Docket #0154 Date Filed: 05/07/2019

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** 148

FINAL ORDER (I) ESTABLISHING NOTICE AND OBJECTION PROCEDURES FOR TRANSFERS OF EQUITY SECURITIES, (II) ESTABLISHING A RECORD DATE FOR NOTICE AND SELL-DOWN PROCEDURES FOR TRADING IN CLAIMS AGAINST THE DEBTOR'S ESTATE AND (III) GRANTING RELATED RELIEF

Upon consideration of 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* (the "Motion")[2] pursuant to sections 105, 362 and 541 of the Bankruptcy Code and Rule 3001 of the Bankruptcy Rules, filed by the debtor in the above-captioned cases (the "Debtor"); and the Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and venue of the Chapter 11 Case and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and proper and adequate notice of the Motion, the hearing thereon, and opportunity for objection having been given; and the relief requested in the Motion being in the best interests of the Debtor and its estate and creditors; and the Court having heard evidence and statements of 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] Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

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regarding the Motion and having determined that the legal and factual bases set forth in the Motion and attested to in the First Day Declaration establish just cause for the relief granted herein; and the Court having determined that immediate relief is necessary to avoid irreparable harm; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein on a final basis. All objections to the Motion not previously withdrawn are overruled.

2. The Equity Transfer Procedures are approved on a final basis.

3. Effective as of the Petition Date, any purchase, sale, trade or other transfer of Equity Securities in violation of the Equity Transfer Procedures set forth herein (including the notice requirements set forth in paragraph 4 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 following notice and objection procedures for holding and transferring Equity Securities ("Equity Transfer Procedures") shall apply in the Debtor's Chapter 11 Case:

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 ("Equity Securities"); (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 4(iii) below (Equity Security Acquisition Notice) and/or paragraph 4(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, 390 Madison Avenue, New York, New York 10017, 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, (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, and (iv) proposed counsel to the Official Committee of Unsecured Creditors (the "Committee"), Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10024, Attn: Arik Preis and Klehr Harrison Harvey Branzburg LLP, 919 N. Market Street, Wilmington, DE 19801, Attn: Domenic Pacitti and Morton Branzburg, 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, counsel to the DIP Lender, and counsel to the Committee (at the addresses set forth in paragraph 4(ii) above), advance written notice of the intended transfer of Equity Securities or worthless stock deduction, 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 (a) file with the Court and (b) serve on the Debtor, proposed counsel to the Debtor, and counsel to the DIP Lender (at the addresses set forth in paragraph 4(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 4.

5. The Debtor may waive in writing, in its sole and absolute discretion, with advance notice to the Committee, any and all restrictions, stays and notice procedures contained in this Order.

6. The notices substantially in the form attached hereto as **Exhibit 1**, **Exhibit 2** and **Exhibit 3** are approved.

7. Within five (5) business days after the entry of this final order, the Debtor shall provide a copy of this final order to: (a) the U.S. Trustee, (b) the United States Securities and Exchange Commission, (c) the Internal Revenue Service, (d) the Debtor's twenty (20) largest unsecured creditors as identified in its chapter 11 petition, (e) counsel to the DIP Lender (as defined in the First Day Declaration), (f) all known holders of the outstanding Equity Securities, and (g) any party that has requested notice pursuant to Bankruptcy Rule 2002.

8. Claimholders and potential purchasers of claims against the Debtor are hereby deemed notified that, if the Court ultimately approves a Sell-Down Order, claimholders that acquire Claims after **April 16, 2019** (the "Record Date") in an amount that would entitle them to receive more than 4.5% of the equity of the reorganized Debtor may be subject to a required sell-down of any Claims acquired after the Record Date in accordance with the Sell-Down Procedures.

9. Entry of this Order shall in no way be deemed a determination of any kind that entry of a Sell-Down Order is necessary or warranted in this case and this Court's review of any request for entry of a Sell-Down Order shall be without regard to entry of this Order.

10. The entry of this Order shall in no way prejudice the rights of any party to oppose the entry of a Sell-Down Order, on any grounds, and all parties' rights are expressly preserved hereby.

11. Notice of the Motion as provided therein shall be deemed good and sufficient notice of the Motion.

12. The requirements set forth in this final order are in addition to the requirements of Bankruptcy Rule 3001(e) and applicable law and do not excuse compliance therewith.

13. This Order shall be immediately effective and enforceable upon its entry.

14. The Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this final order in accordance with the Motion.

15. The Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

16. Nothing in the Motion or this Order shall be deemed or construed as: (i) an admission as to the validity of any claim against the Debtor; (ii) a waiver of the Debtor's rights to dispute any claim on any grounds; (iii) a promise to pay any claim; or (iv) an implication or admission that any particular claim is a claim for payments authorized pursuant to the Motion.

Dated: May 7, 2019
Wilmington, Delaware

THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1 TO FINAL ORDER

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 (BLS), 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:

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[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, 390 Madison Avenue, New York, New York 10017, 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, (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, and (iv) proposed counsel to the Official Committee of Unsecured Creditors, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10024, Attn: Arik Preis and Klehr Harrison Harvey Branzburg LLP, 919 N. Market Street, Wilmington, DE 19801, Attn: Domenic Pacitti and Morton Branzburg.

Respectfully submitted,

_____
(Name of Equityholder)

By: _____

Name: _____

Title: _____

Address: _____

_____

_____

Telephone: _____

Facsimile: _____

Date: _____

EXHIBIT 2 TO FINAL ORDER

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 (BLS) 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.

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

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[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.

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, 390 Madison Avenue, New York, New York 10017, 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 TO FINAL ORDER

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 (BLS) 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.

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[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, 390 Madison Avenue, New York, New York 10017, 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: _____