

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

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In re	:	Chapter 11
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SWIFT ENERGY COMPANY, <i>et al.</i> , <sup>1</sup>	:	Case No. 15-____ (____)
	:	
Debtors.	:	(Joint Administration Requested)
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**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 DEBTORS' ESTATES**

The above-captioned debtors and debtors in possession (collectively, the "Debtors") move the Court for the entry of interim and final orders pursuant to sections 105, 362 and 541 of the Bankruptcy Code and Rule 3001 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"): (i) establishing notice and objection procedures regarding certain transfers of beneficial interests in equity securities in Swift Energy Company ("Equity Securities"); (ii) establishing a record date (the "Record Date") for notice and potential sell-down procedures for trading in claims against the Debtors ("Claims"); and (iii) granting certain related relief. In support of this motion, the Debtors respectfully represent as follows:

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<sup>1</sup> The Debtors are the following nine entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Swift Energy Company (0661); Swift Energy International, Inc. (6721); Swift Energy Group, Inc. (8150); Swift Energy USA, Inc. (8212); Swift Energy Alaska, Inc. (6493); Swift Energy Operating, LLC (2961); GASRS LLC (4381); SWENCO-Western, LLC (0449); and Swift Energy Exploration Services, Inc. (2199). The address of each of the Debtors is 17001 Northchase Drive, Suite 100, Houston, Texas 77060.



### **Background**

1. On the date hereof (the "Petition Date"), each of the Debtors commenced a case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code.<sup>2</sup> The Debtors are continuing in possession of their properties and are managing their business, as debtors in possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. The Debtors are an independent energy company engaged in the exploration, development, production and acquisition of oil and natural gas properties. The Debtors are headquartered in Houston, Texas. Their primary assets and operations are focused in the Eagle Ford trend of South Texas and, to a lesser extent, the onshore and inland waters of Louisiana. For the nine months ended September 30, 2015, the Debtors generated revenue of approximately \$195.7 million from net oil and gas production of 8.8 million barrels of oil equivalents (MMBoe). Crude oil represented 47% and natural gas represented 44% of the Debtors' oil and gas revenues for the nine months ended September 30, 2015 (22% and 66% of the volumes for crude oil and natural gas, respectively), with the remaining production and revenues coming from natural gas liquids (NGLs).

3. Additional information regarding the Debtors and these cases, including the Debtors' business, corporate structure, financial condition, and the reasons for and objectives of these cases, is set forth in the Declaration of Dean E. Swick in Support of First Day Pleadings (the "First Day Declaration"), filed contemporaneously herewith and incorporated herein by reference.

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<sup>2</sup> This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

***The Debtors' Net Operating Losses***

4. Swift Energy Company ("Swift") is publicly traded on the New York Stock Exchange (ticker symbol SFY). As of December 24, 2015, there were approximately 44.6 million shares of Swift common stock outstanding, with a total market capitalization of approximately \$3.16 million. In addition to having publicly-traded equity, the Debtors have approximately \$877 million in tradable unsecured bond debt.

5. The Debtors have experienced years of losses from the operation of their business. As a result, the Debtors estimate that their federal income tax net operating losses ("NOLs") are approximately \$718 million as of the Petition Date, which amounts could be even higher when the Debtors emerge from chapter 11.<sup>3</sup> These NOLs could translate into future reductions of the Debtors' federal income tax liabilities of approximately \$251 million based on a corporate federal income tax rate of 35%. These tax savings could substantially enhance the Debtors' cash position for the benefit of parties in interest and contribute to the Debtors' efforts to maximize value for the benefit of creditors.

6. As described more fully below, the Debtors may lose the ability to use their NOLs if they experience an "ownership change" for federal income tax purposes. To prevent this potential loss of property of the Debtors' estates, the Debtors request Court approval of the procedures detailed herein to govern the transfers of Equity Securities during the pendency of these chapter 11 cases. In addition, the Debtors may ultimately need to seek an order (a "Sell-Down Order") with respect to trading in Claims to protect and preserve the value

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<sup>3</sup> The Debtors' NOLs consist of losses generated in individual tax years, each of which can be "carried forward" for up to 20 subsequent tax years to offset the Debtors' future taxable income, thereby reducing future aggregate tax obligations. See 26 U.S.C. § 172.

of the NOLs in connection with a plan of reorganization or a qualifying asset sale, and this motion is designed to give advance notice of such possibility.

***Potential Limitations on the Use of the Debtors' NOLs***

7. Section 172 of the Internal Revenue Code of 1986 (as amended, the "IRC") permits corporate taxpayers to use NOLs in years following the years in which they were incurred, including years after they have experienced an ownership change.

Limitations on the Debtors' Ability to Use Their NOLs

8. However, the Debtors' ability to use their NOLs and certain other losses, which will be referred to collectively herein as NOLs, is subject to certain statutory limitations. Section 382 of the IRC limits the ability of a corporation to use its NOLs if an "ownership change" occurs. Generally, an "ownership change" occurs if the percentage (by value) of the stock of the corporation owned by one or more 5% shareholders has increased by more than 50 percentage points over the lowest percentage of stock owned by such shareholders at any time during the relevant testing period, which is usually three years.<sup>4</sup> For example, an ownership change would occur in the following situation:

Three individuals ("A," "B" and "C") each own 20% of the stock of corporation X ("X"). Each sells 15% to another individual ("D"), who has recently acquired 7%. Under section 382 of the IRC, an ownership change has occurred because D both became a 5% shareholder and increased his ownership in X by more than 50 percentage points (from 0% to 52%) during the testing period.

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<sup>4</sup> In general, under section 382(g)(4)(A) of the IRC, all shareholders who individually hold less than 5% of the stock of a company are deemed to be a single 5% shareholder throughout the three-year testing period, and transfers between such shareholders are disregarded for purposes of determining whether an ownership change has occurred. Accordingly, the Debtors do not seek to impose the requested notice and objection procedures on Transfers among shareholders holding less than 4.99% of Swift Energy Corporation stock, provided that such shareholders do not have an intent to accumulate a 5% or greater block of stock or add or sell shares to or from such block.

9. When an ownership change occurs, section 382 of the IRC limits the amount of future taxable income that the company can offset by its "pre-change losses" in any taxable year (or a portion thereof) to an annual amount equal to (a) the value of its stock prior to the ownership change, multiplied by (b) the long-term, tax-exempt interest rate. See I.R.C. § 382(b). For distressed companies especially, this limitation could severely restrict the use of NOLs because the value of their stock may be quite low. For example, if a hypothetical company were to become distressed, such that its equity value was \$2 million, and undergo an ownership change when its equity value was at this depressed level, the annual limitation on the company's use of its NOLs resulting from that ownership change would be \$52,200 (based on a 2.61% long-term, tax-exempt rate that would apply under section 382 of the IRC for an ownership change occurring in December 2015). In other words, the company would be able to utilize only \$52,200 of its NOLs in each post-change tax year because the ownership change occurred when the company's stock value was low. Taxable income in excess of this amount would be taxable to the company at the federal rate of 35% plus applicable state taxes.

10. Thus, if left unrestricted, transfers of Equity Securities during the pendency of these chapter 11 cases could severely limit the Debtors' ability to use their NOLs, and could have significant negative consequences for the Debtors, their estates and their efforts to maximize value for creditors. Specifically, transfers of Equity Securities could adversely affect the Debtors' NOLs if (a) too many 5% or greater blocks of Equity Securities are created, or (b) too many Equity Securities are added to or sold from such blocks, such that, together with previous transfers by or to 5% shareholders during the preceding three year period, an ownership change within the meaning of section 382 of the IRC has occurred.

Ownership Change in the Context of a Qualifying Bankruptcy Event

11. The limitations imposed by section 382 of the IRC are significantly relaxed if an ownership change occurs pursuant to a confirmed chapter 11 plan or qualifying asset sale. Under section 382(1)(5) of the IRC, a corporation is not subject to the limitations imposed by section 382 of the IRC if (a) the ownership change resulted from consummation of a chapter 11 plan or qualifying asset sale and (b) pursuant to the plan or qualifying asset sale, the debtor's pre-change-in-ownership shareholders (i.e., persons or entities who owned the debtor's stock immediately before the relevant ownership change) and/or "Qualified Creditors" emerge from the reorganization owning at least 50% of the total value and voting power of the debtor's stock immediately after the ownership change (the "Section 382(1)(5) Safe Harbor").

12. Under section 382(1)(5)(E) of the IRC and the regulations promulgated thereunder, a creditor whose claim is exchanged for stock of the debtor under a plan of reorganization or pursuant to a qualifying sale is a "Qualified Creditor" for section 382 purposes if such claim either (a) has been owned by such creditor for 18 or more months prior to the date of filing of the bankruptcy petition, or (b) arose in the ordinary course of the debtor's business and was at all times beneficially owned by such creditor. Creditors may also be "qualified," despite not satisfying the continuous ownership requirements under either (a) or (b) of the preceding sentence, if they meet the criteria set forth in the De Minimis Rule described below.

13. For purposes of the Section 382(1)(5) Safe Harbor, under Treasury Regulation § 1.382-9(d)(3) (the "De Minimis Rule"), a debtor generally may "treat indebtedness as always having been owned by the beneficial owner of the indebtedness immediately before the ownership change if the beneficial owner is not, immediately after the ownership change, either a 5-percent shareholder or an entity through which a 5-percent shareholder owns an indirect ownership interest" in the debtor. Such a claimholder will generally be a Qualified

Creditor under the Section 382(1)(5) Safe Harbor unless the particular claim(s) that it holds both (a) did not arise in the ordinary course of the issuing debtor's business and (b) was not in existence 18 months prior to the filing of the bankruptcy petition.

14. Alternatively, where an ownership change results from the consummation of a chapter 11 plan or qualifying asset sale but the requirements for the Section 382(1)(5) Safe Harbor are *not* met, section 382(b) of the IRC would limit the amount of taxable income that the debtor could offset with a NOL.

15. Under the scenario where the requirements for the Section 382(1)(5) Safe Harbor are not met, the section 382 limitation is calculated using the special rule of section 382(1)(6) of the IRC. That rule provides that the value of the debtor, for purposes of calculating the section 382 limitation, generally must reflect any increase in value resulting from any surrender or cancellation of creditors' claims, as well as any new investments, pursuant to the plan. As a result, assuming the debtor's value increases as a result of its chapter 11 plan or qualifying asset sale, the amount of taxable income that can be offset will still be limited, but not by as much as if the ownership change occurred outside the context of a confirmed chapter 11 plan or approved asset sale.

16. Therefore, to protect the Debtors' ability to maximize the use of their NOLs, the Debtors may need to seek entry of a Sell-Down Order allowing them to (a) determine whether the reorganized Debtors will qualify for and benefit from the Section 382(1)(5) Safe Harbor, and (b) require certain persons or entities that have acquired Claims during these chapter 11 cases in an amount that would entitle such claimholders to receive more than 4.99% of the equity of the reorganized Debtors (collectively, the "Substantial Claimholders") to

sell down their claims to the extent necessary to allow the reorganized Debtors to qualify for the Section 382(l)(5) Safe Harbor (the "Sell-Down Procedures").<sup>5</sup>

***The Proposed Equity Transfer Procedures***

17. By establishing procedures for monitoring the transfer of Equity Securities, the Debtors can preserve their ability to seek the necessary relief at the appropriate time if it appears that transfers of Equity Securities may jeopardize the Debtors' use of their NOLs. Therefore, the Debtors propose the following notice and objection procedures for holding and transferring Equity Securities (the "Equity Transfer Procedures"):

- (a) Certain Defined Terms. For purposes of this motion and the interim order and the final order sought hereunder: (A) a "Substantial Equityholder" is any person or entity that beneficially owns at least 2.2 million shares (representing approximately 4.99% of the 44.6 million issued and outstanding shares) of Swift Energy Corporation; (B) "beneficial ownership" of Equity Securities shall be determined in accordance with applicable rules under section 382 of 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 shares 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 stock and (iii) ownership of options to acquire stock; (C) an "option" to acquire stock includes any contingent purchase, warrant, convertible debt, 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 17(c) below (Stock Acquisition Notice) and/or paragraph 17(d) below (Stock Disposition Notice).
- (b) 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 Debtors, c/o Swift Energy Company, 17001 Northchase Drive, Suite 100, Houston, Texas 77060 (Attn: Office of General Counsel), and (ii) Jones Day, 2727 N. Harwood, Dallas, Texas 75201 (Attn: Jonathan M.

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<sup>5</sup> A summary of the potential Sell-Down Procedures is provided in paragraphs 26 through 28 below.

Fisher, Esq.), a notice of such status, in the form attached as Exhibit 2 to the interim order (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.

- (c) Stock Acquisition Notice. At least 28 days prior to any transfer of Equity Securities 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 Debtors and counsel to the Debtors (at the addresses set forth in paragraph 17(b) above), advance written notice of the intended transfer of Equity Securities, in the form attached as Exhibit 3 to the interim order (a "Stock Acquisition Notice").
- (d) Stock Disposition Notice. Prior to any transfer of Equity Securities 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 Debtors and counsel to the Debtors (at the addresses set forth in paragraph 17(b) above), advance written notice of the intended transfer of Equity Securities, in the form attached as Exhibit 4 to the interim order (a "Stock Disposition Notice").
- (e) Objection Procedures. The Debtors shall have 21 days after receipt of a Stock Acquisition Notice or a Stock 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 Debtors' ability to utilize their NOLs. If the Debtors file an objection, the proposed Transfer will not be effective unless and until approved by a final and nonappealable order of this Court. If the Debtors do not object within such 21-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 17.
- (f) 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 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.

18. With respect to the Equity Transfer Procedures, the Debtors may waive, in writing, in their sole and absolute discretion, any and all restrictions, stays and notification procedures contained in this motion or in any order entered with respect hereto.

19. Within five (5) business days after the entry of the interim order, the Debtors propose to provide a notice in substantially the form attached as Exhibit 1 to the interim order (the "Equity Transfer Procedures Notice") to (a) the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), (b) the United States Securities and Exchange Commission, (c) the Internal Revenue Service and (d) any registered or beneficial holders of the outstanding Equity Securities, describing the authorized transfer restrictions and notification requirements with respect to Equity Securities. The Debtors will publish notice of the entry of the interim order substantially in the form attached as Exhibit 6 to the interim order within five (5) business days after the entry of the interim order.

20. Upon receipt of such Equity Transfer Procedures Notice, any broker, bank, dealer or other agent or nominee of a beneficial holder (each a "Nominee") of Equity Securities will be required, within five (5) business days of receipt of such notice and on at least a quarterly basis thereafter, to send the Equity Transfer Procedures Notice to all beneficial holders of Equity Securities on whose behalf such Nominee holds Equity Securities. To the extent such beneficial holder is also a Nominee, such Nominee must, in turn, promptly provide the Equity Transfer Procedures Notice to any holder for whose account such holder holds Equity Securities, and so on down the chain of ownership. Additionally, any person, entity, broker or agent acting on behalf of any holder who sells at least 2.2 million shares (representing approximately 4.99% of the 44.6 million issued and outstanding shares) of Swift to another

person or entity must provide a copy of the Equity Transfer Procedures Notice to such purchaser or any broker or agent acting on such purchaser's behalf.

21. The Equity Transfer Procedures Notice will provide the date and time (the "Objection Deadline") by which parties must file an objection to the motion ("Objection"). If an Objection is timely filed and served, a final hearing will be held at the date and time set forth in the interim order (the "Final Hearing"). If no Objection is timely filed and served, the interim order shall be deemed a final order without further notice or hearing upon expiration of the Objection Deadline.

***Record Date Notice and Summary of Potential Sell-Down Procedures***

22. At this stage, it is too early to determine whether it will be necessary for the Debtors to obtain a Sell-Down Order. The Debtors' determination of whether to seek entry of a Sell-Down Order will most likely occur if the Debtors are able to implement a plan of reorganization or qualifying asset sale and have determined whether they may qualify for and benefit from the Section 382(l)(5) Safe Harbor such that it is necessary to require Substantial Claimholders to comply with the Sell-Down Procedures summarized below. Accordingly, this motion does not seek entry of a Sell-Down Order, but seeks to establish the Record Date through entry of the interim and final orders. The Debtors propose to set the Record Date as the date of entry of the interim order.

23. Following entry of the interim order, the Debtors propose to provide a notice of the Record Date in substantially the form attached as Exhibit 5 to the interim order (the "Record Date Notice") to (a) the U.S. Trustee, (b) counsel to Wells Fargo Bank, N.A., in its capacity as the trustee under the respective prepetition indentures governing the unsecured notes (the "Notes"), (c) the United States Securities and Exchange Commission, (d) the Internal

Revenue Service, (e) the Debtors' largest unsecured creditors on a consolidated basis, as identified in their chapter 11 petitions; and (f) the Nominees of holders of the Notes.

24. Upon receipt of such Record Date Notice, any Nominee will be required, within five days of receipt of such notice and on at least a quarterly basis thereafter, to send the Record Date Notice to all beneficial holders of the Notes. To the extent such beneficial holder is also a Nominee, such Nominee must, in turn, promptly provide the Record Date Notice to any holder for whose account such holder holds the Notes, and so on down the chain of ownership.

25. Like the Equity Transfer Procedures Notice, the Record Date Notice will also provide the Objection Deadline for parties to file an Objection to the motion, and explain that if no Objection is timely filed and served, the interim order shall be deemed a final order without further notice or hearing upon expiration of the Objection Deadline. If an Objection is timely filed and served, a Final Hearing will be held.

26. In the event the Debtors seek entry of a Sell-Down Order, the Debtors anticipate that the Sell-Down Procedures would require a person or entity that has acquired an amount of Claims after the Record Date entitling that claimholder to receive more than 4.99% of the equity of the reorganized Debtors (the "Threshold Amount") to provide the Debtors with limited information such as the size of its Claim and the date(s) such Claim was acquired. The amount of Claims held by a claimholder as of the Record Date would constitute the "Protected Amount." Substantial Claimholders would never be required to sell down their Claims below the Threshold Amount or the Protected Amount, whichever is greater. In other words, the Sell-Down Order would apply only to persons or entities that acquire Claims in excess of the Threshold Amount after the Record Date and with full notice of the possibility that

the Claims they acquire could be subject to sell-down if the Debtors later determine that the Sell-Down Procedures are necessary.

27. If the Sell-Down Procedures prove to be necessary, the Debtors would seek to require Substantial Claimholders to provide updated holdings information shortly after the date on which the Court approves a plan of reorganization or qualifying asset sale that proposes to utilize the Section 382(1)(5) Safe Harbor. Based on the updated holdings information, the Debtors would then determine whether it would be necessary to require Substantial Claimholders to sell down a portion of their holdings so that the Debtors may qualify for the Section 382(1)(5) Safe Harbor and to preserve the value of the Debtors' NOLs.

28. In the event that the Debtors seek entry of a Sell-Down Order, the Debtors would provide adequate notice and opportunity for claimholders to sell down their Claims without triggering an unreasonable adverse impact on the value of such Claims. Moreover, establishment of the Record Date at this early stage of these chapter 11 cases will provide claimholders with sufficient notice in advance of any trading opportunity that any Claims purchased after the Record Date may ultimately be subject to the Sell-Down Procedures as set forth in a Sell-Down Order.

### **Argument**

#### **A. The NOLs Are Property of the Debtors' Estates and Are Entitled to Protection**

29. Courts have uniformly held that a debtor's NOLs constitute property of the estate under section 541 of the Bankruptcy Code and, therefore, courts have the authority to impose measures intended to protect and preserve such NOLs. The seminal case articulating this rule is In re Prudential Lines, Inc., 107 B.R. 832 (Bankr. S.D.N.Y. 1989), aff'd, 119 B.R. 430 (S.D.N.Y. 1990), aff'd, 928 F.2d 565 (2d Cir. 1991); see also Nisselson v. Drew Indus., Inc. (In re White Metal Rolling & Stamping Corp.), 222 B.R. 417, 424 (Bankr. S.D.N.Y. 1998)

("It is beyond peradventure that NOL carrybacks and carryovers are property of the estate of the loss corporation that generated them."); In re Cumberland Farms, Inc., 162 B.R. 62, 67 (Bankr. D. Mass. 1993) (finding that the Second Circuit's Prudential Lines ruling on NOLs was analogous and persuasive in holding that pass-through losses were property of the estate and were protected by the automatic stay); In re Phar-Mor, Inc., 152 B.R. 924, 927 (Bankr. N.D. Ohio 1993) (carryforward NOLs held to be property of the estate and protected by both the automatic stay and an injunction against the sale of stock causing a reduction of the NOLs).

30. In Prudential Lines, the court enjoined a parent corporation from taking a worthless stock deduction with respect to its wholly-owned subsidiary, which was in bankruptcy, on the grounds that allowing the parent to take such a deduction would destroy its debtor subsidiary's NOLs. In issuing the injunction, the court held that the debtor subsidiary's potential ability to utilize NOLs was property of its estate. 107 B.R. at 838. Further, the court held that, because of the effect that it would have on the debtor subsidiary's ability to use its NOLs, the taking of a worthless stock deduction by the parent was an exercise of control over the debtor subsidiary's NOLs and thus over property of the debtor subsidiary's estate. Id. at 842. Therefore, such action was properly subject to the automatic stay under section 362 of the Bankruptcy Code. Id. at 843; see also In re Southeast Banking Corp., No. 91-14561, 1994 Bankr. LEXIS 2389, at \*2 (Bankr. S.D. Fla. July 21, 1994) (debtor's interest in its NOLs "constitutes property of the estate within the scope of 11 U.S.C. § 541(a)(1) and is entitled to the protection of the automatic stay imposed pursuant to 11 U.S.C. § 362(a)(3)").

31. Because the Debtors' NOLs are property of their estates, this Court has the authority under section 362 of the Bankruptcy Code to enforce the automatic stay by restricting any Transfer of Equity Securities that could adversely impact the Debtors' ability to use this

valuable asset. Courts ordering such relief generally have done so by imposing notice and objection requirements regarding any proposed transfer of shares on a person whose holdings of such shares exceeds (or would exceed as a result of the proposed transfer), a certain threshold amount. See, e.g., In re Samson Res. Corp., Case No. 15-11934 (CSS) (Bankr. D. Del. Oct. 14, 2015) ("Samson Order"); In re Mialgro Holdings, LLC, Case No. 15-11520 (KG) (Bankr. D. Del. Aug. 17, 2015) ("Milagro Order"); In re Cal Dive Int'l, Inc., Case No. 15-10458 (CSS) (Bankr. D. Del. Mar. 31, 2015) ("Cal Dive Order"); In re Quicksilver Res., Inc., Case No. 15-10585 (LSS) (Bankr. D. Del. Apr. 14, 2015) ("Quicksilver Order"); In re Sabine Oil & Gas Corp., Case No. 15-11835 (SCC) (Bankr. S.D.N.Y Aug. 10, 2015) ("Sabine Order"); In re BPZ Res., Inc., Case No. 15-60016 (DRJ) (Bankr. S.D. Tex. Mar. 27, 2015) ("BPZ Order"); In re Autoseis, Inc., Case No. 14-20130 (RSS) (Bankr. S.D. Tex. Apr. 25, 2014) ("Autoseis Order").

32. The Equity Transfer Procedures are designed to protect the Debtors from losing the benefit of all or any portion of their NOLs in connection with Transfers that may (a) trigger an ownership change not within the scope of sections 382(l)(5) or 382(l)(6) of the IRC, (b) preclude the Debtors from taking advantage of the more favorable NOL utilization rules under sections 382(l)(5) or 382(l)(6) of the IRC or (c) severely limit the Debtors' ability to use their NOLs to shelter any taxable income or gain resulting from any sale of assets in the course of these chapter 11 cases. The Debtors require a mechanism to monitor and possibly object to ownership changes resulting from Transfers and/or loss of eligibility for the Section 382(l)(5) Safe Harbor resulting from trading in Claims in order to permit the Debtors to use their NOLs to the fullest extent possible or to shelter any taxable income or gain resulting from any sale of assets, thereby maximizing value for all stakeholders.

33. Moreover, it is in the best interests of the Debtors, their estates and their stakeholders to restrict Transfers that could result in an ownership change and to establish the Record Date with respect to trading in Claims. Transfers are limited only for parties who are or might become 5% shareholders. Because Transfers by or into the hands of 5% shareholders could trigger an ownership change that would impose a severe limitation on the Debtors' use of their NOLs on an annual basis, such Transfers also pose a threat to the value of their NOLs even if the Debtors later satisfied the requirements of sections 382(1)(5) or 382(1)(6) of the IRC.

34. Relief similar to that requested herein with respect to equity security transfers has been granted by bankruptcy courts in other chapter 11 cases in this District and elsewhere. See, e.g., Samson Order; Milagro Order; Cal Dive Order; Quicksilver Order; Sabine Order; BPZ Order.

35. Additionally, bankruptcy courts in this District and elsewhere have granted relief similar to that requested herein with respect to the establishment of a record date for notice and sell-down procedures for trading in claims. See, e.g., Milagro Order; Cal Dive Order; BPZ Order; Autoseis Order. The Debtors submit that the present circumstances warrant similar relief in these chapter 11 cases.

**B. The Equity Transfer Procedures and Record Date Notice Are Narrowly Tailored**

36. The establishment of the Equity Transfer Procedures will not bar all Transfers, only those types of Transfers that pose a serious risk to the Debtors' NOLs under the section 382 ownership change test. Further, the procedures will only be in effect during the pendency of these chapter 11 cases. As such, the requested relief is narrowly tailored to allow the Debtors to preserve their ability to seek substantive relief if it appears that a proposed Transfer will jeopardize the use of their NOLs. The Equity Transfer Procedures would otherwise permit Transfers to continue unaffected, subject to applicable law.

37. As discussed above, the Equity Transfer Procedures are necessary to preserve the value of the Debtors' NOLs. But those procedures may not be sufficient if, pursuant to a plan of reorganization or qualifying asset sale, (a) creditors receive sufficient equity to trigger an "ownership change" under section 382 of the IRC and (b) the Debtors are unable to utilize the Section 382(l)(5) Safe Harbor because of acquisitions of Claims during the pendency of the chapter 11 cases.

38. To avoid that scenario, the Debtors may need to seek the entry of a Sell-Down Order. In the meantime, the Debtors need to be able to set and provide notice of the Record Date to give all creditors who may be subject to Sell-Down Procedures advance notice and ensure that the value of the Debtors' NOLs will be preserved.

39. Approval of the proposed Record Date does not constitute approval of the Sell-Down Procedures and does not restrict trading in Claims. Importantly, the interim order will not impose a burden on any person or entity since the interim order is designed to provide notice to claimholders and claims traders (a) of the Record Date, (b) that the Threshold Amounts will be measured as of the Record Date and (c) that their Claims may ultimately be subject to sell-down if the Debtors determine that a Sell-Down Order is necessary to preserve the value of their NOLs. If the Debtors do later determine that a Sell-Down Order is necessary, the Debtors will file a separate motion requesting entry of a Sell-Down Order applicable to certain Claims traded on or after the Record Date.

**C. Interim Relief Is Necessary to Avoid Irreparable Harm to the Debtors**

40. Once a NOL is limited under section 382 of the IRC, its use is limited forever, and once an equity interest is transferred, it cannot be undone. The relief sought herein is necessary to avoid an irrevocable loss of the Debtors' NOLs and the irreparable harm that could be caused by unfettered Transfers, which, unmonitored, could jeopardize the Debtors'

ability to offset taxable income with their NOLs, thereby risking the Debtors' ability to increase liquidity.

41. Absent establishing the Record Date at this time, it is unlikely that the Debtors would be able to implement the Sell-Down Procedures in any effective fashion to enable them to maximize the value of their NOLs. Whether or not the Debtors seek and the Court ultimately enters a Sell-Down Order, setting the Record Date now is essential to adequately protect the Debtors' option to choose to preserve the value of their NOLs without affecting any parties in interest.

42. Accordingly, the Debtors submit that, absent the interim relief granted in the interim order, the Debtors and their estates could suffer immediate and irreparable harm. If the Court does not grant the relief sought in this motion on an interim basis, holders of Equity Securities could transfer such securities before the protective restrictions herein are implemented by the Court, and the Record Date would not be established for purposes of trading in Claims, risking the Debtors' ability to use their NOLs to maximize value and benefit their estates. Therefore, the Debtors request that the procedures described herein be approved immediately on an interim basis.

#### **Consent to Jurisdiction**

43. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

#### **Notice**

44. Notice of this motion has been provided to: (a) the Office of the United States Trustee for the District of Delaware; (b) the Debtors' largest unsecured creditors on a consolidated basis, as identified in their chapter 11 petitions; (c) Kirkland & Ellis LLP, as

counsel to the ad hoc committee of a majority of holders of the Debtors' prepetition unsecured notes; (d) counsel to JP Morgan Chase Bank, N.A., in its capacity as administrative agent for the senior secured lenders; (e) counsel to Wilmington Trust, National Association, in its capacity as the trustee under the respective prepetition indentures governing the unsecured notes; (f) Substantial Equity Holders; (g) any person or entity who is not a Substantial Equity Holder but that beneficially owns shares representing 1% to 4.99% of the issued and outstanding shares; (h) counsel to Cantor Fitzgerald Securities LLC in its capacity as administrative agent under the proposed debtor in possession financing (the "DIP Agent"); and (i) all parties entitled to notice pursuant to Local Rule 9013-1(m). As this motion is seeking "first day" relief, this motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). Due to the nature of the relief requested herein, the Debtors respectfully submit that no further notice of this motion is necessary.

**No Prior Request**

45. No prior request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the interim order, substantially in the form attached hereto as Exhibit A, and a final order, granting: (i) the relief requested herein; and (ii) such other and further relief to the Debtors as the Court may deem proper.

Dated: December 31, 2015  
Wilmington, Delaware

Respectfully submitted,

/s/ Zachary I. Shapiro

Daniel J. DeFranceschi (DE 2732)  
Zachary I. Shapiro (DE 5103)  
Brendan J. Schlauch (DE 6115)  
RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701

-and-

Gregory M. Gordon (TX 08435300)  
JONES DAY  
2727 N. Harwood Street  
Dallas, Texas 75201  
Telephone: (214) 220-3939  
Facsimile: (214) 969-5100

Thomas A. Howley (TX 24010115)  
Paul M. Green (TX 24059854)  
JONES DAY  
717 Texas, Suite 3300  
Houston, Texas 77002  
Telephone: (832) 239-3939  
Facsimile: (832) 239-3600

PROPOSED ATTORNEYS FOR DEBTORS  
AND DEBTORS IN POSSESSION

**EXHIBIT A**  
**Interim Order**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

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In re	:	Chapter 11
	:	
SWIFT ENERGY COMPANY, <i>et al.</i> , <sup>1</sup>	:	Case No. 15-_____ (____)
	:	
Debtors.	:	(Jointly Administered)
	:	

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**INTERIM 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 DEBTORS' ESTATES AND (III) SCHEDULING A FINAL HEARING**

This matter coming before the Court on 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 Debtors' Estates (the "Motion") pursuant to sections 105, 362 and 541 of the Bankruptcy Code and Rule 3001 of the Bankruptcy Rules;<sup>2</sup> the Court having reviewed the Motion and the First Day Declaration and having considered the statements of counsel and evidence adduced with respect to the Motion at a preliminary hearing before the Court (the "Hearing"); the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (c) venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409 and (d) notice of the Motion and the Hearing was sufficient under the circumstances; and the Court finding that

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<sup>1</sup> The Debtors are the following nine entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Swift Energy Company (0661); Swift Energy International, Inc. (6721); Swift Energy Group, Inc. (8150); Swift Energy USA, Inc. (8212); Swift Energy Alaska, Inc. (6493); Swift Energy Operating, LLC (2961); GASRS LLC (4381); SWENCO-Western, LLC (0449); and Swift Energy Exploration Services, Inc. (2199). The address of each of the Debtors is 17001 Northchase Drive, Suite 100, Houston, Texas 77060.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

the relief sought in the Motion is in the best interests of the Debtors, their estates, creditors and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion and the First Day Declaration and at the Hearing establish just cause for the relief granted herein; and after due deliberation thereon and good and sufficient cause appearing therefore;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The Equity Transfer Procedures set forth herein are approved in all respects, on an interim basis.
3. 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 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 Debtors' chapter 11 cases:
  - (a) Certain Defined Terms. For purposes of this interim order: (A) a "Substantial Equityholder" is any person or entity that beneficially owns at least 2.2 million shares (representing approximately 4.99% of the 44.6 million issued and outstanding shares) of Swift Energy Corporation; (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 shares 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 stock and (iii) ownership of options to acquire stock; (C) an "option" to acquire stock includes any contingent purchase, warrant, convertible debt, 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(c) below (Stock Acquisition Notice) and/or paragraph 4(d) below (Stock Disposition Notice).

- (b) 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 Debtors, c/o Swift Energy Company, 17001 Northchase Drive, Suite 100, Houston, Texas 77060 (Attn: Office of General Counsel), and (ii) Jones Day, 2727 N. Harwood, Dallas, Texas 75201 (Attn: Jonathan M. Fisher, Esq.), a notice of such status, in the form attached hereto as Exhibit 2 (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.
- (c) Stock Acquisition Notice. At least 28 days prior to any Transfer (including options to acquire stock 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 Debtors and Jones Day, counsel to the Debtors (at the addresses set forth in paragraph 4(b) above), advance written notice of the intended Transfer or worthless stock deduction, in the form attached hereto as Exhibit 3 (a "Stock Acquisition Notice").
- (d) Stock Disposition Notice. Prior to any Transfer 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 Debtors and Jones Day, counsel to the Debtors (at the addresses set forth in paragraph 4(b) above), advance written notice of the intended Transfer, in the form attached hereto as Exhibit 4 (a "Stock Disposition Notice").
- (e) Objection Procedures. The Debtors shall have 21 days after receipt of a Stock Acquisition Notice or a Stock 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 Debtors' ability to utilize their NOLs. If the Debtors file an objection, the proposed Transfer will not be effective unless and until approved by a final and nonappealable order of this Court.

If the Debtors do not object within such 21-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.

- (f) 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 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.

5. Within five business days after the entry of this interim order, the Debtors shall provide notice in substantially the form attached hereto as Exhibit 1 (the "Equity Transfer Procedures Notice") to: (a) the U.S. Trustee; (b) the United States Securities and Exchange Commission; (c) the Internal Revenue Service; and (d) any registered holders of the outstanding Equity Securities.

6. Upon receipt of such Equity Transfer Procedures Notice, any broker, bank, dealer or other agent or nominee of a beneficial holder of Equity Securities (each a "Nominee") will be required, within five business days of receipt of such notice and on at least a quarterly basis thereafter, to send the Equity Transfer Procedures Notice to all beneficial holders of Equity Securities on whose behalf such Nominee holds Equity Securities. To the extent such beneficial holder is also a Nominee, such Nominee must, in turn, promptly provide the Equity Transfer Procedures Notice to any holder for whose account such holder holds Equity Securities, and so on down the chain of ownership. In addition, any person, entity, broker or agent acting on behalf of any holder of Equity Securities who sells at least 2.2 million shares (representing approximately 4.99% of the 44.6 million issued and outstanding shares) of Swift to another person or entity must provide a copy of the Equity Transfer Procedures Notice to such purchaser or any broker or agent acting on such purchaser's behalf.

7. Claimholders and potential purchasers of Claims against the Debtors are hereby deemed notified that, if the Debtors ultimately seek and the Court approves a Sell-Down Order, claimholders that acquire Claims after the date of this interim order (the "Record Date") in an amount that would entitle them to receive more than 4.99% of the stock of the Debtors may be subject to a required sell-down of any Claims acquired after the Record Date in accordance with the Sell-Down Procedures.

8. Within five business days after the entry of this interim order, the Debtors shall provide notice in substantially the form attached hereto as Exhibit 5 (the "Record Date Notice") to: (a) the U.S. Trustee; (b) counsel to Wells Fargo Bank, N.A., solely in its capacity as the trustee under the indenture governing the Notes; (c) the United States Securities and Exchange Commission; (d) the Internal Revenue Service and (e) the Debtors' largest unsecured creditors on a consolidated basis, as identified in their chapter 11 petitions and (f) the Nominees of holders of the Notes.

9. Upon receipt of the Record Date Notice, any Nominee will be required, within five days of receipt of the Record Date Notice, and on at least a quarterly basis thereafter, to send such Record Date Notice to all beneficial holders of the Notes. To the extent such beneficial holder is also a Nominee, such Nominee must, in turn, promptly provide the Record Date Notice to any holder for whose account such beneficial holder holds the Notes, and so on down the chain of ownership.

10. Within five business days after the entry of the interim order, the Debtors will publish notice of the entry of the interim order substantially in the form attached hereto as Exhibit 6.

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

12. The entry of this interim 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.

13. The notices substantially in the form attached hereto as Exhibit 1, Exhibit 2, Exhibit 3, Exhibit 4, Exhibit 5 and Exhibit 6 are approved.

14. Any of the Debtors may waive in writing, and in their sole and absolute discretion, any and all restrictions, stays and notice procedures contained in this interim order.

15. The Final Hearing to consider entry of an order granting the relief requested in the Motion on a final basis shall be held on \_\_\_\_\_, 2016 at \_\_:\_\_.m. (ET).

16. If no objections to the Motion are timely filed, served and received in accordance with the Motion and this interim order, the interim order shall be deemed a final order upon expiration of the Objection Deadline without further notice or hearing, and the Motion shall be granted on a final and permanent basis.

17. If objections are timely filed and served as set forth herein, the Debtors shall, on or after the Objection Deadline, submit to the Court a final order.

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

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

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

21. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this interim order in accordance with the Motion.

22. The Debtors shall consult with the lenders under the Debtors' debtor in possession financing prior to making any changes to the procedures authorized by this interim order.

23. The Court shall retain jurisdiction to hear and determine all matters arising from or related to this interim order.

Dated: \_\_\_\_\_, 2016  
Wilmington, Delaware

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1 TO INTERIM ORDER**

Equity Transfer Procedures Notice

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

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In re	:	Chapter 11
	:	
SWIFT ENERGY COMPANY, <i>et al.</i> , <sup>1</sup>	:	Case No. 15-_____ (____)
	:	
Debtors.	:	(Jointly Administered)
	:	

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

**TO ALL PERSONS OR ENTITIES WITH  
EQUITY INTERESTS IN SWIFT ENERGY COMPANY:**

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On December 31, 2015 (the "Petition Date"), the above-captioned debtors and debtors in possession (collectively, the "Debtors") commenced cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

2. On the Petition Date, the Debtors 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 Debtors' Estates (the "Motion").

3. On \_\_\_\_\_, 2016, the United States Bankruptcy Court for the District of Delaware (the "Court") entered an interim order (the "Interim Order"), approving the procedures set forth below with respect to transfers of equity securities Swift Energy Corporation (the "Equity Transfer Procedures") and setting the Record Date with respect to trading in claims against the Debtors, in order to assist the Debtors in preserving their net operating losses

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<sup>1</sup> The Debtors are the following nine entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Swift Energy Company (0661); Swift Energy International, Inc. (6721); Swift Energy Group, Inc. (8150); Swift Energy USA, Inc. (8212); Swift Energy Alaska, Inc. (6493); Swift Energy Operating, LLC (2961); GASRS LLC (4381); SWENCO-Western, LLC (0449); and Swift Energy Exploration Services, Inc. (2199). The address of each of the Debtors is 17001 Northchase Drive, Suite 100, Houston, Texas 77060.

("NOLs"). **Any purchase, sale, trade or other transfer of equity securities in Debtor Swift Energy Corporation 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. A final hearing to consider the relief requested in the Motion and the entry of an order (the "Final Order") implementing the Equity Transfer Procedures on a final and permanent basis shall be held on \_\_\_\_\_, 2016 at \_\_:\_\_ .m. (ET), before the Honorable \_\_\_\_\_ at \_\_\_\_\_.

5. Objections to the Motion must be filed with the Court and served so as to be received by 4 p.m. (ET) on \_\_\_\_\_, 2016, on (a) the office of the United States Trustee for the District of Delaware and (b) (i) the Debtors, c/o Swift Energy Company, 17001 Northchase Drive, Suite 100, Houston, Texas 77060 (Attn: Office of General Counsel), and (ii) Jones Day, 2727 N. Harwood, Dallas, Texas 75201 (Attn: Jonathan M. Fisher, Esq.).

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 in Swift Energy Corporation:

- (a) 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 2.2 million shares (representing approximately 4.99% of the 44.6 million issued and outstanding shares) of Swift Energy Corporation ("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 shares 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 stock and (iii) ownership of options to acquire stock; (C) an "option" to acquire stock includes any contingent purchase, warrant, convertible debt, 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(c) below (Stock Acquisition Notice) and/or paragraph 7(d) below (Stock Disposition Notice).

- (b) 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 Debtors, c/o Swift Energy Company, 17001 Northchase Drive, Suite 100, Houston, Texas 77060 (Attn: Office of General Counsel), and (ii) Jones Day, 2727 N. Harwood, Dallas, Texas 75201 (Attn: Jonathan M. Fisher, Esq.), a notice of such status, in the form attached hereto as Exhibit 2 (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.
- (c) Stock Acquisition Notice. At least 28 days prior to any Transfer (including options to acquire stock 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 Debtors and Jones Day, counsel to the Debtors (at the addresses set forth in paragraph 7(b) above), advance written notice of the intended Transfer, in the form attached hereto as Exhibit 3 (a "Stock Acquisition Notice").
- (d) Stock Disposition Notice. Prior to any Transfer 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 Debtors and counsel to the Debtors (at the addresses set forth in paragraph 7(b) above), advance written notice of the intended Transfer in the form attached hereto as Exhibit 4 (a "Stock Disposition Notice").
- (e) Objection Procedures. The Debtors shall have 21 days after receipt of a Stock Acquisition Notice or a Stock 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 Debtors' ability to utilize their NOLs. If the Debtors file an objection, the proposed Transfer will not be effective unless and until approved by a final and nonappealable order of this Court. If the Debtors do not object within such 21-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.

- (f) 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 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 IN SWIFT ENERGY CORPORATION IN VIOLATION OF THE INTERIM ORDER WILL BE NULL AND VOID AB INITIO AND MAY RESULT IN THE IMPOSITION OF SANCTIONS BY THE BANKRUPTCY COURT.**

8. Any of the Debtors may waive in writing, and in their sole and absolute discretion, any and all restrictions, stays and notice procedures contained in the Interim Order. However, the Debtors shall consult with the lenders under the Debtors' debtor in possession financing prior to any such changes of the restrictions, stays and notice procedures contained in the Interim Order.

9. 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 Debtors' Notice, Claims and Solicitation Agent, Kurtzman Carson Consultants LLC, by accessing their website at [www.kccllc.net/swiftenergy](http://www.kccllc.net/swiftenergy) or by calling 888.251.2764. If a hearing is held and a Final Order is entered, such Final Order will also be available as described in the preceding sentence.

10. 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.

Dated: \_\_\_\_\_, 2016  
Wilmington, Delaware

Respectfully submitted,

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Daniel J. DeFranceschi (DE 2732)  
Zachary I. Shapiro (DE 5103)  
Brendan J. Schlauch (DE 6115)  
RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701

-and-

Gregory M. Gordon (TX 08435300)  
JONES DAY  
2727 N. Harwood Street  
Dallas, Texas 75201  
Telephone: (214) 220-3939  
Facsimile: (214) 969-5100

Thomas A. Howley (TX 24010115)  
Paul M. Green (TX 24059854)  
JONES DAY  
717 Texas, Suite 3300  
Houston, Texas 77002  
Telephone: (832) 239-3939  
Facsimile: (832) 239-3600

**PROPOSED ATTORNEYS FOR DEBTORS  
AND DEBTORS IN POSSESSION**

**EXHIBIT 2 TO INTERIM ORDER**

Notice of Substantial Equityholder Status



Number of Shares of Common Stock	Date Acquired

(Attach additional page if necessary)

3. The last four digits of the taxpayer identification number of **[Name of Equityholder]** is \_\_\_\_\_.
4. 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.
5. 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 Debtors, c/o Swift Energy Company, 17001 Northchase Drive, Suite 100, Houston, Texas 77060 (Attn: Office of General Counsel), and (ii) Jones Day, 2727 N. Harwood, Dallas, Texas 75201 (Attn: Jonathan M. Fisher, Esq.).

Respectfully submitted,

\_\_\_\_\_  
(Name of Equityholder)

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT 3 TO INTERIM ORDER**

Stock Acquisition Notice



above-captioned debtors and debtors in possession (collectively, the "Debtors") and the Debtors' counsel.

3. **[Name of Prospective Acquirer]** currently beneficially owns \_\_\_\_\_ shares of Common Stock of Swift.

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

5. The last four digits of the taxpayer identification number of **[Name of Prospective Acquirer]** is \_\_\_\_\_.

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 Debtors, c/o Swift Energy Company, 17001 Northchase Drive, Suite 100, Houston, Texas 77060 (Attn: Office of General Counsel), and (ii) Jones Day, 2727 N. Harwood, Dallas, Texas 75201 (Attn: Jonathan M. Fisher, Esq.).

8. The Debtors have 21 calendar days after receipt of this Notice to object to the Proposed Transfer described herein. If the Debtors file an objection, such Proposed Transfer

will not be effective unless approved by a final and nonappealable order of the Court. If the Debtors do not object within such 21-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 additional shares of Common Stock (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 4 TO INTERIM ORDER**

Stock Disposition Notice



above-captioned debtors and debtors in possession (collectively, the "Debtors") and the Debtors' counsel.

3. **[Name of Prospective Seller]** currently beneficially owns \_\_\_\_\_ shares of Common Stock of Swift.

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

5. The last four digits of the taxpayer identification number of **[Name of Prospective Seller]** is \_\_\_\_\_.

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 Debtors, c/o Swift Energy Company, 17001 Northchase Drive, Suite 100, Houston, Texas 77060 (Attn: Office of General Counsel), and (ii) Jones Day, 2727 N. Harwood, Dallas, Texas 75201 (Attn: Jonathan M. Fisher, Esq.).

8. The Debtors have 21 calendar days after receipt of this Notice to object to the Proposed Transfer described herein. If the Debtors file an objection, such Proposed Transfer will not be effective unless approved by a final and nonappealable order of the Court. If the

Debtors do not object within such 21-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 shares of Common Stock (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: \_\_\_\_\_

**EXHIBIT 5 TO INTERIM ORDER**

Record Date Notice

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

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In re	:	Chapter 11
	:	
SWIFT ENERGY COMPANY, <i>et al.</i> , <sup>1</sup>	:	Case No. 15-_____ (_____)
	:	
Debtors.	:	(Jointly Administered)
	:	

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**NOTICE OF (I) RECORD DATE FOR  
NOTICE AND SELL-DOWN PROCEDURES FOR TRADING IN  
CLAIMS AGAINST THE DEBTORS' ESTATES AND (II) A FINAL HEARING**

**TO ALL PERSONS OR ENTITIES WITH CLAIMS AGAINST ANY OF THE DEBTORS:**

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On December 31, 2015 (the "Petition Date"), the above-captioned debtors and debtors in possession (collectively, the "Debtors") commenced cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

2. On the Petition Date, the Debtors 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 Debtors' Estates (the "Motion").

3. On \_\_\_\_\_, 2016, the United States Bankruptcy Court for the District of Delaware (the "Court") entered an interim order (the "Interim Order") setting the Record Date with respect to trading in claims against the Debtors, in order to assist the Debtors in preserving their net operating losses ("NOLs").

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<sup>1</sup> The Debtors are the following nine entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Swift Energy Company (0661); Swift Energy International, Inc. (6721); Swift Energy Group, Inc. (8150); Swift Energy USA, Inc. (8212); Swift Energy Alaska, Inc. (6493); Swift Energy Operating, LLC (2961); GASRS LLC (4381); SWENCO-Western, LLC (0449); and Swift Energy Exploration Services, Inc. (2199). The address of each of the Debtors is 17001 Northchase Drive, Suite 100, Houston, Texas 77060.

4. Pursuant to the Interim Order, the Record Date is established as \_\_\_\_\_, 2016.

5. Pursuant to the Interim Order, claimholders and potential purchasers of claims against the Debtors ("Claims") are hereby notified that, if the Court ultimately approves a Sell-Down Order, claimholders that acquire Claims after the Record Date in an amount that would entitle them to receive more than 4.99% of the stock of the reorganized Debtors under a plan of reorganization may be subject to a required sell-down of any Claims purchased after the Record Date in accordance with the Sell-Down Procedures.

6. All persons or entities that acquired and hold Claims after the Record Date in an amount entitling such person or entity to receive more than 4.99% of the equity of the reorganized Debtors may be required to identify themselves to the Debtors and the official committee of unsecured creditors after the Court's approval of the disclosure statement which identifies potential recoveries for creditors.

7. A final hearing to consider the relief requested in the Motion and the entry of an order (the "Final Order") confirming the establishment of the Record Date on a final and permanent basis shall be held on \_\_\_\_\_, 2016 at \_\_: \_\_ .m. (ET) before the Honorable \_\_\_\_\_ at \_\_\_\_\_.

8. Objections to the Motion must be filed with the Court and served so as to be received by 4 p.m. (ET) on [\_\_\_\_\_], 2016, on (a) the office of the United States Trustee for the District of Delaware and (b) (i) the Debtors, c/o Swift Energy Company, 17001 Northchase Drive, Suite 100, Houston, Texas 77060 (Attn: Office of General Counsel), and (ii) Jones Day, 2727 N. Harwood, Dallas, Texas 75201 (Attn: Jonathan M. Fisher, Esq.).

9. 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.

10. 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 Debtors' Notice, Claims and Solicitation Agent, Kurtzman Carson Consultants LLC, by accessing their website at [www.kccllc.net/swiftenergy](http://www.kccllc.net/swiftenergy), or by calling 888.251.2764. If a hearing is held and a Final Order is entered, such Final Order will also be available as described in the preceding sentence.

11. The entry of the Interim and Final Orders 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 by the Interim and Final Orders.

12. 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.

Dated: \_\_\_\_\_, 2016  
Wilmington, Delaware

Respectfully submitted,

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Daniel J. DeFranceschi (DE 2732)  
Zachary I. Shapiro (DE 5103)  
Brendan J. Schlauch (DE 6115)  
RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
Telephone: (302) 651-7700  
Facsimile: (302) 651-7701

-and-

Gregory M. Gordon (TX 08435300)  
JONES DAY  
2727 N. Harwood Street  
Dallas, Texas 75201  
Telephone: (214) 220-3939  
Facsimile: (214) 969-5100

Thomas A. Howley (TX 24010115)  
Paul M. Green (TX 24059854)  
JONES DAY  
717 Texas, Suite 3300  
Houston, Texas 77002  
Telephone: (832) 239-3939  
Facsimile: (832) 239-3600

PROPOSED ATTORNEYS FOR DEBTORS  
AND DEBTORS IN POSSESSION

**EXHIBIT 6 TO INTERIM ORDER**

Publication Notice

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

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In re	:	Chapter 11
	:	
SWIFT ENERGY COMPANY, <i>et al.</i> , <sup>1</sup>	:	Case No. 15-_____ (____)
	:	
Debtors.	:	(Jointly Administered)
	:	

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**NOTICE OF RESTRICTION OF TRADING IN EQUITY OF SWIFT ENERGY CORPORATION AND RECORD DATE FOR NOTICE AND SELL-DOWN PROCEDURES FOR TRADING IN CLAIMS AGAINST THE DEBTORS' ESTATES**

**TO ALL PERSONS OR ENTITIES WITH EQUITY INTERESTS IN SWIFT ENERGY CORPORATION OR CLAIMS AGAINST ANY OF THE DEBTORS:**

PLEASE TAKE NOTICE OF THE FOLLOWING:

On December 31, 2015 (the "Petition Date"), the above-captioned debtors and debtors in possession (collectively, the "Debtors") commenced cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

On the Petition Date, the Debtors 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 Debtors' Estates (the "Motion").

On \_\_\_\_\_, 2016, the United States Bankruptcy Court for the District of Delaware (the "Court") entered an interim order (the "Interim Order") (i) approving procedures with respect to transfers of equity securities in Swift Energy Corporation (the "Equity Transfer Procedures") and (ii) setting the record date with respect to trading in claims against the Debtors, in order to assist the Debtors in preserving their net operating losses ("NOLs").

**FAILURE TO FOLLOW THE EQUITY TRANSFER PROCEDURES SET FORTH 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 IN SWIFT ENERGY CORPORATION IN VIOLATION OF THE INTERIM ORDER WILL BE NULL AND VOID AB INITIO, SHALL CONFER NO RIGHTS ON THE**

<sup>1</sup> The Debtors are the following nine entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Swift Energy Company (0661); Swift Energy International, Inc. (6721); Swift Energy Group, Inc. (8150); Swift Energy USA, Inc. (8212); Swift Energy Alaska, Inc. (6493); Swift Energy Operating, LLC (2961); GASRS LLC (4381); SWENCO-Western, LLC (0449); and Swift Energy Exploration Services, Inc. (2199). The address of each of the Debtors is 17001 Northchase Drive, Suite 100, Houston, Texas 77060.

**TRANSFeree AND MAY RESULT IN THE IMPOSITION OF SANCTIONS BY THE BANKRUPTCY COURT.**

Pursuant to the Interim Order, the Record Date is established as \_\_\_\_\_, 2016.

Claimholders and potential purchasers of claims against the Debtors ("Claims") are hereby notified that, if the Court ultimately approves a Sell-Down Order, claimholders that acquire Claims after the record date in an amount that would entitle them to receive more than 4.99% of the stock of the reorganized Debtors under a plan of reorganization may be subject to a required sell-down of any Claims purchased after the record date in accordance with the Sell-Down Procedures.

All persons or entities that acquired and hold Claims after the record date in an amount entitling such person or entity to receive more than 4.99% of the equity of the reorganized Debtors may be required to identify themselves to the Debtors and the official committee of unsecured creditors after the Court's approval of a qualifying sale.

A final hearing to consider the relief requested in the Motion and the entry of an order (the "Final Order") implementing the Equity Transfer Procedures on a final and permanent basis shall be held on \_\_\_\_\_, 2016 at \_\_\_:\_\_\_ .m. (ET), before the Honorable \_\_\_\_\_ at \_\_\_\_\_.

Objections to the Motion must be filed with the Court and served so as to be received by 4 p.m. (ET) on \_\_\_\_\_, on (a) the office of the United States Trustee for the District of Delaware and (b) (i) the Debtors, c/o Swift Energy Company, 17001 Northchase Drive, Suite 100, Houston, Texas 77060 (Attn: Office of General Counsel), and (ii) Jones Day, 2727 N. Harwood, Dallas, Texas 75201 (Attn: Jonathan M. Fisher, Esq.).

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.

The entry of the Interim and Final Orders 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 by the Interim and Final Orders.

Any of the Debtors may waive in writing, and in their 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, and any Final Order will be, available via PACER via the Court's website at <https://ecf.deb.uscourts.gov> for a fee, or through the Debtors' Notice, Claims and Solicitation Agent, Kurtzman Carson Consultants LLC, by accessing their website at [www.kccllc.net/swiftenergy](http://www.kccllc.net/swiftenergy), or by calling 888.251.2764.