Docket #0076 Date Filed: 04/19/2019

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
Achaogen, Inc.,	Case No. 19-10844 (BLS)
Debtor.[1]	Re: D.I. 11 & 45

NOTICE OF (I) EQUITY TRANSFER PROCEDURES AND (II) A FINAL HEARING

TO ALL PERSONS OR ENTITIES WITH EQUITY INTERESTS IN THE DEBTOR:

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On April 15, 2019 (the "Petition Date"), the above-captioned debtor (the "Debtor") commenced this case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware. You are receiving this notice because you have been identified as a potential equity holder in the Debtor. No bar date for filing proofs of interest has been established in the Debtor's bankruptcy case. For additional information regarding the Debtor's chapter 11 case, please go to www.kccllc.net/achaogen.

2. On the Petition Date, the Debtor filed the Motion For Entry of Interim and Final Orders (I) Establishing Notice and Objection Procedures for Transfers of Equity Securities and (II) Establishing a Record Date for Notice and Sell-Down Procedures for Trading in Claims Against the Debtor's Estate [D.I. 11] (the "Motion").

3. On April 16, 2019, the United States Bankruptcy Court for the District of Delaware (the "Court") entered an interim order (the "Interim Order"), approving the procedures

[1] The last four digits of the Debtor's federal tax identification number are 3693. The Debtor's mailing address for purposes of this Chapter 11 Case is 1 Tower Place, Suite 400, South San Francisco, CA 94080.

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set forth below with respect to transfers of certain Equity Securities of the Debtor (the "Equity Transfer Procedures") and setting the Record Date with respect to trading in claims against the Debtor, in order to assist the Debtor in preserving its net operating losses ("NOLs"). **Any purchase, sale, trade or other transfer of equity securities (including options) of the Debtor, in violation of the procedures set forth below shall be null and void *ab initio* as an act in violation of the automatic stay under section 362 of the Bankruptcy Code, and shall confer no rights on the transferee.**

4. The hearing to consider entry of an order granting the relief requested in the Motion on a final basis shall be held on **May 8, 2019 at 11:00 a.m. (Eastern Time)**.

5. Objections to the Motion must be filed with the Court and served so as to be received by **4:00 p.m. (ET) on May 1, 2019**, on (a) the office of the United States Trustee for the District of Delaware; (b) (i) the Debtor, care of Achaogen, Inc., 1 Tower Place, Suite 400, South San Francisco, CA 94080, Attn: Gary Loeb, and (ii) proposed counsel to the Debtor, Hogan Lovells US LLP, 1999 Avenue of the Stars, Suite 1400, Los Angeles, California 90067, Attn: Richard L. Wynne and Erin N. Brady, and Hogan Lovells US LLP, 875 Third Avenue, New York, New York 10022, Attn.: John D. Beck, and Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, Wilmington, DE 19899-1347, Attn: Derek C. Abbott and Andrew R. Remming; and (c) counsel to the DIP Lender, Morrison & Foerster LLP, 200 Clarendon Street, Boston, MA 02116, Attn: Alexander Rheaume, Morrison & Foerster LLP, 250 West 55th Street, New York, NY 10019-9601, Attn: Todd Goren and Benjamin Butterfield, and Ashby & Geddes, 500 Delaware Avenue, P.O. Box 1150, Wilmington, DE 19899, Attn: Gregory Taylor.

6. If no objections to the Motion are timely filed, served and received in accordance with the Interim Order, the Interim Order shall be deemed a Final Order without further notice or hearing, and the Motion shall be granted on a final and permanent basis.

7. Pursuant to the Interim Order, the following Equity Transfer Procedures shall apply to holding and transferring beneficial interests in Equity Securities:

i. Certain Defined Terms. For purposes of the Interim Order and this Notice: (A) a "Substantial Equityholder" is any person or entity that beneficially owns at least 2,900,374 shares (representing approximately 4.5% of the 64,452,763 issued and outstanding shares) of Debtor; (B) "beneficial ownership" of Equity Securities shall be determined in accordance with applicable rules under section 382 of the Internal Revenue Code of 1986 (as amended, the "IRC") and regulations promulgated thereunder and shall include (i) direct and indirect ownership (e.g., a holding company would be considered to beneficially own all equity owned or acquired by its subsidiaries), (ii) ownership by such holder's family members and persons acting in concert with such holder to make a coordinated acquisition of equity and (iii) ownership of options to acquire equity; (C) an "option" to acquire equity includes any contingent purchase, warrant, convertible debt, exchangeable shares, put, stock subject to risk of forfeiture, contract to acquire stock or similar interest, regardless of whether it is contingent or otherwise not currently exercisable; and (D) a "Transfer" means any transfer of Equity Securities to the extent described in paragraph 7(iii) below (Equity Security Acquisition Notice) and/or paragraph 7(iv) below (Equity Security Disposition Notice).

ii. Notice of Substantial Equityholder Status. Any person or entity who currently is or becomes a Substantial Equityholder shall (a) file with the Court and (b) serve upon (i) the Debtor, care of Achaogen, Inc., 1 Tower Place, Suite 400, South San Francisco, CA 94080, Attn: Gary Loeb, (ii) proposed counsel to the Debtor, Hogan Lovells US LLP, 1999 Avenue of the Stars, Suite 1400, Los Angeles, California 90067, Attn: Richard L. Wynne and Erin N. Brady, and Hogan Lovells US LLP, 875 Third Avenue, New York, New York 10022, Attn.: John D. Beck, and Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, Wilmington, DE 19899-1347, Attn: Derek C. Abbott and Andrew R. Remming, and (iii) counsel to the DIP Lender, Morrison & Foerster LLP, 200 Clarendon Street, Boston, MA 02116, Attn: Alexander Rheaume, Morrison & Foerster LLP, 250 West 55th Street, New York, NY 10019-9601, Attn: Todd Goren and Benjamin Butterfield, and

Ashby & Geddes, 500 Delaware Avenue, P.O. Box 1150, Wilmington, DE 19899, Attn: Gregory Taylor, a notice of such status, in the form attached hereto as Exhibit 1 (a "Notice of Substantial Equityholder Status"), on or before the later of (A) 14 days after entry of the Interim Order or (B) 14 days after becoming a Substantial Equityholder.

iii. Equity Security Acquisition Notice. At least 14 days prior to any transfer of Equity Securities (including any transfer of options to acquire equity or any exercise thereof) that would result in an increase in the amount of Equity Securities beneficially owned by a Substantial Equityholder or would result in a person or entity becoming a Substantial Equityholder, such Substantial Equityholder or potential Substantial Equityholder shall (a) file with the Court and (b) serve on the Debtor, proposed counsel to the Debtor, and the DIP Lender (at the addresses set forth in paragraph 7(ii) above), advance written notice of the intended transfer of Equity Securities, in the form attached hereto as Exhibit 2 (an "Equity Security Acquisition Notice").

iv. Equity Security Disposition Notice. Prior to any transfer of Equity Securities (including options) that would result in a decrease in the amount of Equity Securities beneficially owned by a Substantial Equityholder or would result in a person or entity ceasing to be a Substantial Equityholder, such Substantial Equityholder shall file with the Court and serve on the Debtor, proposed counsel to the Debtor, and the DIP Lender (at the addresses set forth in paragraph 7(ii) above), advance written notice of the intended transfer of Equity Securities in the form attached hereto as Exhibit 3 (an "Equity Security Disposition Notice").

v. Objection Procedures. The Debtor shall have 7 days after receipt of an Equity Security Acquisition Notice or Equity Security Disposition Notice (each, a "Transfer Notice") to file with the Court and serve on the party filing the Transfer Notice an objection to the proposed Transfer on the grounds that such Transfer may adversely affect the Debtor's ability to utilize its NOLs. If the Debtor files an objection, the proposed Transfer will not be effective unless and until approved by a final and nonappealable order of this Court. If the Debtor does not object within such 7-day period, the Transfer may proceed solely as set forth in the Transfer Notice. Further Transfers within the scope of this paragraph must comply with the Equity Transfer Procedures set forth in this paragraph 7.

vi. Unauthorized Transfers of Equity Securities. Effective as of the Petition Date and until further order of this Court to the contrary,

> any acquisition or disposition of Equity Securities (including options) in violation of the Equity Transfer Procedures shall be null and void ab initio as an act in violation of the automatic stay under section 362 of the Bankruptcy Code.

FAILURE TO FOLLOW THE PROCEDURES SET FORTH IN THIS NOTICE AND IN THE INTERIM ORDER SHALL CONSTITUTE A VIOLATION OF THE AUTOMATIC STAY UNDER SECTION 362 OF THE BANKRUPTCY CODE. ANY PROHIBITED PURCHASE, SALE, TRADE OR OTHER TRANSFER OF EQUITY SECURITIES (INCLUDING OPTIONS) IN ACHAOGEN, INC. IN VIOLATION OF THE INTERIM ORDER WILL BE NULL AND VOID AB INITIO.

The Debtor may waive in writing, and in its sole and absolute discretion, any and all restrictions, stays and notice procedures contained in the Interim Order.

Complete copies of the Motion and the Interim Order are available via PACER via the Court's website at https://ecf.deb.uscourts.gov for a fee, or through the Debtor's Notice, Claims and Solicitation Agent, KCC, at www.kccllc.net/achaogen. If a hearing is held and a Final Order is entered, such Final Order will also be available as described in the preceding sentence.

The requirements set forth in this Notice are in addition to the requirements of Rule 3001(e) of the Federal Rules of Bankruptcy Procedure and applicable law, and do not excuse compliance therewith.

April 19, 2019
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Paige N. Topper

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Andrew R. Remming (No. 5120)
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- and -

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Proposed Counsel for Debtor and Debtor in Possession

EXHIBIT 1

Notice of Substantial Equityholder Status

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
Achaogen, Inc.,	Case No. 19-10844 (BLS)
Debtor.[1]	

NOTICE OF SUBSTANTIAL EQUITYHOLDER STATUS

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. **[Name of Equityholder]** is/has become a Substantial Equityholder[2] with respect to the shares (the "Shares") of the above-captioned debtor (the "Debtor"). Achaogen, Inc. is the Debtor in Case No. 19-10844, pending in the United States Bankruptcy Court for the District of Delaware (the "Court").

2. As of _____, 20__, **[Name of Equityholder]** beneficially owns _____ Shares of Debtor and/or options with respect to _____ Shares of Debtor.

3. The following table sets forth the date(s) on which **[Name of Equityholder]** acquired or otherwise became the beneficial owner of such Equity Securities:

[1] The last four digits of the Debtor's federal tax identification number are 3693. The Debtor's mailing address for purposes of this Chapter 11 Case is 1 Tower Place, Suite 400, South San Francisco, CA 94080.

[2] For purposes of this Notice: (A) a "Substantial Equityholder" is any person or entity that beneficially owns at least 2,900,374 shares (representing approximately 4.5% of the 64,452,763 issued and outstanding shares) of Achaogen, Inc.; (B) "beneficial ownership" of equity securities shall be determined in accordance with applicable rules under section 382 of the Internal Revenue Code of 1986 (as amended, the "IRC") and the regulations promulgated thereunder and shall include (i) direct and indirect ownership (e.g., a holding company would be considered to beneficially own all equity owned or acquired by its subsidiaries), (ii) ownership by such holder's family members and persons acting in concert with such holder to make a coordinated acquisition of equity and (iii) ownership of options to acquire equity; and (C) an "option" to acquire equity includes any contingent purchase, warrant, convertible debt, exchangeable shares, put, stock subject to risk of forfeiture, contract to acquire stock or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

Number of Shares of Debtor	Date Acquired

(Attach additional page if necessary)

4. The last four digits of the taxpayer identification number of **[Name of Equityholder]** are _____.

5. Under penalty of perjury, **[Name of Equityholder]** hereby declares that it has examined this Notice and accompanying attachments (if any) and, to the best of its knowledge and belief, this Notice and any attachments that purport to be part of this Notice are true, correct and complete.

6. Pursuant to the **[Interim/Final]** Order establishing the Equity Transfer Procedures (as defined in the **[Interim/Final]** Order), this Notice is being (a) filed with the Court and (b) served upon (i) the Debtor, care of Achaogen, Inc., 1 Tower Place, Suite 400, South San Francisco, CA 94080, Attn: Gary Loeb, (ii) proposed counsel to the Debtor, Hogan Lovells US LLP, 1999 Avenue of the Stars, Suite 1400, Los Angeles, California 90067, Attn: Richard L. Wynne and Erin N. Brady, and Hogan Lovells US LLP, 875 Third Avenue, New York, New York 10022, Attn.: John D. Beck, and Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, Wilmington, DE 19899-1347, Attn: Derek C. Abbott and Andrew R. Remming, and (iii) counsel to the DIP Lender, Morrison & Foerster LLP, 200 Clarendon Street, Boston, MA 02116, Attn: Alexander Rheaume, Morrison & Foerster LLP, 250 West 55th Street,

New York, NY 10019-9601, Attn: Todd Goren and Benjamin Butterfield, and Ashby & Geddes, 500 Delaware Avenue, P.O. Box 1150, Wilmington, DE 19899, Attn: Gregory Taylor.

Respectfully submitted,

_____
(Name of Equityholder)

By: _____

Name: _____

Title: _____

Address: _____

_____

_____

Telephone: _____

Facsimile: _____

Date: _____

EXHIBIT 2

Equity Security Acquisition Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
Achaogen, Inc.,	Case No. 19-10844 (BLS)
Debtor.[1]	

EQUITY SECURITY ACQUISITION NOTICE

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. **[Name of Prospective Acquirer]** hereby provides notice of its intention to purchase, acquire or otherwise accumulate (the "Proposed Transfer") shares (the "Shares") of Achaogen, Inc. (the "Debtor"). Achaogen is the Debtor in Case No. 19-10844 pending in the United States Bankruptcy Court for the District of Delaware (the "Court").

2. If applicable, on **[Prior Date(s)]**, **[Name of Prospective Acquirer]** filed a Notice of Substantial Equityholder Status[2] with the Court and served copies thereof on the above-captioned debtor (collectively, the "Debtor") and the Debtor's counsel.

[1] The last four digits of the Debtor's federal tax identification number are 3693. The Debtor's mailing address for purposes of this Chapter 11 Case is 1 Tower Place, Suite 400, South San Francisco, CA 94080.

[2] For purposes of this Notice: (A) a "Substantial Equityholder" is any person or entity that beneficially owns at least 2,900,374 shares (representing approximately 4.5% of the 64,452,763 issued and outstanding shares) of Achaogen, Inc.; (B) "beneficial ownership" of equity securities shall be determined in accordance with applicable rules under section 382 of the Internal Revenue Code of 1986 (as amended, the "IRC") and the regulations promulgated thereunder and shall include (i) direct and indirect ownership (e.g., a holding company would be considered to beneficially own all equity owned or acquired by its subsidiaries), (ii) ownership by such holder's family members and persons acting in concert with such holder to make a coordinated acquisition of equity and (iii) ownership of options to acquire equity; and (C) an "option" to acquire equity includes any contingent purchase, warrant, convertible debt, exchangeable shares, put, stock subject to risk of forfeiture, contract to acquire stock or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

3. **[Name of Equityholder]** currently beneficially owns _____ Shares of Debtor and/or options with respect to _____ Shares of Debtor.

4. Pursuant to the Proposed Transfer, **[Name of Prospective Acquirer]** proposes, as applicable, to purchase, acquire or otherwise accumulate _____ Shares or an option (or to exercise such an option) with respect to _____ Shares. If the Proposed Transfer is permitted to occur, **[Name of Prospective Acquirer]** will beneficially own _____ Shares after the transfer becomes effective.

5. The last four digits of the taxpayer identification number of **[Name of Prospective Acquirer]** are _____.

6. Under penalty of perjury, **[Name of Prospective Acquirer]** hereby declares that it has examined this Notice and accompanying attachments (if any) and, to the best of its knowledge and belief, this Notice and any attachments which purport to be part of this Notice are true, correct and complete.

7. Pursuant to that certain **[Interim/Final]** Order establishing the Equity Transfer Procedures (as defined in the **[Interim/Final]** Order), this Notice is being (a) filed with the Court and (b) served upon (i) the Debtor, care of Achaogen, Inc., 1 Tower Place, Suite 400, South San Francisco, CA 94080, Attn: Gary Loeb, (ii) proposed counsel to the Debtor, Hogan Lovells US LLP, 1999 Avenue of the Stars, Suite 1400, Los Angeles, California 90067, Attn: Richard L. Wynne and Erin N. Brady, and Hogan Lovells US LLP, 875 Third Avenue, New York, New York 10022, Attn: John D. Beck, and Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, Wilmington, DE 19899-1347, Attn: Derek C. Abbott and Andrew R. Remming, and (iii) counsel to the DIP Lender, Morrison & Foerster LLP, 200 Clarendon Street, Boston, MA 02116, Attn: Alexander Rheaume, Morrison & Foerster LLP, 250 West 55th

Street, New York, NY 10019-9601, Attn: Todd Goren and Benjamin Butterfield, and Ashby & Geddes, 500 Delaware Avenue, P.O. Box 1150, Wilmington, DE 19899, Attn: Gregory Taylor.

8. The Debtor has 7 calendar days after receipt of this Notice to object to the Proposed Transfer described herein. If the Debtor files an objection, such Proposed Transfer will not be effective unless approved by a final and nonappealable order of the Court. If the Debtor does not object within such 7-day period, then after expiration of such period the Proposed Transfer may proceed solely as set forth in this Notice.

9. The undersigned Prospective Acquirer understands that any further transactions that may result in **[Name of Prospective Acquirer]** purchasing, acquiring or otherwise accumulating Equity Securities (or an option with respect thereto) will each require an additional notice to be filed with the Court and served in the same manner as this Notice.

Respectfully submitted,

_____
(Name of Prospective Acquirer)

By: _____

Name:_____

Title:_____

Address: _____

_____

_____

Telephone: _____

Facsimile: _____

Date: _____

EXHIBIT 3

Equity Security Disposition Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
Achaogen, Inc.,	Case No. 19-10844 (BLS)
Debtor.[1]	

EQUITY SECURITY DISPOSITION NOTICE

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. **[Name of Prospective Seller]**, a Substantial Equityholder,[2] hereby provides notice of its intention to sell, trade or otherwise transfer (the "Proposed Transfer") shares (the "Shares") of Achaogen Inc. ("Debtor"), or options with respect thereto. Achaogen, Inc. is the Debtor in Case No. 19-10844 pending in the United States Bankruptcy Court for the District of Delaware (the "Court").

2. If applicable, on **[Prior Date(s)]**, **[Name of Prospective Seller]** filed a Notice of Substantial Equityholder Status with the Court and served copies thereof on the above-captioned debtor (collectively, the "Debtor") and the Debtor's counsel.

[1] The last four digits of the Debtor's federal tax identification number are 3693. The Debtor's mailing address for purposes of this Chapter 11 Case is 1 Tower Place, Suite 400, South San Francisco, CA 94080.

[2] For purposes of this Notice: (A) a "Substantial Equityholder" is any person or entity that beneficially owns at least 2,900,374 shares (representing approximately 4.5% of the 64,452,763 issued and outstanding shares) of Achaogen, Inc.; (B) "beneficial ownership" of equity securities shall be determined in accordance with applicable rules under section 382 of the Internal Revenue Code of 1986 (as amended, the "IRC") and the regulations promulgated thereunder and shall include (i) direct and indirect ownership (e.g., a holding company would be considered to beneficially own all equity owned or acquired by its subsidiaries), (ii) ownership by such holder's family members and persons acting in concert with such holder to make a coordinated acquisition of equity and (iii) ownership of options to acquire equity; and (C) an "option" to acquire equity includes any contingent purchase, warrant, convertible debt, exchangeable shares, put, stock subject to risk of forfeiture, contract to acquire stock or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

3. **[Name of Prospective Seller]** currently beneficially owns _____ Shares of Debtor and/or options with respect to _____ Shares of Debtor.

4. Pursuant to the Proposed Transfer, **[Name of Prospective Seller]** proposes to sell, trade or otherwise transfer _____ Shares or an option with respect to _____ Shares. If the Proposed Transfer is permitted to occur, **[Name of Prospective Seller]** will beneficially own _____ Shares after the transfer becomes effective.

5. The last four digits of the taxpayer identification number of **[Name of Prospective Seller]** are _____.

6. Under penalty of perjury, **[Name of Prospective Seller]** hereby declares that it has examined this Notice and accompanying attachments (if any) and, to the best of its knowledge and belief, this Notice and any attachments that purport to be part of this Notice are true, correct and complete.

7. Pursuant to that certain **[Interim/Final]** Order establishing the Equity Transfer Procedures (as defined in the **[Interim/Final]** Order), this Notice is being (a) filed with the Court and (b) served upon (i) the Debtor, care of Achaogen, Inc., 1 Tower Place, Suite 400, South San Francisco, CA 94080, Attn: Gary Loeb, (ii) proposed counsel to the Debtor, Hogan Lovells US LLP, 1999 Avenue of the Stars, Suite 1400, Los Angeles, California 90067, Attn: Richard L. Wynne and Erin N. Brady, and Hogan Lovells US LLP, 875 Third Avenue, New York, New York 10022, Attn.: John D. Beck, and Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market Street, 16th Floor, Wilmington, DE 19899-1347, Attn: Derek C. Abbott and Andrew R. Remming, and (iii) counsel to the DIP Lender, Morrison & Foerster LLP, 200 Clarendon Street, Boston, MA 02116, Attn: Alexander Rheaume, Morrison & Foerster LLP, 250 West 55th

Street, New York, NY 10019-9601, Attn: Todd Goren and Benjamin Butterfield, and Ashby & Geddes, 500 Delaware Avenue, P.O. Box 1150, Wilmington, DE 19899, Attn: Gregory Taylor.

8. The Debtor has 7 calendar days after receipt of this Notice to object to the Proposed Transfer described herein. If the Debtor files an objection, such Proposed Transfer will not be effective unless approved by a final and nonappealable order of the Court. If the Debtor does not object within such 7-day period, then after expiration of such period the Proposed Transfer may proceed solely as set forth in this Notice.

9. The undersigned Prospective Seller understands that any further transactions that may result in **[Name of Prospective Seller]** selling, trading or otherwise transferring Equity Securities (or an option with respect thereto) will each require an additional notice to be filed with the Court and served in the same manner as this Notice.

Respectfully submitted,

_____
(Name of Prospective Seller)

By: _____

Name:_____

Title:_____

Address: _____

_____

_____

Telephone: _____

Facsimile: _____

Date: _____