

POSEIDON CONCEPTS CORP. SECURITIES LITIGATION

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

AND IN THE MATTER OF

**POSEIDON CONCEPTS CORP., POSEIDON CONCEPTS LTD.,
POSEIDON CONCEPTS LIMITED PARTNERSHIP
AND POSEIDON CONCEPTS INC.**

**NOTICE OF APPLICATIONS FOR APPROVAL OF THE PROPOSED
CLAIMS AND DISTRIBUTION PROTOCOL, CLASS COUNSEL FEES
AND EXPENSES, AND RELATED MATTERS**

READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS

THIS NOTICE IS TO all persons and entities who purchased or otherwise acquired securities of Poseidon Concepts Corp. on or before February 14, 2013, excluding the Excluded Persons ("Class").¹

TAKE NOTICE that Courts in Canada and the United States have approved and recognized the Amended Plan of Compromise and Arrangement dated April 6, 2018 ("**Amended Plan**") with respect to Poseidon Concepts Corp and its related entities (collectively, "**Poseidon**") and the

¹ In accordance with Order of the Alberta Court dated May 30, 2013, made in Poseidon's insolvency proceeding, Action No. 1301-04363, the following persons and entities are excluded from the proposed class action because they are defendants in the Poseidon-related class actions or are related to the defendants in those actions: Poseidon and its past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns; New Open Range and its past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns; any individual who is an immediate member of the family of a past or present director or officer of Poseidon Concepts or New Open Range; National Bank of Canada, National Bank Financial Inc, BMO Nesbitt Burns Inc, CIBC World Markets Inc, Haywood Securities Inc, Peters & Co Limited, Canaccord Genuity Corp, Cormark Securities Inc, Dundee Securities Ltd and FirstEnergy Capital Corp (collectively, the "Financial Institutions"), and each Financial Institution's past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns; KPMG LLP and its past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns; and Peyto Exploration & Development Corp and its past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, predecessors, successors and assigns.

Global Settlement, made within Poseidon's insolvency proceeding brought in the Alberta Court of Queen's Bench ("**Alberta Court**").

The Amended Plan and the Global Settlement were previously announced on April 23, 2018.

Accordingly, the Amended Plan and the Global Settlement have become final and they have been implemented.

On behalf of the Class Representatives, Class Counsel are bringing applications before the Alberta Court for approval of a proposed Claims and Distribution Protocol, Class Counsel's fees and expenses, and related matters. Subject to approval by the Alberta Court, these applications will determine the manner of use of the settlement funds and the distribution of the settlement funds net of legal fees and expenses among eligible shareholders of Poseidon.

The purpose of this Notice is to advise you of the proposed Claims and Distribution Protocol and Class Counsel's request for approval of their fees and expenses, and certain related matters.

If you have any questions after having reviewed this Notice, please contact Class Counsel using the information provided below.

The Alberta Court is scheduled to hear the applications on September 21, 2018 at the Calgary Courts Centre.

If you have no concerns regarding the matters discussed in this Notice, you are not required to do anything at this time. After the Alberta Court has approved the Claims and Distribution Protocol, a further notice will be issued which will advise the eligible Poseidon shareholders of the steps they must take in order to claim compensation.

However, if wish to object to the proposed Claims and Distribution Protocol or Class Counsel's fees and expenses, you must complete the Objection Form attached hereto and submit it to Class Counsel **by no later than Thursday, September 20, 2018 at noon, Calgary time**. Class Counsel will forward all complete Objection Forms to the Alberta Court's attention.

BACKGROUND OF POSEIDON

Poseidon was a public company based in Calgary, Alberta, that carried on business as a provider of energy services solutions. Poseidon was created in November 2011 as a result of a spin-off transaction whereby Open Range Energy Corp. split its business and assets into two separate public companies, one being Poseidon and the other being a new Open Range Energy Corp. ("**New Open Range**"). Poseidon's common shares traded on the Toronto Stock Exchange under ticker symbol "**PSN**" and in the United States on over-the-counter Pink Sheets under ticker "**POOSF**."

Poseidon manufactured and rented above-ground fluid handling tanks to oil and gas producing companies in Canada and the United States. In a series of disclosures made between November

2012 and February 2013, Poseidon disclosed that it had improperly recorded significant revenues and accounts receivable, and that it had to restate its financial statements. Upon these revelations, Canadian securities regulators issued orders prohibiting trading in Poseidon's securities, and Poseidon's common shares were delisted from the Toronto Stock Exchange. Soon after, Poseidon commenced insolvency proceedings in the Alberta Court and the United States Bankruptcy Court for the District of Colorado. Within the context of those proceedings, Poseidon ceased operating and substantially all of its assets were sold.

POSEIDON-RELATED CLASS ACTIONS

In late-2012 and early-2013, proposed class actions were commenced on behalf of the Class in Alberta, Ontario, Québec and the United States against Poseidon and directors and officers ("**D&Os**"). These actions allege that the defendants violated their disclosure obligations under Canadian and United States securities laws, and materially misrepresented Poseidon's business and financial results to Poseidon's investors.

Contemporaneously, several other proposed class actions were commenced against several entities that were involved with Poseidon's business and/or its financial reporting:

- KPMG LLP ("**KPMG**"): Proposed class actions were commenced on behalf of the Class in Alberta, Ontario and Québec against Poseidon's auditor, KPMG, alleging that it failed to comply with its duties as Poseidon's auditor.
- National Bank Financial Inc., BMO Nesbitt Burns Inc., CIBC World Markets Inc., Haywood Securities Inc., Peters & Co. Limited, Canaccord Genuity Corp., Cormark Securities Inc., Dundee Securities Ltd. and First Energy Capital Corp ("**Underwriters**"): A proposed class action was commenced in Ontario on behalf of the investors who acquired Poseidon's common shares in a public offering by way of a prospectus dated January 26, 2012. This action alleges that the underwriters failed to comply with their duties.
- Peyto Exploration & Development Corp ("**Peyto**") in its capacity as the successor by merger to New Open Range: Proposed class actions were commenced on behalf of the Class in the courts of Alberta and Ontario against Peyto in its capacity as the legal successor to New Open Range, alleging that New Open Range improperly influenced the release of certain of Poseidon's disclosure documents that allegedly contained misrepresentations.

POSEIDON'S INSOLVENCY PROCEEDINGS

In April 2013, Poseidon obtained protection from its creditors from the Alberta Court under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("**Insolvency Proceedings**").² The Alberta Court appointed PricewaterhouseCoopers Inc as the court-appointed monitor of Poseidon's affairs within the Insolvency Proceedings ("**Monitor**").

Within the Insolvency Proceedings, the Alberta Court appointed the Canadian class action plaintiffs as representatives for the Class for all the purposes of the Insolvency Proceedings including, without limitation, for the purpose of proving, settling or compromising claims by Poseidon's investors ("**Class Representatives**"). The Alberta Court also appointed the law firms of Jensen Shawa Solomon Duguid Hawkes LLP, Siskinds LLP, Paliare Roland Rosenberg Rothstein LLP and Siskinds Desmeules, Avocats as counsel for the Class for any issues affecting the Class within the Insolvency Proceedings ("**Class Counsel**").

In April 2014, pursuant to an order of the Alberta Court, Poseidon's stakeholders were ordered to participate in a mediation to resolve all or part of the claims involving Poseidon ("**Mediation**"). The Mediation was unsuccessful. Subsequent to the Mediation, the Monitor, the Class Representatives, a syndicate of Canadian banks that are secured lenders to Poseidon ("**Secured Creditors**"),³ and Poseidon, the D&Os and Peyto continued the negotiations.

As previously announced on April 23, 2018, these negotiations resulted in a settlement between the Class Representatives and all the defendants in the class actions arising from the circumstances of Poseidon ("**Global Settlement**"). Further details regarding the Global Settlement were previously provided in a notice available [here](#) (English) and [here](#) (French).

THE GLOBAL SETTLEMENT

The Global Settlement is the result of lengthy and complex negotiations amongst the Monitor, the Class Representatives, the Secured Creditors, Poseidon, the D&Os, KPMG, the Underwriters and Peyto. It represents a compromise of disputed claims and is not an admission of liability, wrongdoing or fault on the part of any of the defendants, which have disputed, and continue to dispute, the allegations advanced against them.

The Global Settlement is part of the Amended Plan, dated April 6, 2018, made pursuant to the *Companies' Creditors Arrangement Act*, copies of which are available on Class Counsel's website at <http://www.siskinds.com/poseidon-concepts-corp/> and <http://www.jsbarristers.ca/pages/class-actions/class-actions.cfm#poseidon>. We encourage you to consult these documents for further details.

² In conjunction with Poseidon's insolvency proceedings in Canada, a parallel insolvency proceeding was commenced in the United States Bankruptcy Court District of Colorado under Chapter 15 of the United States Bankruptcy Code.

³ The Secured Creditors of Poseidon are The Toronto-Dominion Bank, National Bank of Canada, The Bank of Nova Scotia and HSBC Bank of Canada.

The Amended Plan and the Global Settlement have been approved and recognized by Orders of the Alberta Court (dated May 4, 2018), the Ontario Superior Court of Justice (dated June 15, 2018), the United States Bankruptcy Court for the District of Colorado (dated June 27, 2018), the Superior Court of Québec (dated July 23, 2018) and the United States District Court Southern District of New York (dated July 27, 2018).

Copies of the above-noted Court Orders are available on Class Counsel's website at <https://www.siskinds.com/poseidon-concepts-corp/>.

Pursuant to its terms, among other things, the Global Settlement results in a gross recovery to the Class in the amount of at least \$34,632,800 and up to \$36,606,200, which is comprised of the following payments:

- 1) The Initial Instalment: Upon Court approval and implementation of the Global Settlement and the Amended Plan, the Class will receive a payment in the aggregate sum of \$11,632,800. This payment will be made by Poseidon's D&Os' liability insurers;
- 2) Additional Proceeds: Upon Court approval and implementation of the Global Settlement and the Amended Plan, the Class will receive a further payment in the aggregate sum of \$23,000,000. This payment will be made by KPMG, the Underwriters and Peyto in amounts agreed upon separately and confidentially as between them; and
- 3) The Final Instalment: In addition to the two payments noted above, the Class will be entitled to a further payment in the aggregate sum of up to \$1,973,400. The Final Instalment is part of a fund in the aggregate sum of \$6,500,000, which is currently held back by Poseidon's D&Os' liability insurers to be spent on the costs of current or potential regulatory and criminal proceedings against Poseidon's D&Os and certain of its employees. Subject to limitations and restrictions provided in the Global Settlement and the Amended Plan, the remaining balance of these funds will be released by Poseidon's D&Os' liability insurers on the later date of (i) the date on which any such regulatory or criminal proceedings are concluded; and (ii) April 10, 2019, which will be apportioned between the Class and the estate of Poseidon in accordance with the terms of the Global Settlement and the Amended Plan.

Correspondingly, the Global Settlement results in the dismissal and compromise of the claims asserted against the defendants in the following Class Actions, all of which have been permanently dismissed.

James v Poseidon et al, Ontario Superior Court of Justice File No. CV-12-468736-00CP

James v KPMG LLP, Ontario Superior Court of Justice File No. CV-14-507785-00CP

Kuefler v Underwriters, Ontario Superior Court of Justice File No. CV-13-474553-00CP

James et al v Peyto, Ontario Superior Court of Justice File No. CV-14-512823-00CP

Auer et al v Poseidon et al, Alberta Court of Queen's Bench File No. 1301-00935

Ramzy v KPMG LLP, Alberta Court of Queen's Bench File No. 1401-07353

Auer et al v Peyto, Alberta Court of Queen's Bench File No. 1301-11455

Lewis v Poseidon et al, Québec Superior Court File No. 500-06-000633-129

Lewis v KPMG LLP, Québec Superior Court File No. 500-06-000699-146

Miller v Poseidon et al, United States District Court for the Southern District of New York Action No. 1:13-cv-01213-DLC

Trunkel v Poseidon et al, United States District Court for the Southern District of New York Action No. 1:13-cv-01412-DLC

Use of the Proceeds of the Global Settlement

Pursuant to the terms of the Amended Plan and the Global Settlement, the following fees and expenses will be deducted from the proceeds of the Global Settlement as priority claims:

- a) Class Counsel Fees and reimbursement of notice expenses;
- b) any fees payable to Claims Funding Australia Pty Ltd., in its capacity as the litigation funder, pursuant to the Amended and Restated Litigation Funding Agreement made as of November 2015, approved by the Alberta Court Order dated August 8, 2016 and the Ontario Court Order dated November 30, 2016, the particulars of which shall be determined by further order of the CCAA Court;
- c) Administration Expenses; and
- d) taxes required by law to be paid to any governmental authority.

After the deduction of the foregoing priority claims, which are further set out below, the net proceeds of the Global Settlement ("**Net Settlement Fund**") will be available for distribution to the Class.

The Proposed Claims and Distribution Protocol

Class Counsel will seek Alberta Court's approval of the proposed Claims and Distribution Protocol, which is attached as **Schedule "A"** to this Notice.

The proposed Claims and Distribution Protocol addresses the following matters.

a) The persons and entities who are eligible to receive compensation from the Net Settlement Fund

Pursuant to the proposed Claims and Distribution Protocol, a person or entity is eligible to receive compensation from the Net Settlement Fund if he/she/it purchased or otherwise acquired Poseidon's common shares:

- pursuant to the spin-off transaction involving Old Open Range, which was implemented on November 1, 2011;
- in the primary market pursuant to a Final Short-Form Prospectus dated January 26, 2012; and/or
- in the secondary market at any time between November 4, 2011 and February 14, 2013;

AND, held some or all of those shares as of:

- November 15, 2012;
- December 27, 2012; and/or
- February 14, 2013.

Notwithstanding the foregoing, the following persons and entities are not eligible to claim or receive compensation from the Net Settlement Fund:

- The following entities and their past and present directors, officers, senior employees, partners, subsidiaries, affiliates, legal representatives, heirs, predecessors, successors and assigns: Poseidon Concepts Corp; Poseidon Concepts Ltd.; Poseidon Concepts Limited Partnership; Poseidon Concepts Inc.; Open Range Energy Corp.; Peyto Exploration & Development Corp.; National Bank of Canada; National Bank Financial Inc.; The Toronto Dominion Bank; The Bank of Nova Scotia; HSBC Bank of Canada; KPMG LLP; BMO Nesbitt Burns Inc.; CIBC World Markets Inc.; Haywood Securities Inc.; Peters & Co. Limited; Canaccord Genuity Corp.; Cormark Securities Inc.; Dundee Securities Ltd.; and FirstEnergy Capital Corp.; and
- The following individuals and any individual who is a member of their immediate families: Matthew MacKenzie; Clifford Wiebe; Joseph Kostelecky; Lyle Michaluk; Scott Dawson; Dean Jensen; Jim McKee; Neil Richardson; David Belcher; Sonja Kuehnle; Harley Winger; Doug Robinson; Kenneth Faircloth; and Wazir (Mike) Seth.

b) The procedure for submission of proper and valid claims with the settlement administrator

As part of the application for approval of the proposed Claims and Distribution Protocol, Class Counsel will ask that the Alberta Court appoint the firm of Epiq Class Action Services Canada as

the settlement administrator in this matter (“**Administrator**”). Epiq Class Action Services Canada is a third-party firm with extensive experience in administering settlements in class actions in Canada and the United States.

The shareholders who wish to receive compensation from the Net Settlement Fund will be required to complete the Claim Form (in a form to be approved by the Alberta Court) and submit it to the Administrator before a claims-bar date to be fixed by the Court (“**Claims Bar Deadline**”).

Further details regarding the procedure for submission of Claim Forms as well as the Claims Bar Deadline will be announced by further notice after the Alberta Court has approved the Claims and Distribution Protocol.

A Claim Form that is not completed properly, provides incomplete or inaccurate or false information or is not submitted to the Administrator by the Claims Bar Deadline will not be considered valid, and it will be rejected and disallowed by the Administrator unless in very exceptional circumstances.

Note that after the Alberta Court has approved the Claims and Distribution Protocol, a further notice will be issued that will set out the Claims Bar Deadline as well as the procedure for claiming compensation from the Net Settlement Fund. Shareholders will be provided a period of 120 days from the date of that further notice to submit their Claim Forms to the Administrator.

c) The methodology for determining each eligible shareholder’s compensation

The Administrator will review and process each Claim Form received from the members of the Class, and it will determine the valid Claim Forms.

With respect to each valid Claim Form, the Administrator will determine whether the shareholder has suffered an eligible net loss taking into account his/her/its entire transactions in Poseidon’s shares (“**Net Loss**”). Only shareholders who have incurred a Net Loss are eligible for compensation from the Net Settlement Fund.

After the Administrator has determined that the shareholder has incurred a Net Loss, the Administrator will determine the shareholders’ provisional entitlement to compensation using the risk adjustment rates provided in the proposed Claims and Distribution Protocol (“**Provisional Entitlement**”).

The risks adjustments are determined by Class Counsel, and will be submitted to the Alberta Court for approval as part of the proposed Claims and Distribution Protocol. In Class Counsel’s judgment and based on their best information, the risk adjustments represent the relative value of the losses incurred on each transaction in Poseidon’s shares taking into account the relative strength of the legal claims in light of the evidence available to Class Counsel and the legal defences raised by the defendants.

d) Distribution of the Net Settlement Fund

After the Administrator has determined the Provisional Entitlement with respect to each eligible shareholder who has submitted a valid Claim Form and is eligible for compensation, the Administrator will distribute the Net Settlement Fund in an initial distribution and a final distribution.

Each eligible shareholder's compensation from the Net Settlement Fund shall be equal to the ratio of his/her/its Provisional Entitlement to the total Provisional Entitlements of all eligible shareholders multiplied by the Net Settlement Fund, as calculated by the Administrator.

Class Counsel's Fees

Pursuant to an Order of the Alberta Court dated May 31, 2013, the law firms of Siskinds LLP, Jensen Shawa Solomon Duguid Hawkes LLP, Paliare Roland Rosenberg Rothstein LLP and Siskinds Desmeules, Avocats, were appointed Class Counsel in these proceedings.

Class Counsel will seek an Order of the Alberta Court approving:

- legal fees in the amount of \$6,694,920 on the account of the Initial Instalment and the Additional Proceeds, plus 15% of the Final Instalment in an amount to be determined pursuant to the terms of the Amended Plan and the Global Settlement, plus applicable taxes; and
- reimbursement for their out-of-pocket expenses in the amount of up to approximately \$1,848,865.79 (inclusive of applicable taxes).

As part of their application for approval of their fees and expenses, Class Counsel will ask that the Court approve an honorarium payment to each of the Class Representatives and the other representative plaintiffs in the Canadian Insolvency Proceedings and class actions (each being a "**Plaintiff**"). There are 6 Plaintiffs. Over the course of the past several years, each Plaintiff has spent significant time and made a significant contribution for the benefit of the Class. Class Counsel will ask that the Court approve an honorarium payment in the amount of \$7,500 to each Plaintiff in recognition of the Plaintiffs' efforts and contributions.

These honorarium payments will be proposed to be made from Class Counsel's fees, and they do not represent an additional cost to the Class.

Litigation Funder's Commissions

Pursuant to Orders dated August 8, 2016 and November 30, 2016, respectively, the Alberta Court and the Ontario Superior Court of Justice approved the Amended and Restated Litigation Funding Agreement between Claims Funding Australia Pty Ltd. ("**Litigation Funder**") and the Class Representatives made as of November 2015 ("**Litigation Funding Agreement**").

Pursuant to the Litigation Funding Agreement, the Litigation Funder advanced \$50,000 with respect to the class actions and also agreed to indemnify the Class Representatives and the other plaintiffs with respect to any potential adverse costs awards in the Insolvency Proceedings and the class actions.

Pursuant to the Litigation Funding Agreement, the Litigation Funder is entitled to the following payments, which Class Counsel will ask that the Alberta Court approve as a priority charge on the proceeds of the Global Settlement:

- Repayment of \$50,000 on the account of the Litigation Funder's advance payment of \$50,000 in connection with these proceedings; and
- Payment of the Litigation Funder's Commissions, which represent 7% of the proportion of the Net Settlement Fund that is allocated to the members of the Class other than those persons and entities who are residents of the United States. Accordingly, the Administrator will deduct and withhold 7% of the payment to any eligible shareholder, other than those who are resident in the United States, on the account of the Litigation Funder's commissions.

APPLICATIONS WILL BE HEARD BY THE ALBERTA COURT

The Alberta Court is scheduled to hear the applications for approval of the proposed Claims and Distribution Protocol, Class Counsel's fees and expenses, the Litigation Funder's Commissions and related matters on September 21, 2018 at Calgary Courts Centre, 601 - 5 Street SW, Calgary, AB T2P 5P7.

If you have no concerns regarding the matters set out in this Notice, you are not required to do anything at this time. After the Alberta Court has approved the Claims and Distribution Protocol, a further notice will be issued to advise the shareholders regarding the steps they need to take in order to claim compensation.

However, if you wish to object to the proposed Claims and Distribution Protocol, Class Counsel's fees and expenses or the Litigation Funder's commissions, you must complete and submit the Objection Form attached as Schedule "B" to this Notice to Class Counsel by no later than Thursday, September 20, 2018 at 12:00 p.m. MST. Class Counsel will forward all complete Objection Forms to the Alberta Court. You may, but are not required to, attend the hearing, whether or not you deliver an Objection Form.

INTERPRETATION

If there is a conflict between the provisions of this Notice and the Amended Plan, the Global Settlement or any of the Orders of the Alberta Court, the Ontario Superior Court of Justice, the Superior Court of Québec, the United States Bankruptcy Court for the District of Colorado or the

United States District Court Southern District of New York, the terms of the Amended Plan, the Global Settlement or such Court Orders shall prevail.

Copies of the Amended Plan, the Global Settlement and the above-noted Court Orders are available at <https://www.siskinds.com/poseidon-concepts-corp/>.

INQUIRIES MAY BE DIRECTED TO CLASS COUNSEL

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Date: September 10, 2018

SCHEDULE "A"

POSEIDON CONCEPTS CORP. SECURITIES LITIGATION
IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT*
ACT, R.S.C. 1985, C. C-36, AS AMENDED
AND IN THE MATTER OF
POSEIDON CONCEPTS CORP., POSEIDON CONCEPTS LTD.,
POSEIDON CONCEPTS LIMITED PARTNERSHIP
AND POSEIDON CONCEPTS INC.

GLOBAL SETTLEMENT
[PROPOSED] CLAIMS AND DISTRIBUTION PROTOCOL

DEFINED TERMS

1. For the purposes of this Claims and Distribution Protocol, the definitions set out in the Amended Plan and the Settlement Agreement apply to and are incorporated into this Claims and Distribution Protocol and, in addition, the following definitions apply:
 - (a) **“Acquisition Expense”** has the meaning ascribed to this term in section 8 of this Claims and Distribution Protocol;
 - (b) **“Administrator”** means Epiq Class Action Services Canada;
 - (c) **“Amended Plan”** means the Amended Plan of Compromise and Arrangement dated April 6, 2018;
 - (d) **“Claim Form”** means the claim form to be approved by the Court which, when completed and submitted in a timely manner to the Administrator, constitutes a Shareholder’s claim for compensation pursuant to the Settlement;
 - (e) **“Claimant”** means a Shareholder, or a person acting duly on behalf of a Shareholder, who submits a properly completed Claim Form and all required supporting documentation to the Administrator;
 - (f) **“Claims Bar Deadline”** means ●;
 - (g) **“Court”** means the Court of Queen’s Bench of the Province of Alberta;

- (h) **“Disposition Proceeds”** has the meaning ascribed to this term in sections 9 and 10 of this Claims and Distribution Protocol;
- (i) **“Eligible Shares”** has the meaning ascribed to this term in section 6 of this Claims and Distribution Protocol;
- (j) **“Escrow Settlement Account”** means an interest bearing trust account held by the Administrator with one of the Canadian Schedule 1 banks or a liquid money market account or equivalent security with a rating equivalent to, or better than, that of an interest bearing account in a Canadian Schedule 1 bank in Ontario;
- (k) **“FIFO”** means the principle of first-in, first-out, wherein securities are deemed to be sold in the same order that they were purchased (*i.e.*, the first common shares purchased are deemed to be the first sold);
- (l) **“Litigation Funder’s Repayment”** means a payment in the sum of \$50,000 to Claims Funding Australia Pty Ltd., pursuant to section 3(b)(ii) of the Settlement Agreement;
- (m) **“Loss”** means, with respect to any of Eligible Shares or Non-Eligible Shares, the difference between the Acquisition Expense and the Disposition Proceeds, where the Acquisition Expense is greater than the Disposition Proceeds;
- (n) **“Offering Shares”** means the common shares of Poseidon purchased in the primary market pursuant to the Final Short-Form Prospectus dated January 26, 2012 at \$13.00 per share;
- (o) **“Net Loss”** means that the Claimant’s Disposition Proceeds are less than the Claimant’s Acquisition Expense having regard to all of the Claimant’s transactions in Eligible Shares as well as Non-Eligible Shares;
- (p) **“Net Settlement Fund”** means the Class Settlement Funds remaining after payment of Administration Expenses, Class Counsel Fees, Litigation Funder’s Repayment and any applicable taxes in accordance with section 3(b) of the Settlement Agreement;
- (q) **“Non-Eligible Shares”** has the meaning ascribed to this term in section 7 of this Claims and Distribution Protocol;
- (r) **“Poseidon”** means Poseidon Concepts Corp.;

- (s) “**Profit**” means with respect to any of Eligible Shares and Non-Eligible Shares, the difference between the Acquisition Expense and the Disposition Proceeds, where the Disposition Proceeds are greater than the Acquisition Expense;
- (t) “**Provisional Entitlement**” means a Claimant’s provisional entitlement to compensation pursuant to the Settlement as calculated pursuant to the formula set forth herein, and which forms the basis for each Claimant’s *pro rata* share of the Net Settlement Fund;
- (u) “**Secondary Market Shares**” means common shares of Poseidon purchased in the secondary market anywhere in the world;
- (v) “**Settlement Agreement**” means the Settlement Agreement at Schedule B to the Amended Plan, dated April 6, 2018;
- (w) “**Shareholder**” means a current or former holder of the common shares of Poseidon; and
- (x) “**Spin-Off Shares**” means the common shares of Poseidon acquired as a result of the restructuring of Open Range Energy Corp. pursuant to the transaction carried out by way of a plan of arrangement under the Alberta *Business Corporations Act*, which was implemented on November 1, 2011.

OBJECTIVE

2. The objective of this Claims and Distribution Protocol is to equitably distribute the Net Settlement Fund amongst the Claimants.

CURRENCY

3. In this Claims and Distribution Protocol, all dollar amounts are indicated in Canadian dollars.
4. All payments pursuant to this Claims and Distribution Protocol shall be made in Canadian dollars.
5. For all purposes of this Claims and Distribution Protocol, the conversion rate between United States dollar and Canadian dollar is fixed at 1:1, which is the approximate exchange rate in effect during the relevant period of November 1, 2011 through February 14, 2013.

CLAIMANTS' ELIGIBILITY

6. For the purposes of this Claims and Distribution Protocol, Eligible Shares are as follows:
 - (a) with respect to the Spin-Off Shares and the Offering Shares, any such shares that were held through as of November 15, 2012 or later;
 - (b) with respect to the Secondary Market Shares, where such shares were purchased or acquired:
 - (i) between November 4, 2011 and November 14, 2012, inclusive, and held through as of November 15, 2012 or later;
 - (ii) between November 15, 2012 and December 26, 2012, inclusive, and held through as of December 27, 2012 or later;
 - (iii) between December 27, 2012 and February 13, 2013, inclusive, and held through as of February 14, 2013 or later; or
 - (iv) on February 14, 2013.
7. For the purposes of this Claims and Distribution Protocol, Non-Eligible Shares are as follows:
 - (a) with respect to the Spin-Off Shares and the Offering Shares, any such shares that were sold or otherwise disposed of on or before November 14, 2012;
 - (b) with respect to the Secondary Market Shares, any such shares that were:
 - (i) purchased and also sold or otherwise disposed of on or before November 14, 2012;
 - (ii) purchased and also sold or otherwise disposed of between November 15, 2012 and December 26, 2012, inclusive; or
 - (iii) purchased and also sold or otherwise disposed of between December 27, 2012 and February 13, 2013.
8. For the purposes of this Claims and Distribution Protocol, Acquisition Expense means:
 - (a) with respect to the Offering Shares and the Secondary Market Shares the total monies paid by the Claimant (including brokerage commissions) to purchase or acquire those shares; and
 - (b) with respect to the Spin-Off Shares, each such share shall be deemed to have been purchased or acquired at \$9.40 per share.

9. For the purposes of this Claims and Distribution Protocol, Disposition Proceeds with respect to Non-Eligible Shares means the actual proceeds from the sale of those Non-Eligible Shares.
10. For the purposes of this Claims and Distribution Protocol, Disposition Proceeds with respect to Eligible Shares means:
 - (a) with respect to any Eligible Shares that were sold or otherwise disposed of between November 15, 2012 and November 28, 2012, inclusive, the actual proceeds from the sale or disposition of those Eligible Shares;
 - (b) with respect to any Eligible Shares that were sold or otherwise disposed of between November 29, 2012 and December 26, 2012, inclusive, the number of such Eligible Shares multiplied by \$5.07;
 - (c) with respect to any Eligible Shares that were sold or otherwise disposed of between December 27, 2012 and January 10, 2013, inclusive, the actual proceeds from the sale or disposition of those Eligible Shares;
 - (d) with respect to any Eligible Shares that were sold or otherwise disposed of between January 11, 2013 and February 13, 2013, inclusive, the number of such Eligible Shares multiplied by \$1.43;
 - (e) with respect to any Eligible Shares that were sold or otherwise disposed of on February 14, 2013, the actual proceeds from the sale or disposition of those Eligible Shares; and
 - (f) with respect to any Eligible Shares that were held as of February 14, 2013 or later, the number of such Eligible Shares multiplied by \$0.27.
11. A Claimant may only be entitled to compensation or a distribution pursuant to the Settlement with respect to Eligible Shares. Non-Eligible Shares are not entitled to compensation or any distribution pursuant to the Settlement. Accordingly, a Claimant may be entitled to compensation or a distribution pursuant to the Settlement only if he/she/it has suffered a Loss on his/her/its transactions in Eligible Shares.
12. A Claimant may only be entitled to compensation or a distribution pursuant to the Settlement if he/she/it has suffered a Net Loss after taking into account all of his/her/its transactions in Eligible Shares as well as Non-Eligible Shares.
13. Notwithstanding anything to the contrary in this Claims and Distribution Protocol, the following persons and entities shall not be entitled to compensation or any distribution pursuant to the Settlement:

- (a) The following entities and their past and present directors, officers, senior employees, partners, subsidiaries, affiliates, legal representatives, heirs, predecessors, successors and assigns: Poseidon Concepts Corp; Poseidon Concepts Ltd.; Poseidon Concepts Limited Partnership; Poseidon Concepts Inc.; Open Range Energy Corp.; Peyto Exploration & Development Corp.; National Bank of Canada; National Bank Financial Inc.; The Toronto Dominion Bank; The Bank of Nova Scotia; HSBC Bank of Canada; KPMG LLP; BMO Nesbitt Burns Inc.; CIBC World Markets Inc.; Haywood Securities Inc.; Peters & Co. Limited; Canaccord Genuity Corp.; Cormark Securities Inc.; Dundee Securities Ltd.; and FirstEnergy Capital Corp.; and
 - (b) The following individuals and any individual who is a member of their immediate families: Matthew MacKenzie; Clifford Wiebe; Joseph Kostecky; Lyle Michaluk; Scott Dawson; Dean Jensen; Jim McKee; Neil Richardson; David Belcher; Sonja Kuehnle; Harley Winger; Doug Robinson; Kenneth Faircloth; and Wazir (Mike) Seth.
14. A summary of the eligibility criteria is provided at Schedule “A” of this Claims and Distribution Protocol.

DEADLINE FOR SUBMISSION OF CLAIM FORMS

- 15. Any Shareholder who wishes to claim compensation pursuant to the Settlement shall deliver to the Administrator a Claim Form by the Claims Bar Deadline.
- 16. If the Administrator does not receive a Claim Form from a Shareholder by the Claims Bar Deadline, the Shareholder shall not be eligible for any compensation whatsoever pursuant to the Settlement.
- 17. By agreement between Class Counsel and the Administrator, the Claims Bar Deadline may be extended. Class Counsel and the Administrator may agree to extend the Claims Bar Deadline if, in their opinions, doing so will not adversely affect the efficient administration of the Settlement.

PROCESSING CLAIM FORMS

- 18. Each Claimant is required to set out in the Claim Form information regarding all of his/her/its transactions in Eligible Shares as well as Non-Eligible Shares. For clarity, each Claimant is required to provide in the Claim Form information regarding all of his/her/its transactions in Poseidon’s common shares on or before February 14, 2013.
- 19. The Administrator shall review each Claim Form and verify that:

- (a) for a Claimant submitting the Claim Form as a Shareholder, the Administrator shall be satisfied that the Claimant is a Shareholder; and
 - (b) For a Claimant submitting the Claim Form on behalf of a Shareholder or a Shareholder's estate, the Administrator shall be satisfied that:
 - (i) the person or estate on whose behalf the claim is submitted is a Shareholder; and
 - (ii) the Claimant has authority to act on behalf of the Shareholder or the Shareholder's estate in respect of financial affairs.
20. The Administrator shall review each Claim Form and be satisfied that the Claimant has provided all supporting documentation required by the Claim Form or alternative documentation acceptable to the Administrator.
21. The Administrator shall review each Claim Form and supporting documentation to ensure that the Claimant is entitled to compensation pursuant to the Settlement, as provided herein.

DETERMINATION OF NET LOSS

22. The Administrator shall apply FIFO to determine the Acquisition Expense and the Disposition Proceeds with respect to any and all of a Claimant's Eligible Shares as well as Non-Eligible Shares.
23. Subsequently, the Administrator shall determine the following:
- (a) The Administrator shall first determine that the Claimant has incurred a Loss on his/her/its Eligible Shares. If the Claimant has not incurred a Loss on his/her/its Eligible Shares, the Claimant shall not be entitled to receive compensation or a distribution pursuant to the Settlement.
 - (b) If the Administrator determines that the Claimant has incurred a Loss on his/her/its Eligible Shares, then the Administrator shall determine whether the Claimant has incurred a Net Loss taking into account all of his/her/its transactions in Eligible Shares as well as Non-Eligible Shares. If the Claimant has not incurred a Net Loss, the Claimant shall not be entitled to receive compensation or a distribution pursuant to the Settlement.

- (c) If the Administrator determines that the Claimant has incurred a Net Loss, the Administrator shall go on to calculate the Claimant's Provisional Entitlement.

PROVISIONAL ENTITLEMENT

- 24. To calculate a Claimant's Provisional Entitlement, the Administrator shall take the following three steps:
 - (a) the Administrator shall first determine the Claimant's Loss or Profit on each of his/her/its purchases or acquisitions of Eligible Shares and Non-Eligible Shares;
 - (b) subsequently, the Administrator shall multiply the amount of Loss or Profit with respect to each transaction in Eligible Shares and Non-Eligible Shares by the risk adjustment rates set out in Schedule "B";
 - (c) subsequently, the Administrator shall determine the aggregate of all the adjusted Profits and Losses. If the resultant number is negative, that number represents the Claimant's Provisional Entitlement. If the resultant number is positive, the Claimant's Provisional Entitlement equals \$0.

INITIAL DISTRIBUTION

- 25. Each Claimant's compensation from the Net Settlement Fund shall be equal to the ratio of his/her/its Provisional Entitlement to the total Provisional Entitlements of all Claimants multiplied by the Net Settlement Fund, as calculated by the Administrator.
- 26. The Administrator shall not make payments to Claimants whose *pro rata* entitlement under this Claims and Distribution Protocol is less than \$10.00. Such amounts shall instead be allocated *pro rata* to other eligible Claimants in accordance with the "Final Distribution" section of this Claims and Distribution Protocol.

FINAL DISTRIBUTION

- 27. If the Escrow Settlement Account is in a positive balance (whether by reason of tax refunds, un-cashed cheques or otherwise) after one hundred and eighty (180) days from the date of the Initial Distribution or the date of receipt of the Final Instalment of the

Class Settlement Funds, whichever is later, the Administrator shall, if feasible, allocate such balance among eligible Claimants in an equitable and economic fashion.

28. Thereafter, any remaining funds will be distributed as follows:
 - (a) *The Act Respecting the Fonds d'aide aux actions collectives*, CQLR c F-3.2.0.1.1 shall apply to 10% of any remaining balance that cannot be economically distributed to the Claimants; and
 - (b) The balance of the funds in the Escrow Settlement Account that cannot be economically distributed to the Claimants shall be distributed *cy-près* to a recipient to be approved by the Court.

PAYMENTS OF CLAIMS FUNDING AUSTRALIA PTY LTD.'S COMMISSIONS

29. Pursuant to the Amended and Restated Litigation Funding Agreement made as of November 2015, approved by Orders of the Court dated August 8, 2016 and the Ontario Superior Court of Justice dated November 30, 2016, the Administrator shall withhold 7% of the payment to each eligible Claimant other than such eligible Claimants who are residents of the United States on the account of commissions payable to Claims Funding Australia Pty Ltd.

REQUESTS FOR RECONSIDERATION

30. A Claimant whose claim is disallowed in its entirety by the Administrator may submit a request for reconsideration to the Administrator.
31. Any request for reconsideration must be received by the Administrator within 45 days of the date set out on the notice advising of the disallowance. If no request is received within this time period, the Claimant shall be deemed to have accepted the Administrator's determination and the determination shall be final and not subject to further review or reconsideration. However, the Administrator may in its sole discretion permit a late request for reconsideration if doing so will not adversely affect the efficient administration of the Settlement.
32. The request for reconsideration must:
 - (a) be in writing;
 - (b) be dated;

- (c) identify the Claimant and, if the Claimant is acting on behalf of a Shareholder or the estate of a Shareholder, identify the Shareholder or the estate of the Shareholder;
 - (d) provide the Claimant's contact information;
 - (e) set out briefly the reasons upon which a reconsideration is requested; and
 - (f) be signed by the Claimant.
33. Where a Claimant submits a request for reconsideration to the Administrator, the Administrator shall advise Class Counsel of the request and conduct a review of the Claimant's request for reconsideration.
 34. Following its determination, the Administrator shall advise the Claimant of its determination. In the event the Administrator reverses a disallowance, the Administrator shall send the Claimant a notice specifying the revision to the Administrator's disallowance.
 35. The determination of the Administrator is final and is not subject to further review by any court or other tribunal.
 36. Any matter not referred to above shall be determined by analogy by the Administrator in consultation with Class Counsel.

ADDITIONAL RULES

37. The claims process is intended to be expeditious, cost effective and user friendly and to minimize the burden on Claimants. The Administrator shall, in the absence of reasonable grounds to the contrary, assume the Claimants to be acting honestly and in good faith.
38. Where a Claim Form contains minor omissions or errors, the Administrator shall correct such omissions or errors if the information necessary to correct the error or omission is readily available to the Administrator.
39. The claims process is also intended to prevent fraud and abuse. If, after reviewing any Claim Form, the Administrator believes that the claim contains unintentional errors which would materially exaggerate the Provisional Entitlement of the Claimant, then the Administrator may disallow the claim in its entirety or make such adjustments so that an appropriate Provisional Entitlement is determined. If the Administrator believes that the claim is fraudulent or contains intentional errors which would materially exaggerate the

Provisional Entitlement to be awarded to the Claimant, then the Administrator shall disallow the claim in its entirety.

40. Where the Administrator disallows a claim in its entirety, the Administrator shall send to the Claimant, at the email or postal address provided by the Claimant or the Claimant's last known email or postal address, a notice advising the Claimant that he/she/it may request the Administrator to reconsider its decision.
41. For greater certainty, a Claimant is not entitled to a notice or a review or reconsideration where a claim is allowed in whole or in part but the Claimant disputes the determination of Provisional Entitlement or his/her/its individual compensation.
42. If for any reason a Claimant is unable to complete the Claim Form, it may be completed by the Claimant's personal representative or a member of the Claimant's family.
43. For the purposes of this Claims and Distribution Protocol, the receipt or grant by gift, devise (other than with respect to the Spin-Off Shares) or inheritance of Eligible Shares shall not be deemed to be a purchase or acquisition of Eligible Shares, nor shall it be deemed an assignment of any claim relating to the purchase or acquisition of such Eligible Shares unless specifically provided in the instrument or gift or assignment.
44. For the purposes of this Claims and Distribution Protocol, Eligible Shares transferred between accounts belonging to the same Claimant shall not be deemed to be a purchase or acquisition of Eligible Shares. However, the initial transaction involving purchase or acquisition of such Eligible Shares shall be considered in accordance with this Claims and Distribution Protocol. To calculate the Claimant's Profit or Loss, the Administrator shall take into account the Acquisition Expense at the initial purchase or acquisition date, and the Disposition Proceeds as of the date the Eligible Shares were ultimately sold or otherwise disposed of.
45. The Administrator shall make payment to an eligible Claimant by either bank transfer or by cheque to the Claimant at the address provided by the Claimant or the last known postal address for the Claimant. If for any reason a Claimant does not cash a cheque within six months after the date on which the cheque was sent to the Claimant, the Claimant shall forfeit the right to compensation and the funds shall be distributed in accordance with the "Final Distribution" section of this Claims and Distribution Protocol.

46. Any matters not foreseen in this Claims and Distribution Protocol may be resolved by consultation amongst Class Counsel and the Administrator having due regard to the objective of this Claims and Distribution Protocol and the efficient administration of the claims process and the settlement, where possible by analogy to the provisions of this Claims and Distribution Protocol.
47. Class Counsel and the Administrator may seek the Court's direction on matters arising from this Claims and Distribution Protocol or otherwise relating to the claims process and settlement administration.

SCHEDULE “A”
POSEIDON CONCEPTS SECURITIES LITIGATION
CLAIMS AND DISTRIBUTION PROTOCOL
CLAIMANTS’ ELIGIBILITY

	Purchase/Acquisition Date	Sale Date	Eligible?	Acquisition Expense	Disposition Proceeds
Spin-Off Shares	Nov 1-4, 2011	On or before Nov 14, 2012	No	\$9.40 * #shares	Proceeds received upon sale.
		Nov 15 – Nov 28, 2012	Yes	\$9.40 * #shares	Proceeds received upon sale.
		Nov 29-Dec 26, 2012	Yes	\$9.40 * #shares	\$5.07 * #shares
		Dec 27, 2012 – Jan 10, 2013	Yes	\$9.40 * #shares	Proceeds received upon sale.
		Jan 11-Feb 13, 2013	Yes	\$9.40 * #shares	\$1.43 * #shares
		Feb 14, 2013	Yes	\$9.40 * #shares	Proceeds received upon sale.
		Held as of Feb 14, 2013 or later	Yes	\$9.40 * #shares	\$0.27 * #shares
Offering Shares	Jan 26-Feb 2, 2012	On or before Nov 14, 2012	No	Price paid, incl. comms.	Proceeds received upon sale.
		Nov 15 – Nov 28, 2012	Yes	Price paid, incl. comms.	Proceeds received upon sale.
		Nov 29-Dec 26, 2012	Yes	Price paid, incl. comms.	\$5.07 * #shares

	Purchase/Acquisition Date	Sale Date	Eligible?	Acquisition Expense	Disposition Proceeds
		Dec 27, 2012 – Jan 10, 2013	Yes	Price paid, incl. comms.	Proceeds received upon sale.
		Jan 11-Feb 13, 2013	Yes	Price paid, incl. comms.	\$1.43 * #shares
		Feb 14, 2013	Yes	Price paid, incl. comms.	Proceeds received upon sale.
		Held as of Feb 1, 2013 or later.	Yes	Price paid, incl. comms.	\$0.27 * #shares
Secondary Market Share	Nov 4, 2011-Nov 14, 2012	On or before Nov 14, 2012	No	Price paid, incl. comms.	Proceeds received upon sale.
		Nov 15 – Nov 28, 2012	Yes	Price paid, incl. comms.	Proceeds received upon sale.
		Nov 29-Dec 26, 2012	Yes	Price paid, incl. comms.	\$5.07 * #shares
		Dec 27, 2012 – Jan 10, 2013	Yes	Price paid, incl. comms.	Proceeds received upon sale.
		Jan 11-Feb 13, 2013	Yes	Price paid, incl. comms.	\$1.43 * #shares
		Feb 14, 2013	Yes	Price paid, incl. comms.	Proceeds received upon sale.
		Held as of Feb 1, 2013 or later.	Yes	Price paid, incl. comms.	\$0.27 * #shares
	Nov 15-Dec 26, 2012	On or before Dec 26, 2012	No	Price paid, incl. comms.	Proceeds received upon sale.
		Dec 27, 2012 – Jan 10, 2013	Yes	Price paid, incl. comms.	Proceeds received upon sale.
		Jan 11-Feb 13, 2013	Yes	Price paid, incl. comms.	\$1.43 * #shares

	Purchase/Acquisition Date	Sale Date	Eligible?	Acquisition Expense	Disposition Proceeds
		Feb 14, 2013	Yes	Price paid, incl. comms.	Proceeds received upon sale.
		Held as of Feb 1, 2013 or later.	Yes	Price paid, incl. comms.	0.27 * #shares
	Dec 27, 2012 – Feb 13, 2013	On or before Feb 13, 2012	No	Price paid, incl. comms.	Proceeds received upon sale.
		Feb 14, 2013	Yes	Price paid, incl. comms.	Proceeds received upon sale.
		Held as of Feb 1, 2013 or later.	Yes	Price paid, incl. comms.	0.27 * #shares
	Feb 14, 2014	Feb 14, 2013	Yes	Price paid, incl. comms.	Proceeds received upon sale.
		Held as of Feb 14, 2013 or later.	Yes	Price paid, incl. comms.	0.27 * #shares

SCHEDULE “B”
POSEIDON CONCEPTS SECURITIES LITIGATION
CLAIMS AND DISTRIBUTION PROTOCOL
RISK ADJUSTMENTS

	Purchase/Acquisition Date	Risk Adjustment
Spin-Off Shares	Nov 1-4, 2011	0.10
Offering Shares	Jan 26, 2012 – Feb 2, 2012	1
Secondary Market Shares	Nov 4, 2011 – Mar 21, 2012	0.20
	Mar 22, 2012 – Aug 7, 2012	0.50
	Aug 8, 2012 – Nov 14, 2012	1
	Nov 15, 2012 – Dec 26, 2012	0.50
	Dec 27, 2012 – Feb 13, 2013	0.20
	Feb 14, 2013	0.01

SCHEDULE "B"
POSEIDON CONCEPTS CORP. SECURITIES LITIGATION
OBJECTION FORM

Complete and return this Objection Form by no later than Thursday, September 20, 2018 at 12:00 p.m. MST, ONLY IF YOU WISH TO OBJECT TO THE PROPOSED CLAIMS AND DISTRIBUTION PROTOCOL OR CLASS COUNSEL FEES AND EXPENSES.

Name:	
Organization and title (if applicable):	
Phone number:	
Fax number:	
Email:	
Address:	
Number of Poseidon common shares purchased or acquired on or before February 14, 2013:	

I, _____, **OBJECT** to: [CHECK THE APPROPRIATE BOX]

☐ The proposed Claims and Distribution Protocol

☐ Class Counsel's fee and expenses

The reason for my objection is as follows:

Please check the appropriate box:

I will attend the hearing to be held before the Court of Queen's Bench of Alberta on September 21, 2018 at Calgary Courts Centre, 601 - 5 Street SW, Calgary, AB T2P 5P7. Yes ☐ No ☐

My counsel will attend on my behalf the hearing to be held before the Court of Queen's Bench of Alberta on September 21, 2018 at Calgary Courts Centre, 601 - 5 Street SW, Calgary, AB T2P 5P7. Yes ☐ * No ☐

* If your counsel will attend the Sanction Hearing, please provide your counsel's contact information: _____

I, _____, certify that the information provided herein is complete and true.

Date

Signature

Please return this Objection Form via fax or email by no later than Thursday, September 20, 2018 at 12:00 p.m. MST, to:

Attn: Sajjad Nematollahi
Siskinds LLP
Email: sajjad.nematollahi@siskinds.com
Fax: 416-594-4391