids will be considered for any purpose after the Auction has concluded.
- f. **Auction Cancellation/Postponement.** The COPL Entities, in consultation with the Consenting Lenders, and with the approval of with the Monitor, reserve the right to cancel or postpone the Auction.
- g. **Additional Rules.** Except as otherwise set forth herein, the COPL Entities may establish additional rules for conducting the Auction, provided that such rules are: (a) disclosed to each participating Qualified Party; (b) designed, in the COPL Entities' business judgment, to result in the highest and otherwise best offer; (c) approved by the Monitor; and (d) not contrary to any material term set out herein.

4. **Selection.** Before the conclusion of the Auction, the COPL Entities, in consultation with the Monitor, will: (a) review each Qualified Bid, considering the factors set out in Section 7 of the SISP and, among other things, (i) the amount of consideration being offered and, if applicable, the proposed form, composition and allocation of same, (ii) the value of any assumption of liabilities or waiver of liabilities not otherwise accounted for in prong (i) above; (iii) the likelihood of the Qualified Party's ability to close a transaction within thirty (30) days after completion of the Auction and the timing thereof (including factors such as the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments; and required governmental or other approvals), (iv) the likelihood of the Court's approval of the Successful Bid, and (v) any other factors the COPL Entities may, consistent with its fiduciary duties, reasonably deem relevant; and (b) identify the highest or otherwise best bid received at the Auction (the "**Successful Bid**" and the Qualified Party making such bid, the "**Successful Party**").

5. **Acknowledgement.** The Successful Party shall complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid was made within one business day of the Successful Bid being selected as such, unless extended by the COPL Entities, after consultation with the Monitor, subject to the milestones set forth in Section 6 of the SISP.