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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In re:**

**PATRIOT COAL CORPORATION, *et al.*,**

**Debtors.<sup>1</sup>**

**Chapter 11**

**Case No. 12-[ ] ( )**

**(Jointly Administered)**

**DEBTORS' MOTION FOR AN ORDER  
ESTABLISHING NOTIFICATION PROCEDURES AND APPROVING  
RESTRICTIONS ON CERTAIN TRANSFERS OF CLAIMS AGAINST AND  
INTERESTS IN THE DEBTORS' ESTATES**

Patriot Coal Corporation (“**Patriot Coal**”) and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”) respectfully represent:

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<sup>1</sup> The Debtors are the entities listed on Schedule 1 attached hereto. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors' chapter 11 petitions.

### **Relief Requested**

1. By this motion (the “**Motion**”), the Debtors seek to enforce the automatic stay by implementing court-ordered procedures (the “**Procedures**”) intended to protect the Debtors’ estates against the possible loss of valuable tax benefits that could flow from inadvertent stay violations. Pursuant to sections 105(a) and 362 of the Bankruptcy Code, the Debtors request authorization (i) to establish and implement restrictions and notification requirements regarding the Tax Ownership (as defined in Section (j) of Paragraph 14 below) and certain transfers of common stock of Patriot Coal (the “**Stock**”), (ii) to establish “sell down” procedures with respect to Covered Claims (as defined in Section (j) of Paragraph 14 below) and (iii) to notify holders of Stock and Covered Claims of the restrictions, notification requirements and procedures. The Debtors also seek approval of the form of notice attached hereto as Exhibit B, which will notify holders of Stock and Covered Claims whose actions could adversely affect the Debtors’ tax assets that the Procedures have been established by order of this Court.

### **Background and Jurisdiction**

2. On July 9, 2012 (the “**Petition Date**”), each Debtor commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of their chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

4. Additional information about the Debtors' businesses and the events leading up to the Petition Date can be found in the Declaration of Mark N. Schroeder, Patriot Coal Corporation's Senior Vice President and Chief Financial Officer, which is incorporated herein by reference.

5. The Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and may be determined by the Bankruptcy Court. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

#### **The Debtors' Net Operating Loss Carryforwards**

6. The Debtors file a consolidated U.S. income tax return. The Debtors estimate that, as of June 30, 2012, they had a consolidated net operating loss ("NOL") for U.S. federal income tax purposes of approximately \$867 million and a NOL for U.S. federal alternative minimum tax purposes of approximately \$570 million. Because the Internal Revenue Code permits corporations to carry forward NOLs to offset future income, the Debtors' consolidated NOL carryforwards are valuable assets of their estates. *See, e.g.*, I.R.C. § 172. The availability of these tax assets may prove crucial to the financial health of the reorganized Debtors.

7. For the reasons discussed below, and consistent with the automatic stay, the Debtors need the ability to enforce the stay to preclude certain transfers and to monitor and possibly object to other changes in the ownership of Stock. In addition, the Debtors may need the ability to require creditors who have increased their positions after the Petition Date to "sell-down" to reestablish the status quo among creditors. Specifically, trading of Stock and Covered Claims could adversely affect the Debtors'

future ability to utilize their NOL carryforwards and other tax attributes described above  
if:

- A. too many 5% or greater blocks of equity securities are created through purchases, sales or issuances, or too many shares are added to or sold from such blocks, such that, together with the previous trading by 5-percent shareholders during the preceding three year period, a section 382 ownership change is triggered prior to the consummation of a confirmed chapter 11 plan; or
- B. the Tax Ownership of claims against the Debtors that are currently held by “qualified creditors” is transferred, prior to consummation of the plan, such that (A) those claims (either alone or when accumulated with other claims currently held by a transferee) would be converted under a plan of reorganization into a 5% or greater block of the stock of the reorganized Debtors and (B) the sum of all such 5% or greater blocks and the blocks of stock of the reorganized Debtors held by all nonqualified creditors would represent 50% or more of such stock.

8. The use of NOL carryforwards is subject to certain statutory limitations.

One limitation is contained in section 382 of the Internal Revenue Code (“**section 382**”), which, in the case of a corporation that undergoes a change of ownership, limits that corporation’s ability to use its NOLs and certain other tax attributes to offset future income. For purposes of section 382, a change of ownership occurs when the percentage of a company’s equity held by one or more “5-percent shareholders” (as defined in section 382 and the Treasury regulations promulgated thereunder) increases by more than fifty percentage points over the lowest percentage of stock owned by those shareholders at any time during a three-year rolling period. For example, if a 10% shareholder purchased additional stock and became a 61% shareholder, the percentage of stock

owned by 5-percent shareholders would have increased by 51 percentage points, thereby causing an “ownership change.”<sup>2</sup>

9. In the event a corporation experiences a section 382 ownership change, section 382 generally imposes a limitation on the amount of NOLs and certain other tax attributes that can be utilized in each subsequent year to offset income. Subject to a number of potentially applicable adjustments, this limitation is generally equal to the product of (1) the equity value of the debtor immediately before the change in ownership multiplied by (2) a long-term tax-exempt rate prescribed by the U.S. Treasury (3.26% for an ownership change occurring during the month of July 2012). If Patriot Coal were to undergo an ownership change at a time prior to consummation of a chapter 11 plan, the resulting annual limitation could result in a substantial portion of its NOLs expiring unutilized.

10. By contrast, in the context of a change of ownership that occurs pursuant to a confirmed chapter 11 plan, the rules relating to the limitations on the use of tax attributes are more relaxed, particularly where the plan involves the retention or receipt of at least 50% of the stock of the reorganized debtor by shareholders or “qualified creditors.” *See* I.R.C. § 382(l)(5), (6). Paragraph 11 below discusses the special rule under section 382(l)(5) of the Internal Revenue Code (“**section 382(l)(5)**”) that would apply if Patriot Coal shareholders and “qualified creditors” of the Debtors receive stock pursuant to the chapter 11 plan of reorganization constituting at least 50% of the total value and voting power of Patriot Coal’s stock immediately after the ownership change.

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<sup>2</sup> For purposes of section 382, a sale of shares owned by a 5-percent shareholder is treated as creating a new 5-percent shareholder, even if none of the buyers of the shares individually acquires a 5% block of shares. *See* Treas. Reg. § 1.382-2T(j)(3)(i).

Paragraph 12 below discusses the special rule under section 382(l)(6) of the Internal Revenue Code (“**section 382(l)(6)**”) that would apply if the Debtors do not satisfy the eligibility requirements of section 382(l)(5) or elect out of that provision.

11. Under section 382(l)(5), the limitations imposed by section 382 do not apply to a debtor that undergoes an ownership change as a result of the consummation of a chapter 11 plan if the plan provides that the persons or entities who owned the debtor’s stock immediately before the relevant ownership change and/or “qualified creditors” emerge from the reorganization owning (as a result of their prior ownership of stock or claims that are “qualified indebtedness”) at least 50% of the total value and voting power of the debtor’s stock immediately after the ownership change. *See* I.R.C. § 382(l)(5)(A). Qualified creditors are, in general, creditors who (i) held their claims continuously for at least 18 months at the time the bankruptcy petition is filed or (ii) hold claims incurred in the ordinary course of the debtor’s business and held those claims continuously since they were incurred. Claims described in the preceding sentence are “qualified indebtedness.” *See* I.R.C. § 382(l)(5)(E); Treas. Reg. § 1.382-9(d)(2). Importantly, a “de minimis” rule generally provides that a creditor who does not meet either of the foregoing requirements for the sole reason that its claim was not held continuously for a sufficient period may still be considered a qualified creditor if that creditor will directly or indirectly own less than 5% of the reorganized debtor’s equity immediately after the ownership change.<sup>3</sup> *See* Treas. Reg. § 1.382-9(d)(3).

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<sup>3</sup> This de minimis rule does not apply to claims beneficially owned by a person whose participation in formulating a chapter 11 plan makes evident to the debtor (whether or not the debtor had previous knowledge) that the person has not owned the claim for the requisite 18 month period. In that event, in order for the person to be treated as a qualified creditor, the debtor must establish that the claim (...continued)

12. It is possible that the Debtors will undergo an ownership change for purposes of section 382 upon emergence from chapter 11. In that event, the Debtors may seek to avail themselves of the special relief afforded by section 382(l)(5) for changes in ownership under a confirmed chapter 11 plan. However, if the relief requested herein is not granted, there is a significant risk that as a result of pre-consummation trading and the accumulation of claims against and interests in the Debtors, this special relief would not be available to the Debtors and the use of the Debtors' tax assets could be permanently impaired. Even if the Debtors are ultimately unable to satisfy the requirements of section 382(l)(5), or if they were to determine that it is more advantageous to elect not to accept its benefits, it would still be in the best interest of the Debtors and their estates to restrict Stock trading that could result in a change of ownership of the Debtors before the confirmation of a chapter 11 plan.<sup>4</sup> In order for the Debtors to qualify for the favorable valuation rule of section 382(l)(6), an ownership change must occur pursuant to the consummation of a chapter 11 plan. Under section 382(l)(6), if the Debtors experience an ownership change pursuant to a confirmed chapter 11 plan and section 382(l)(5) does not apply (either because the Debtors elect out of that provision or because its requirements are not satisfied), the value of the reorganized Debtors' equity for the purposes of calculating the limitation under section 382 would reflect the increase in

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(continued...)

was incurred in the ordinary course of the Debtors' business and the creditor has held the claim continuously since it was incurred.

<sup>4</sup> As discussed above, if a change of ownership occurred *before* the confirmation of a chapter 11 plan, the limitation under section 382 would be determined based on the equity value of the Debtor immediately before the ownership change. Consequently, the Debtors' ability to use their NOL carryforwards could be severely limited. Accordingly, this Motion proposes restrictions on Stock trading in order to guard against an ownership change and thereby to protect a valuable asset of the Debtors' estates.

value of the reorganized Debtors' equity resulting from the restructuring of creditor claims in the plan. Thus, to the extent the value of the reorganized Debtors' equity increases as a result of the reorganization (compared to the value of the Debtors' equity prior to the reorganization), section 382(l)(6) will provide for a higher annual limitation than would otherwise be obtained under section 382 for an ownership change occurring during the time the Debtors are operating under chapter 11.

13. With respect to creditor claims, the following proposed procedures and restrictions implement a so-called "sell down" approach to protecting these valuable tax assets. The core idea of the sell down approach is that claims may be freely accumulated, subject to applicable law, unless and until the debtor files a disclosure statement for a plan structured to protect the ability to utilize the section 382(l)(5) regime. At that point, creditors that have acquired claims in excess of a specified threshold amount subsequent to the petition date and that would otherwise be entitled to receive more than a specified amount (e.g., 4.85%)<sup>5</sup> of the stock of the reorganized debtor generally may be required to "sell down" their holdings to the extent necessary to preserve the debtor's ability to utilize section 382(l)(5).<sup>6</sup>

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<sup>5</sup> The 4.85% number is designed to take advantage of the "de minimis" rule described in Paragraph 11. The Interim Trading Order uses the term "Applicable Percentage" to refer to this number. The reason for the use of a defined term is that determination of the appropriate number of shares is more complex if the plan of reorganization contemplates the issuance of more than one class of stock.

<sup>6</sup> Certain technical mechanics necessary to implement a Sell Down Order are found in the definitions set out in Section 11 of the Interim Trading Order (and also in Section (j) of Paragraph 14 herein). In the event that the issuance of Sell Down Notices is determined to be necessary, a creditor generally cannot be forced to reduce its holdings of Covered Claims below either the Threshold Amount or that creditor's Protected Amount. The Threshold Amount is a conservative estimate, based on known unsecured claims, that is calculated with a view to ensuring that a holder of the Threshold Amount of Covered Claims will receive less than 4.85% of the stock of the reorganized Debtors. A creditor's Protected Amount is generally the amount of Covered Claims it held as of the Effective Time, with certain modifications. One potential exception arises in the case of a creditor that willfully violates the Participation Restriction set out in Section 3(b) of the Interim Trading Order (and also in Section (c)(2) of (...continued)



**Proposed Procedures and Restrictions**

14. In light of the above, the Debtors seek to implement the following procedures and restrictions:

(a) Notice of Substantial Equityholder Status. Any Person who is or becomes a Tax Owner of at least 4,500,000 shares, which represent approximately 4.85% of the issued and outstanding Stock as of the Petition Date (a “**Substantial Equityholder**”), must, on or before the later of: (A) 15 days after the Court’s entry of an order approving these Procedures or (B) 10 days after that Person becomes a Substantial Equityholder, serve on the Debtors, the attorneys for the Debtors and the attorneys for the Creditors’ Committee (when appointed) a notice (the “**Substantial Equityholder Notice**”) containing the Tax Ownership information substantially in the form of Exhibit C attached hereto.

(b) Restrictions and Procedures for Trading in Stock. Any Person that, after the Effective Time,

- (1) is not a Substantial Equityholder and wishes to purchase or otherwise acquire Tax Ownership of an amount of Stock that would cause the Person to become a Substantial Equityholder;
- (2) is a Substantial Equityholder and wishes to purchase or otherwise acquire Tax Ownership of any additional Stock; or

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(continued...)

Paragraph 14 herein). The Participation Restriction prohibits a creditor that participates in the formulation of a plan of reorganization from doing so in a manner that makes evident to the Debtors that the creditor holds claims that are neither “old and cold” nor “ordinary course.” Under applicable Treasury regulations, this conduct precludes such claims from qualifying for the “de minimis” exception while held by such creditor. Thus, a violation of the Participation Restriction undermines the Debtors’ ability to implement a 382(l)(5) Plan. A creditor found by the Court to have willfully violated the Participation Exemption will be required to dispose of its claims to the extent necessary to protect the Debtors’ ability to effect the successful implementation of a 382(l)(5) Plan. Prior to seeking to enforce such a remedy, the Debtors must consult with counsel for the Creditors’ Committee (when appointed).

- (3) is a Substantial Equityholder and wishes to sell or otherwise dispose of Tax Ownership of any Stock,

must, prior to the consummation of any such transaction, file with the Court (at the holder's election, in a redacted form that does not include such holder's taxpayer identification number and the aggregate principal amount of Stock that such holder beneficially owns), and serve on the Debtors, their counsel and counsel for the Creditors' Committee (when appointed) an unredacted notice in the form attached hereto as Exhibit D, in the case of a proposed acquisition of Stock, or Exhibit E, in the case of a proposed disposition of Stock (either such notice, a "**Proposed Stock Transaction Notice**"). The Debtors shall consult with counsel for the Creditors' Committee (when appointed) prior to responding to any Proposed Stock Transaction Notice. If written approval of the proposed transaction is filed with the Court by the Debtors within 15 calendar days following the receipt of a Proposed Stock Transaction Notice, then the transaction may proceed. If written approval of the proposed transaction is not filed by the Debtors with the Court within such period, then the transaction may not be consummated unless approved by a final and nonappealable order of the Court. Further transactions within the scope of this Section (b) must be the subject of additional notices as set forth herein with additional waiting periods.

- (c) Restrictions and Procedures for Trading in Covered Claims.

- (1) Any Person that, after the Effective Time,

- (i) is not a Substantial Claimholder and purchases or otherwise acquires Tax Ownership of an amount of Covered Claims that causes the Person to become a Substantial Claimholder; or

(ii) is a Substantial Claimholder and purchases or otherwise acquires Tax Ownership of any additional Covered Claims, will have an obligation, in the event that the Court issues a Sell Down Order at the request of the Debtors pursuant to Section (d) of this Paragraph 14, to sell or otherwise transfer Tax Ownership of an aggregate amount of Covered Claims sufficient to prevent such Person from having Tax Ownership of an amount of the reorganized Debtors' stock as a result of the implementation of the 382(l)(5) Plan that exceeds the greater of (a) the Applicable Percentage or (b) the percentage specified in the Sell Down Notice applicable to such Person pursuant to Section (d) of this Paragraph 14; *provided, however*, that such Person shall not be required to make any sale or other transfer of Tax Ownership of Covered Claims that would result in such Person having Tax Ownership of an aggregate amount of Covered Claims that is less than either (x) the Threshold Amount, as revised from time to time or (y) such Person's Protected Amount.

(2) Any Person that participates in formulating any chapter 11 plan of reorganization of or on behalf of the Debtors (which shall include, without limitation, making any suggestions or proposals to the Debtors or their advisers with regard to such a plan), shall not do so in a manner that makes evident to the Debtors that any Covered Claims of which such Person has Tax Ownership are Newly Traded Covered Claims (the "**Participation Restriction**"). For this purpose, the Debtors acknowledge and agree that the following activities alone shall not constitute a violation of the Participation Restriction: filing an objection to a proposed disclosure statement or to confirmation of a proposed plan of reorganization, voting to accept or reject a proposed plan of reorganization, reviewing or commenting on a proposed business plan, membership on a

Creditors' Committee (when appointed) or an *ad hoc* Committee, providing information to the Debtors' counsel on a confidential basis, or taking any action required by the Interim Trading Order. Any Person found by the Court to have violated the Participation Restriction willfully shall be required to dispose of Newly Traded Covered Claims of which such Person has Tax Ownership (subject to the Equity Forfeiture Provision described in Section (f) of this Paragraph 14) to the extent necessary to protect the Debtors' ability to effect successful implementation of the 382(l)(5) Plan. For the avoidance of doubt, (i) such Person shall not be permitted to retain Tax Ownership of any Newly Traded Covered Claims if a Sell Down Order has been or is subsequently issued pursuant to Section (d)(2) of this Paragraph 14, and (ii) if a Claims Trading Notice Order has been issued pursuant to Section (d)(5) of this Paragraph 14, such Person shall only be permitted to retain Tax Ownership of Newly Traded Covered Claims to the extent that such retention would not impair the reasonable "cushions" referred to in Section (d)(3) of this Paragraph 14. Prior to taking any action to enforce the foregoing two sentences, the Debtors shall consult with counsel for the Creditors' Committee (when appointed).

(d) Sell Down Procedures.

(1) *Reporting of Substantial Claimholder Status.* In order to assess the feasibility of implementing a 382(l)(5) Plan and the need for petitioning the Court for a Sell Down Order, the Debtors, after consultation with counsel for the Creditors' Committee (when appointed), may file with the Court and further publish and serve in the manner specified in Section (h) of this Paragraph 14 a notice (the "**Reporting Notice**") requiring each Substantial Claimholder, within 30 calendar days of the Debtors' filing of the Reporting Notice with the Court, to serve on the Debtors, their counsel and counsel

for the Creditors' Committee (when appointed), a notice in the form attached hereto as Exhibit F (a "**Substantial Claimholder Notice**"). A Person that is uncertain whether it is a Substantial Claimholder may serve a Substantial Claimholder Notice in the manner described above in order to preserve its rights under the Interim Trading Order. A Person serving a Substantial Claimholder Notice in the manner described above shall not be required to file the Substantial Claimholder Notice with the Court. For the avoidance of doubt, the Debtors will not be precluded from filing more than one Reporting Notice pursuant to this subsection (1).

(2) *Petition for Sell Down Order and Notification Procedures.* After filing a 382(l)(5) Plan and Disclosure Statement with respect thereto with the Court, but no later than the expiration of the 75-day period beginning with the date on which the Debtors file a Reporting Notice with the Court, the Debtors may, in consultation with counsel for the Creditors' Committee (when appointed), file a motion with the Court for the issuance of an order (the "**Sell Down Order**") that (i) authorizes the Debtors to issue Sell Down Notices to each Person that has timely filed a Substantial Claimholder Notice showing Tax Ownership of Covered Claims that, pursuant to the terms of the 382(l)(5) Plan (and prior to giving effect to the Sell Down Order), would entitle such Person to acquire Tax Ownership of more than the Applicable Percentage of the equity of the reorganized Debtors (a "**Potentially Substantial New Equityholder**") and (ii) provides that any Person other than a Potentially Substantial New Equityholder shall not be entitled to acquire Tax Ownership of more than the Applicable Percentage of the equity of the reorganized Debtors (or consideration in lieu thereof) if the 382(l)(5) Plan is consummated. The motion for a Sell Down Order shall be published and served in the

manner described in Section (h) of this Paragraph 14. Each Potentially Substantial New Equityholder shall be served with a copy of the motion and the Sell Down Notice applicable to such Person. Counsel for the Creditors' Committee (when appointed) shall be served with a copy of the motion and all Sell Down Notices. For the avoidance of doubt, the Debtors will not be precluded from filing more than one motion for the issuance of a Sell Down Order pursuant to this subsection (2).

Each Sell Down Notice shall indicate (i) the Debtors' calculation of the percentage of the equity of the reorganized Debtors of which the Potentially Substantial New Equityholder would otherwise acquire Tax Ownership under the terms of the 382(l)(5) Plan, based on the Substantial Claimholder Notice filed by such person (such person's "**Preliminary Percentage**"), and (ii) the percentage of equity of the reorganized Debtors of which such person will be permitted to acquire Tax Ownership under the 382(l)(5) Plan, based on a proportionate reduction to the Preliminary Percentage of each Potentially Substantial New Equityholder (except to the extent that the Debtors determine that such a reduction would result in the requirement that a Potentially Substantial New Equityholder sell or otherwise transfer Covered Claims that are not Newly Traded Covered Claims). For instance, if Potentially Substantial New Equityholders are required to reduce their Preliminary Percentage by 20%, a Potentially Substantial New Equityholder whose Preliminary Percentage was 15% generally would be required to sell Covered Claims such that it would be entitled to receive no more than 12% of the equity of the reorganized Debtors under the 382(l)(5) Plan. If a Potentially Substantial New Equityholder holds more than one category of Covered Claims, the category or categories

of Covered Claims to be sold in order to comply with the Sell Down Notice will be left to the discretion of the Potentially Substantial New Equityholder.

(3) *Procedures for Objection to a Sell Down Notice.* A Potentially Substantial New Equityholder in receipt of a Sell Down Notice will be permitted to object on any one or more of the following grounds: (i) the Sell Down Notice applicable to it contains a mathematical error and (ii) compliance with the Sell Down Notice applicable to it would require the Potentially Substantial New Equityholder to reduce its Tax Ownership of Covered Claims below the Threshold Amount (so long as it has complied and continues to comply with the Participation Restriction) or below its Protected Amount or would require it to transfer Tax Ownership of Covered Claims that are not Newly Traded Covered Claims. If an objection is filed, the Debtors will be permitted to serve new Sell Down Notices in their discretion.

Unless the Court determines otherwise for good cause shown, a Sell Down Order and the related Sell Down Notices will remain effective notwithstanding amendments to the 382(l)(5) Plan; *provided, however*, that if the Debtors withdraw the 382(l)(5) Plan, the Sell Down Notices will have no further effect.

(4) *Procedures for Implementing a Sell Down Order.* Each transfer of Covered Claims required by a final Sell Down Notice shall occur prior to the later of (i) the date that is 10 calendar days after the date of confirmation of the 382(l)(5) Plan, (ii) the date that is 30 calendar days after receipt of the Sell Down Notice and (iii) the date specified in all of the Sell Down Notices.

Once a Potentially Substantial New Equityholder has transferred its Covered Claims in accordance with the preceding paragraph, such Person (i) shall, no later than

one business day following the latest date for completing such transfer in accordance with the preceding paragraph, serve on the Debtors, their counsel and counsel for the Creditors' Committee (when appointed) a notice in the form attached hereto as Exhibit G (a "**Notice of Completed Sell Down**") and (ii) under no circumstances shall acquire additional Covered Claims in a manner that would increase the amount of the reorganized Debtors' equity to which such Person would be entitled pursuant to the implementation of the 382(l)(5) Plan above the percentage specified in the Sell Down Notice applicable to such Person.

(5) *Procedure If No Sell Down Notices Are Required.* If the Debtors determine, based on the Substantial Claimholder Notices filed in response to the Reporting Notice, that no Sell Down Notices appear necessary in order to implement the 382(l)(5) Plan, the Debtors may move the Court for an order requiring advance notice of certain acquisitions of Covered Claims (the "**Claims Trading Notice Order**"). Under the Claims Trading Notice Order,

(i) any Potentially Substantial New Equityholder proposing to acquire Covered Claims in a transaction following which such Person would have Tax Ownership of Covered Claims that, pursuant to the terms of the 382(l)(5) Plan, would entitle such Person to receive equity of the reorganized Debtors in excess of the amount of equity to which such Person would have been entitled based on the holdings reported on such Person's Substantial Claimholder Notice, and

(ii) any Person that would become a Potentially Substantial New Equityholder by virtue of a proposed acquisition of Covered Claims

will be required, prior to the consummation of any such transaction, to serve on the Debtors, their counsel and counsel for the Creditors' Committee (when appointed), a notice in the form attached hereto as Exhibit H (a "**Proposed Covered Claim**

**Transaction Notice**"). The same procedures applicable to a Proposed Stock Transaction



Notice (described in Section (b) of this Paragraph 14) will apply with respect to a Proposed Covered Claim Transaction Notice. If the Debtors do not give written consent to the proposed transaction and the Person that has delivered the Proposed Covered Claim Transaction Notice requests a hearing, the procedures described in Section (d)(3) of this Paragraph 14 will apply.

In addition, the Claims Trading Notice Order will require any Person that has acquired Tax Ownership of Covered Claims for which it did not file a Substantial Claimholder Notice and as to which a motion would have been required under the preceding paragraph, but for the fact that such acquisition occurred prior to the entry of the Claims Trading Notice Order, to serve notice of such fact on the Debtors, their counsel and counsel for the Creditors' Committee (when appointed) within 15 calendar days of the entry of the Claims Trading Notice Order. If the Debtors determine that the retention by such Person of such Covered Claims could jeopardize the implementation of the 382(l)(5) Plan, they will serve a Sell Down Notice on such Person, in which case the procedures described in this Section (d) will apply.

(e) Confidentiality.

The Debtors, their counsel and counsel for the Creditors' Committee (when appointed) shall keep all information provided in all notices delivered pursuant to the Interim Trading Order strictly confidential and shall not disclose the contents thereof to any person (including any member of any Creditors' Committee (when appointed)), except (i) to the extent necessary to respond to a petition or objection filed with the Court, (ii) to the extent otherwise required by law or (iii) to the extent that the information contained therein is already public; *provided, however*, that the Debtors may

disclose the contents thereof to their professional financial advisers, who shall keep all such notices strictly confidential and shall not disclose the contents thereof to any other person subject to further Court order. To the extent confidential information is necessary to respond to a petition or objection filed with the Court, such confidential information shall be filed under seal or in redacted form. For the avoidance of doubt, the foregoing provisions shall not preclude the Debtors from including in their unredacted, unsealed filings with the Court summary information regarding the amount of equity of the reorganized Debtors that Potentially Substantial New Equityholders (not identified by name or otherwise) would be expected to receive under the terms of the 382(l)(5) Plan before and after the implementation of the Sell Down Order.

(f) Sanctions for Noncompliance.

(1) *Noncompliance Relating to Stock.* Acquisitions and dispositions of Tax Ownership of Stock in violation of the restrictions and procedures set forth in Section (b) of this Paragraph 14 shall be void *ab initio*, and the sanction for violating Section (b) of this Paragraph 14 shall be reversal of the noncompliant transaction or such other (or additional) measures as the Court may consider appropriate.

(2) *Noncompliance Relating to a Sell Down Notice or a Claims Trading Notice Order.* In the event that any Person fails to comply with a final Sell Down Notice applicable to it, such Person shall not be entitled to acquire Tax Ownership of any equity of the reorganized Debtors (or consideration in lieu thereof) in connection with the implementation of the 382(l)(5) Plan in excess of the greater of (i) the Applicable Percentage (which, only with respect to such Person, shall be deemed to be zero unless such Person has complied and continues to comply with the Participation

Restriction) or (ii) the percent specified on such Sell Down Notice. Any Person that did not file a Substantial Claimholder Notice shall not be entitled to acquire Tax Ownership of any equity of the reorganized Debtors (or consideration in lieu thereof) in excess of the Applicable Percentage in connection with the implementation of the 382(l)(5) Plan. Any Person that acquires Covered Claims in violation of a Sell Down Order or a Claims Trading Notice Order shall not be entitled to acquire Tax Ownership of any equity of the reorganized Debtors (or consideration in lieu thereof) in connection with the implementation of the 382(l)(5) Plan in excess of the percentage of equity to which such Person would have been entitled had it not acquired such Covered Claims. The foregoing sanctions (the “**Equity Forfeiture Provisions**”) shall be effective without any further order of the Court. Any purported acquisition of Tax Ownership of stock of the reorganized Debtors pursuant to the implementation of the 382(l)(5) Plan that is precluded by the Equity Forfeiture Provisions (such stock the “**Forfeited Equity**”) shall be void *ab initio*. Any Person that receives Forfeited Equity shall, immediately upon becoming aware of such fact, return such Forfeited Equity to the Debtors or, if all of the shares properly issued to such Person and all or any portion of such Forfeited Equity have been sold prior to the time such Person becomes aware of such fact, such Person shall return to the Debtors (i) any Forfeited Equity still held by such Person and (ii) the proceeds attributable to the sale of Forfeited Equity, calculated by treating the most recently sold shares as Forfeited Equity. Any Person that receives Forfeited Equity and deliberately fails to comply with the preceding sentence shall be subject to such additional sanctions as the Court may determine. In no event, however, shall an

acquisition or disposition of Tax Ownership of Covered Claims be rendered void or unenforceable by reason of the Interim Trading Order.

(g) Discretionary Waiver by Debtors. The Debtors may, in their sole discretion, waive any sanctions, remedies or notification procedures imposed by the Interim Trading Order.

(h) Notice Procedures. If the Debtors file a Reporting Notice, a motion for a Sell Down Order or a change to the definition of the term Threshold Amount with the Court, within five business days of such filing, the Debtors shall (i) submit a notice of the filing for publication on the Bloomberg newswire service and the Depository Trust Company Legal Notice System (also known as LENS), (ii) post such notice together with a copy of the filing on the case information website (<http://www.PatriotCaseInfo.com>) and (iii) serve such notice of the filing on (a) the Office of the United States Trustee for the Southern District of New York, (b) all indenture trustees or transfer agents for the Covered Claims or Stock, as applicable, (c) counsel for the Creditors' Committee (when appointed), (d) any identified Substantial Equityholders and Substantial Claimholders, (e) the Internal Revenue Service, (f) the Securities and Exchange Commission, (g) the United States Environmental Protection Agency and (h) the United States Attorney's Office for the Southern District of New York. Upon receipt of such notice, counsel for the Creditors' Committee (when appointed) shall send such notice to their respective committee members. Upon receipt of such notice and at least once every three months during the pendency of these chapter 11 cases, all indenture trustees and transfer agents shall send the notice to all holders of Covered Claims of more than \$15 million or at least

2,000,000 shares of Stock, as applicable, registered with the indenture trustee or transfer agent. Any registered holder shall, in turn, provide the notice to any holder for whose account the registered holder holds Covered Claims of more than \$15 million or at least 2,000,000 shares of Stock, as applicable. Any such holder shall, in turn, provide the notice to any Person for whom the holder holds Covered Claims of more than \$15 million or at least 2,000,000 shares of Stock, as applicable. Any Person, or broker or agent acting on such Person's behalf, that sells Covered Claims in the aggregate amount of \$15 million or sells an aggregate amount of at least 2,000,000 shares of Stock (or an option with respect thereto) to another Person (other than pursuant to a transaction consummated on the New York Stock Exchange) shall provide a copy of the notice to such purchaser or to any broker or agent acting on such purchaser's behalf.

(i) Special Rules. A Person acquiring or disposing of Tax Ownership of Stock or Covered Claims in the capacity of Agent of another Person shall not be treated as a Substantial Equityholder or Substantial Claimholder solely to the extent acting in the capacity of Agent, and shall not have an affirmative duty to inquire whether the account, customer, investment fund, principal, trust or beneficiary is subject to any restrictions or requirements under the Interim Trading Order; *provided, however*, that the account, customer, fund, principal, trust or beneficiary shall not be excluded from the Interim Trading Order by reason of this subsection. Specifically and for the avoidance of doubt, the trustee of any trust, any indenture trustee, owner trustee, pass-through trustee, subordination agent, registrar, paying agent or transfer agent, in each case for any ownership interests, bonds, debentures or other debt securities (collectively, "**Debt Securities**") (i) issued by any of the Debtors, (ii) issued by any governmental or quasi-

governmental authority for the benefit of any of the Debtors, (iii) secured by assets of any of the Debtors or agreements with respect to such assets or (iv) secured by assets leased to any of the Debtors (any such person, an “**Indenture Trustee**”), shall not be treated as a Substantial Claimholder solely to the extent acting in the capacity described above; *provided, however*, that neither any transferee of Covered Claims nor any Person for whom an Indenture Trustee acts shall be excluded solely by reason of this provision.

(j) Definitions.

For purposes of this Motion:

“**382(l)(5) Plan**” means a plan of reorganization for the Debtors under chapter 11 of the Bankruptcy Code pursuant to which there is a reasonable possibility that section 382(l)(5) will be utilized and which provides that transfers of Tax Ownership of the reorganized Debtors’ equity will be subject to reasonable restrictions for not less than two years after the reorganization.

“**Agent**” means a broker, account manager, agent, custodian, nominee, prime broker, clearinghouse or trustee (including an Indenture Trustee but not including a trustee qualified under section 401(a) of the Internal Revenue Code).

“**Applicable Percentage**” means, if only one class of common equity of the reorganized Debtors is to be issued pursuant to the terms of a 382(l)(5) Plan, 4.85% of the number of such shares that the Debtors reasonably estimate will be issued at the effective time of such 382(l)(5) Plan. If more than one class of equity of the reorganized Debtors is to be distributed pursuant to the terms of a 382(l)(5) Plan, the Applicable Percentage shall be determined by the Debtors in their reasonable judgment in a manner consistent with the estimated range of values for the equity to be distributed reflected in the valuation analysis set forth in the Disclosure Statement, and shall be expressed in a manner that makes clear how many shares of common equity would constitute the Applicable Percentage.

“**Bankruptcy Code**” means title 11 of the United States Code.

“**Claims Trading Notice Order**” has the meaning given in Section (d)(5) of this Paragraph 14.

“**Covered Claims**” means any claims within the meaning of section 101(5) of the Bankruptcy Code against one or more Debtors that are not first priority claims, *provided that*

(i) if a holder of a claim is uncertain as to the extent to which such claim is a first priority claim, such holder may serve upon the Debtors and Debtors' counsel, written notice of the requesting holder's uncertainty along with a description of the underlying claim, and within 10 calendar days after actual receipt of such notice, the Debtors shall, in consultation with the requesting holder, reasonably determine, solely for purposes of the Interim Trading Order, the portion of the applicable claim at such time that is a first priority claim; and

(ii) if a holder of claims is uncertain as to the extent to which the Interim Trading Order applies to it, it can consult counsel for the Creditors' Committee (when appointed).

For purposes of clause (i), the Debtors' determination is not binding on the holders and shall not preclude a holder from seeking a determination from the Court.

**"Creditors' Committee"** means the official committee of unsecured creditors that is typically appointed in these cases.

**"Debtors"** has the meaning given in the first paragraph hereof.

**"Debt Securities"** has the meaning given in Section (i) of this Paragraph 14.

**"Disclosure Statement"** means a disclosure statement filed with the Court relating to a proposed plan of reorganization for the Debtors under chapter 11.

**"Effective Time"** means the time of effectiveness of the Interim Trading Order.

**"Equity Forfeiture Provision"** has the meaning given in Section (f)(2) of this Paragraph 14.

**"Forfeited Equity"** has the meaning given in Section (f)(2) of this Paragraph 14.

**"Indenture Trustee"** has the meaning given in Section (i) of this Paragraph 14.

**"Internal Revenue Code"** means the Internal Revenue Code of 1986, as amended.

**"Interim Trading Order"** means the Interim Trading Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Claims Against and Interests in the Debtors' Estates attached hereto as Exhibit A.

**"Motion"** has the meaning given in Paragraph 5.

“**Newly Traded Covered Claims**” means Covered Claims (i) of which a Person acquired Tax Ownership after the date that was 18 months before the Petition Date; and (ii) that are not “ordinary course” claims, within the meaning of section 1.382-9(d)(2)(iv) of the Treasury regulations, of which the same Person has always had Tax Ownership. For the avoidance of doubt, a transferee will be deemed to have owned such Covered Claims for the period that such Covered Claims were owned by the transferor if such Covered Claims were transferred in a “qualified transfer” within the meaning of section 1.382-9(d)(5) of the Treasury regulations.

“**NOL**” has the meaning given in Paragraph 6.

“**Notice of Completed Sell Down**” has the meaning given in Section (d)(4) of this Paragraph 14.

“**Participation Restriction**” has the meaning given in Section (c)(2) of this Paragraph 14.

“**Person**” means a person or Entity (as such term is defined in section 1.382-3(a) of the Treasury regulations).

“**Petition Date**” means July 9, 2012.

“**Potentially Substantial New Equityholder**” has the meaning given in Section (d)(2) of this Paragraph 14.

“**Preliminary Percentage**” has the meaning given in Section (d)(2) of this Paragraph 14.

“**Proposed Covered Claim Transaction Notice**” has the meaning given in Section (d)(5) of this Paragraph 14.

“**Proposed Stock Transaction Notice**” has the meaning given in Section (b) of this Paragraph 14.

“**Protected Amount**” means the amount of Covered Claims of which a Person has Tax Ownership at the Effective Time,

- (i) *increased by* (A) the amount of Covered Claims of which such Person acquires Tax Ownership pursuant to contracts entered into before the Effective Time and (B) the amount of Covered Claims of which such Person acquires Tax Ownership after the Effective Time pursuant to the exercise of rights under a secured debt instrument (including a voluntary foreclosure) of which such Person has Tax Ownership before the Effective Time, *minus* the amount of Covered Claims of which such Person disposes pursuant to contracts entered into before the Effective Time;



(ii) *increased by* the amount of Covered Claims of which such Person acquires Tax Ownership from another Person that are Newly Traded Covered Claims in the hands of the transferor, if either

(x) both the transferor and the transferee are Substantial Claimholders immediately before the transfer; or

(y) the transferor is a Substantial Claimholder immediately before the transfer and the transferee becomes a Substantial Claimholder as a result of the transfer, but the transferor ceases to be a Substantial Claimholder as a result of the transfer, and the transferor has complied and continues to comply with the Participation Restriction; *provided* that the transferee's Protected Amount shall only be increased to the extent that the aggregate amount of Newly Traded Covered Claims of which the transferor has Tax Ownership immediately before the transfer exceeds the aggregate amount of Newly Traded Covered Claims of which the transferee has Tax Ownership immediately before the transfer, and the transferor has complied and continues to comply with the Participation Restriction; and

*provided* that, in the case of (x) and (y), the transferee's Protected Amount shall only be increased to the extent that (i) the amount transferred to the transferee does not exceed the transferor's Protected Amount immediately before the transfer and (ii) the transferee can demonstrate that the transferor is bound by a written agreement to reduce its Protected Amount by a corresponding amount; and

(iii) *decreased by* the amount of Covered Claims held by such Person as of the Effective Time that are not Newly Traded Covered Claims in the hands of such Person and that are subsequently disposed of by such Person.

**"Reporting Notice"** has the meaning given in Section (d)(1) of this Paragraph 14.

**"section 382"** has the meaning given in Paragraph 8.

**"section 382(l)(5)"** has the meaning given in Paragraph 10.

**"section 382(l)(6)"** has the meaning given in Paragraph 10.

**"Sell Down Notice"** means a notice to a Potentially Substantial New Equityholder requiring the Potentially Substantial New Equityholder to transfer Covered Claims in accordance with Sections (c) and (d) of this Paragraph 14.

“**Sell Down Order**” has the meaning given in Section (d)(2) of this Paragraph 14.

“**Stock**” has the meaning given in Paragraph 5.

“**Substantial Claimholder**” means a Person that has Tax Ownership of an aggregate amount of Covered Claims, measured where applicable by principal and accrued interest as of the Petition Date, that equals or exceeds the Threshold Amount (as determined from time to time).

“**Substantial Claimholder Notice**” has the meaning given in Section (d)(1) of this Paragraph 14.

“**Substantial Equityholder**” has the meaning given in Section (a) of this Paragraph 14.

“**Substantial Equityholder Notice**” has the meaning given in Section (a) of this Paragraph 14.

“**Tax Ownership**” means beneficial ownership of a Covered Claim or of Stock as determined in accordance with the applicable rules under section 382 and, to the extent provided in those rules shall include, but not be limited to, direct and indirect ownership (*e.g.*, a holding company would be considered to have Tax Ownership of all shares owned or acquired by its 100% owned subsidiaries), ownership by members of a person’s family and Persons acting in concert and, in certain cases, the creation or issuance of an option (in any form). Any variation of the term Tax Ownership shall have the same meaning. An “option” to acquire stock or claims shall include 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. Tax Ownership of Covered Claims shall be determined as if such Covered Claims were stock of the Debtors.

“**Threshold Amount**” means, as an initial matter, \$20 million. The Debtors will periodically review the definition of the Threshold Amount, in consultation with the Creditors’ Committee (when appointed), with a view to ensuring the reasonableness thereof, but in no event shall the Threshold Amount be decreased with retroactive effect. Any changes to the definition of the term Threshold Amount will be filed with the Court and served and published in the manner described in Section (h) of this Paragraph 14.

**Ample Support Exists for the Proposed  
Restrictions and Notification Requirements**

15. It is well-established that a debtor’s NOL is property of its estate and is protected by section 362 of the Bankruptcy Code. The Court of Appeals for the Second

Circuit, in its seminal decision *In re Prudential Lines Inc.*, 928 F.2d 565 (2d Cir. 1991), affirmed the application of the automatic stay and upheld a permanent injunction against a parent corporation that sought to take a worthless stock deduction with regard to the stock of its subsidiary, which was the debtor in that case. Observing that the worthless stock deduction would have adversely affected the subsidiary's ability to use its NOL carryforwards post-bankruptcy, the Second Circuit held that the subsidiary's NOL carryforwards were property of the estate under the broad language of section 541 of the Bankruptcy Code:

Including NOL carryforwards as property of a corporate debtor's estate is consistent with Congress' intention to "bring anything of value that the debtors have into the estate." Moreover, "[a] paramount and important goal of Chapter 11 is the rehabilitation of the debtor by offering breathing space and an opportunity to rehabilitate its business and eventually generate revenue." Including the right to a NOL carryforward as property of [the debtor's] bankruptcy estate furthers the purpose of facilitating the reorganization of [the debtor].

*Id.* at 573 (citations omitted); *see also In re Russell*, 927 F.2d 413, 417 (8th Cir. 1991) (stating that the "right to carry forward the [debtor's] NOLs" was "property interest" of the estate); *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."). The Second Circuit then held that the parent corporation's attempt to claim a worthless stock deduction in stock of its debtor subsidiary would effectively eliminate the value of the debtor's NOL carryforwards and thus would be an act to exercise control over estate property in violation of the automatic stay under section 362 of the Bankruptcy Code.

16. Section 362(a) of the Bankruptcy Code operates as a stay of, among other things, "any act to obtain possession of property of the estate or of property from the

estate or to exercise control over property of the estate.” 11 U.S.C. § 362(a)(3).

Accordingly, “where a non-debtor’s action with respect to an interest that is intertwined with that of a bankrupt debtor would have the legal effect of diminishing or eliminating property of the bankrupt estate, such action is barred by the automatic stay.” *Prudential Lines*, 928 F.2d at 574 (citing *In re 48th St. Steakhouse, Inc.*, 835 F.2d 427, 431 (2d Cir. 1987)). The Second Circuit held that “despite the fact that the [parent corporation’s] action [of filing for a worthless stock deduction] is not directed specifically at [the debtor subsidiary], it is barred by the automatic stay as an attempt to exercise control over property of the estate.” *Id.*

17. The Second Circuit also held that the permanent injunction was supported by the court’s equitable powers pursuant to section 105(a) of the Bankruptcy Code, and refused to disturb the bankruptcy court’s finding that elimination of the debtor’s ability to apply its NOL to offset income on future tax returns would impede its reorganization. *Id.*

18. Similarly, in *In re Phar-Mor, Inc.*, 152 B.R. 924 (Bankr. N.D. Ohio 1993), chapter 11 debtors moved to prohibit any transfer of the debtors’ stock that could have triggered the section 382 limitation. The court held that the NOL was property of the estate and issued an injunctive order to protect the asset and enforce the automatic stay. Significantly, the court granted the requested relief notwithstanding that the stockholders had not stated an intent to sell their stock and the debtors had not shown the existence of a pending sale that would trigger a change in ownership for purposes of section 382. *See id.* at 927. The court observed that “[w]hat is certain is that the *NOL has a potential value, as yet undetermined*, which will be of benefit to creditors and will assist [d]ebtors in their reorganization process. This asset is entitled to protection while [d]ebtors move

forward toward reorganization.” *Id.* (emphasis added). The court also concluded that because the debtors were seeking to enforce the stay, they did not have to meet the more stringent requirements for a grant of preliminary injunctive relief:

The requirements for enforcing an automatic stay under 11 U.S.C. § 362(a)(3) do not involve such factors as lack of an adequate remedy at law, or irreparable injury, or loss and a likelihood of success on the merits. The key elements for a stay . . . are the existence of property of the estate and the enjoining of all efforts by others to obtain possession or control of property of the estate.

*Id.* at 926 (citing *In re Golden Distribs., Inc.*, 122 B.R. 15, 19 (Bankr. S.D.N.Y. 1990)).

19. Numerous courts in this and other districts have prohibited or otherwise restricted claims and/or equity trading to protect a debtor against the possible loss of its NOL carryovers. *See, e.g., In re Pinnacle Airlines Corp.*, Case No. 12-11343 (REG) (Bankr. S.D.N.Y. Apr. 3, 2012) (establishing procedures substantially identical to those requested herein); *In re The Great Atlantic & Pacific Tea Co.*, Case No. 10-24549 (RDD) (Bankr. S.D.N.Y. Dec. 15, 2010) (establishing notification and hearing procedures for, among other things, transfers of certain equity securities); *In re Neff Corp.*, Case No. 10-12610 (SCC) (Bankr. S.D.N.Y. June 9, 2010) (same); *In re Lehman Bros.*, Case No. 08-13555 (JMP) (Bankr. S.D.N.Y. Mar. 25, 2010) (establishing restrictions and procedures that apply to the transfer of securities); *In re General Motors Corp.*, Case No. 09-50026 (REG) (Bankr. S.D.N.Y. June 25, 2009) (establishing notification procedures and restricting certain transfers of equity interests); *In re Star Tribune Holdings Corp.*, Case No. 09-10244 (RDD) (Bankr. S.D.N.Y. Feb. 6, 2009) (same); *In re Washington Mutual, Inc.*, Case No. 08-12229 (MFW) (D. Del. Nov. 19, 2008) (establishing restrictions and procedures that apply to transfers of certain securities); *In re Frontier Airlines Holdings, Inc.*, Case No. 08-11298 (RDD) (Bankr. S.D.N.Y. June 3, 2008) (establishing notification

and hearing procedures for trading in claims and equity interests); *In re Delta Air Lines, Inc.*, Case No. 05-17923 (PCB) (Bankr. S.D.N.Y. Sept. 16, 2005) (approving notification procedures and restrictions on certain transfers of claims and equity interests in the debtors on an interim basis); *In re Northwest Airlines Corp.*, Case No. 05-17930 (ALG) (Bankr. S.D.N.Y. Sept. 15, 2005) (same); *In re US Airways, Inc.*, Case No. 04-13819 (SSM) (Bankr. E.D. Va. Apr. 1, 2005) (approving notification procedures and restrictions on certain transfers of claims against and equity interest in debtors); *In re WorldCom, Inc.*, Case No. 02-13533 (AJG) (Bankr. S.D.N.Y. Mar. 5, 2003) (restricting acquisitions of stock above a certain threshold and establishing notification requirements for certain acquisitions of claims); *In re Ames Dep't Stores, Inc.*, Case No. 01-42217 (REG) (Bankr. S.D.N.Y. Aug. 21, 2001) (enjoining trading of certain senior notes and common stock and establishing notice and hearing procedures for certain acquisitions of general unsecured claims); *In re Casual Male Corp.*, Case No. 01-41404 (REG) (Bankr. S.D.N.Y. May 18, 2001) (same); *In re UAL Corporation*, Case No. 02-B-48191 (ERW) (Bankr. E.D. Ill. Feb. 21, 2003) (establishing notification procedures for certain transfers of claims or equity securities); *In re US Airways Group, Inc.*, Case No. 02-83984 (SSM) (Bankr. E.D. Va. Oct. 2, 2002) (establishing notification and hearing procedures for trading in claims or equity securities).

20. In short, it is well-settled by courts in this and other circuits that section 362(a)(3) of the Bankruptcy Code stays actions that could adversely affect a debtor's NOL carryforwards.

**The Proposed Notice and Approval Procedures Are Necessary  
and in the Best Interests of the Debtors, Their Estates and Creditors**

21. The proposed procedures and restrictions are necessary to protect the Debtors' NOL carryforwards, which are valuable assets of the Debtors' estates, while providing appropriate latitude for trading in Stock below specified levels and for trading in Covered Claims. The Debtors' ability to meet the requirements of the tax laws to protect their NOL carryforwards may be jeopardized unless procedures are established to ensure that certain trading in Stock is either precluded or closely monitored and made subject to Court approval and that the Debtors have the ability to reestablish the status quo with respect to Covered Claims. However, the Debtors recognize that the trading in Stock below specified levels (with contemporaneous notice of the transfers) and free trading of Covered Claims does not, at this time, pose a serious risk to the NOL carryforwards.

22. The relief requested herein is tailored as narrowly as is reasonable to permit certain Stock and Covered Claims trading to continue, subject only to Rule 3001(e) of the Bankruptcy Rules and applicable securities, corporate and other laws. The proposed restrictions on trading are crucial because once a claim or interest is transferred, the transaction arguably might not be reversible for tax purposes, though it should be null and void under section 362 of the Bankruptcy Code. The relief requested is, therefore, critical to prevent what may be an irrevocable loss of the Debtors' NOL carryforwards.

**Interim Trading Order**

23. The Debtors seek the relief requested in this Motion in the form of the interim order (the "**Interim Trading Order**") attached hereto as Exhibit A. Within five business days of the entry of the Interim Trading Order, the Debtors shall serve on (a) the

Office of the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”), (b) all indenture trustees or transfer agents for the Covered Claims or Stock, as applicable, (c) those creditors holding the five largest secured claims against the Debtors’ estates on a consolidated basis, (d) those creditors holding the 50 largest unsecured claims against the Debtors’ estates on a consolidated basis, (e) counsel for the Creditors’ Committee (when appointed), (f) any identified Substantial Equityholders and Substantial Claimholders, (g) attorneys for the administrative agents for the Debtors’ proposed postpetition lenders, (h) the Internal Revenue Service, (i) the Securities and Exchange Commission, (j) the United States Environmental Protection Agency and (k) the United States Attorney’s Office for the Southern District of New York, a notice in substantially the form attached hereto as Exhibit B describing the authorized trading restrictions and notification requirements. Upon receipt of such notice, counsel for the Creditors’ Committee (when appointed) shall send such notice to their respective committee members. Upon receipt of such notice and at least once every three months during the pendency of these chapter 11 cases, all indenture trustees and transfer agents shall send the notice to all holders of Covered Claims of more than \$15 million or at least 2,000,000 shares of Stock, as applicable, registered with the indenture trustee or transfer agent. Any registered holder shall, in turn, provide the notice to any holder for whose account the registered holder holds Covered Claims of more than \$15 million or at least 2,000,000 shares of Stock, as applicable. Any such holder shall, in turn, provide the notice to any Person for whom the holder holds Covered Claims of more than \$15 million or at least 2,000,000 shares of Stock, as applicable. Any Person, or broker or agent acting on such Person’s behalf, that sells Covered Claims in the aggregate amount of \$15



million or sells an aggregate amount of at least 2,000,000 shares of Stock (or an option with respect thereto) to another Person (other than pursuant to a transaction consummated on the New York Stock Exchange) shall provide a copy of the notice to such purchaser or to any broker or agent acting on such purchaser's behalf.

24. The deadline to file an objection ("**Objection**") to the Motion shall be 4:00 p.m. (prevailing Eastern Time) on the date set forth in the Interim Trading Order (the "**Objection Deadline**"). An Objection shall be considered timely if it is (i) filed with the Court, One Bowling Green, New York, New York 10004-1408 and (ii) actually received on or before the Objection Deadline by (a) the Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn: Elisabetta G. Gasparini and Paul K. Schwartzberg, (b) proposed counsel to the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Marshall S. Huebner and Brian M. Resnick, (c) attorneys for the administrative agents for the Debtors' proposed postpetition lenders, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attn: Marcia Goldstein and Joseph Smolinsky, and Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019, Attn: Margot B. Schonholtz and Ana Alfonso and (d) attorneys for any official committee of unsecured creditors then appointed in these cases.

25. Unless otherwise ordered by the Court, a reply to an Objection may be filed with the Court and served on or before 12:00 p.m. (prevailing Eastern Time) on the day that is at least two business days before the date of the applicable hearing.

26. If no 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

granting the relief requested herein, which order shall be submitted and may be entered with no further notice or opportunity to be heard afforded to any party, and the Motion shall be approved *nunc pro tunc* to the date of the commencement of these chapter 11 cases. If an Objection is timely filed, a hearing will be held at the U.S. Bankruptcy Court for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, New York, New York 10004, at a date and time to be established by the Court.

27. Until the Court enters a final order, any acquisition or disposition of Tax Ownership of Stock after the Petition Date in violation of the Procedures set forth above shall be null and void *ab initio* as an act in violation of the automatic stay prescribed by section 362 of the Bankruptcy Code and pursuant to this Court's equitable power prescribed in section 105(a) of the Bankruptcy Code.

28. The foregoing notice procedures satisfy due process and the strictures of Bankruptcy Rule 9014 by providing parties with a notice and an opportunity to object and be heard at a hearing. *See, e.g., In re Drexel Burnham Lambert Group, Inc.*, 160 B.R. 729, 733 (S.D.N.Y. 1993) (indicating that opportunity to present objections satisfies due process); *In re Colo. Mountain Cellars, Inc.*, 226 B.R. 244, 246 (D. Colo. 1998) (noting that a hearing is not required to satisfy Bankruptcy Rule 9014). Furthermore, the proposed notice procedures protect the due process rights of the parties in interest without unnecessarily exposing the Debtors' estates to unwarranted administrative expenses.

29. The Debtors believe that the above measures constitute a sufficient and cost-effective way of providing notice of the Procedures described above.

**Notice**

30. No trustee, examiner or Creditors' Committee has been appointed in these chapter 11 cases. The Debtors have served notice of this Motion on (a) the Office of the United States Trustee for the Southern District of New York, (b) those creditors holding the five largest secured claims against the Debtors' estates on a consolidated basis, (c) those creditors holding the 50 largest unsecured claims against the Debtors' estates on a consolidated basis, (d) any identified Substantial Equityholders and Substantial Claimholders, (e) attorneys for the administrative agents for the Debtors' proposed postpetition lenders, (f) the Internal Revenue Service, (g) the Securities and Exchange Commission, (h) the United States Environmental Protection Agency and (i) the United States Attorney's Office for the Southern District of New York.

**No Previous Request**

31. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief  
requested herein and such other and further relief as is just and proper.

Dated: New York, New York  
July 9, 2012

By: /s/ Damian S. Schaible

Marshall S. Huebner  
Damian S. Schaible  
Brian M. Resnick  
Michelle M. McGreal

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*Proposed Counsel to the Debtors  
and Debtors in Possession*

**SCHEDULE 1**  
(Debtor Entities)

1. Affinity Mining Company
2. Apogee Coal Company, LLC
3. Appalachia Mine Services, LLC
4. Beaver Dam Coal Company, LLC
5. Big Eagle, LLC
6. Big Eagle Rail, LLC
7. Black Stallion Coal Company, LLC
8. Black Walnut Coal Company
9. Bluegrass Mine Services, LLC
10. Brook Trout Coal, LLC
11. Catenary Coal Company, LLC
12. Central States Coal Reserves of Kentucky, LLC
13. Charles Coal Company, LLC
14. Cleaton Coal Company
15. Coal Clean LLC
16. Coal Properties, LLC
17. Coal Reserve Holding Limited Liability Company No. 2
18. Colony Bay Coal Company
19. Cook Mountain Coal Company, LLC
20. Corydon Resources LLC
21. Coventry Mining Services, LLC
22. Coyote Coal Company LLC
23. Cub Branch Coal Company LLC
24. Dakota LLC
25. Day LLC
26. Dixon Mining Company, LLC
27. Dodge Hill Holding JV, LLC
28. Dodge Hill Mining Company, LLC
29. Dodge Hill of Kentucky, LLC
30. EACC Camps, Inc.
31. Eastern Associated Coal, LLC
32. Eastern Coal Company, LLC
33. Eastern Royalty, LLC
34. Emerald Processing, L.L.C.
35. Gateway Eagle Coal Company, LLC
36. Grand Eagle Mining, LLC
37. Heritage Coal Company LLC
38. Highland Mining Company, LLC
39. Hillside Mining Company
40. Hobet Mining, LLC
41. Indian Hill Company LLC
42. Infinity Coal Sales, LLC
43. Interior Holdings, LLC
44. IO Coal LLC
45. Jarrell's Branch Coal Company
46. Jupiter Holdings LLC
47. Kanawha Eagle Coal, LLC
48. Kanawha River Ventures I, LLC
49. Kanawha River Ventures II, LLC
50. Kanawha River Ventures III, LLC
51. KE Ventures, LLC
52. Little Creek LLC
53. Logan Fork Coal Company
54. Magnum Coal Company LLC
55. Magnum Coal Sales LLC
56. Martinka Coal Company, LLC
57. Midland Trail Energy LLC
58. Midwest Coal Resources II, LLC
59. Mountain View Coal Company, LLC
60. New Trout Coal Holdings II, LLC
61. Newtown Energy, Inc.
62. North Page Coal Corp.
63. Ohio County Coal Company, LLC
64. Panther LLC
65. Patriot Beaver Dam Holdings, LLC
66. Patriot Coal Company, L.P.
67. Patriot Coal Corporation
68. Patriot Coal Sales LLC
69. Patriot Coal Services LLC
70. Patriot Leasing Company LLC
71. Patriot Midwest Holdings, LLC
72. Patriot Reserve Holdings, LLC
73. Patriot Trading LLC
74. PCX Enterprises, Inc.
75. Pine Ridge Coal Company, LLC
76. Pond Creek Land Resources, LLC
77. Pond Fork Processing LLC
78. Remington Holdings LLC
79. Remington II LLC
80. Remington LLC
81. Rivers Edge Mining, Inc.
82. Robin Land Company, LLC
83. Sentry Mining, LLC
84. Snowberry Land Company
85. Speed Mining LLC
86. Sterling Smokeless Coal Company, LLC
87. TC Sales Company, LLC
88. The Presidents Energy Company LLC
89. Thunderhill Coal LLC
90. Trout Coal Holdings, LLC
91. Union County Coal Co., LLC
92. Viper LLC
93. Weatherby Processing LLC
94. Wildcat Energy LLC
95. Wildcat, LLC
96. Will Scarlet Properties LLC
97. Winchester LLC
98. Winifrede Dock Limited Liability Company
99. Yankeetown Dock, LLC

**Exhibit A**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In re:**

**PATRIOT COAL CORPORATION, *et al.*,**

**Debtors.<sup>7</sup>**

**Chapter 11**

**Case No. 12-[ ] (\_\_\_)**

**(Jointly Administered)**

**INTERIM TRADING ORDER ESTABLISHING  
NOTIFICATION PROCEDURES  
AND APPROVING RESTRICTIONS ON  
CERTAIN TRANSFERS OF CLAIMS AGAINST  
AND INTERESTS IN THE DEBTORS' ESTATES**

Upon the motion (the “**Motion**”)<sup>8</sup> of Patriot Coal Corporation and its subsidiaries that are debtors and debtors in possession in these proceedings (collectively, the “**Debtors**”) for an interim order (the “**Interim Trading Order**”) and a final order establishing notification procedures and approving restrictions on certain transfers of claims against and interests in the Debtors’ estates, as more fully described in the Motion; and upon consideration of the Declaration of Mark N. Schroeder, Patriot Coal Corporation’s Senior Vice President and Chief Financial Officer, filed in support of the Debtors’ first-day pleadings; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and Standing Order

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<sup>7</sup> The Debtors are the entities listed on Schedule 1 attached to the Motion. The employer tax identification numbers and addresses for each of the Debtors are set forth in the Debtors’ chapter 11 petitions.

<sup>8</sup> Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to such term in the Motion.

M-61 Referring to Bankruptcy Judges for the Southern District of New York Any and All Proceedings Under Title 11, dated July 10, 1984 (Ward, Acting C.J.) as amended by Standing Order M-431, dated February 1, 2012 (Preska, C.J.); and consideration of the Motion and the requested relief being a core proceeding the Bankruptcy Court can determine pursuant to 28 U.S.C. § 157(b); and due and proper notice of the Motion having been provided to (a) the Office of the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”), (b) those creditors holding the five largest secured claims against the Debtors’ estates on a consolidated basis, (c) those creditors holding the 50 largest unsecured claims against the Debtors’ estates on a consolidated basis, (d) any identified Substantial Equityholders and Substantial Claimholders, (e) attorneys for the administrative agents for the Debtors’ proposed postpetition lenders, (f) the Internal Revenue Service, (g) the Securities and Exchange Commission, (h) the United States Environmental Protection Agency and (i) the United States Attorney’s Office for the Southern District of New York; and it appearing that no other or further notice need be provided; and the relief requested in the Motion being in the best interests of the Debtors and their estates and creditors; and the Court having reviewed the Motion and having held a hearing with appearances of parties in interest noted in the transcript thereof (the “**Hearing**”); and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

FOUND that the Debtors' consolidated net operating loss ("NOL") carryforwards are property of the Debtors' estates and are protected by the automatic stay prescribed in section 362 of the Bankruptcy Code; and it is further

FOUND that unrestricted trading in claims against and equity interests in the Debtors before the Debtors' emergence from chapter 11 could severely limit the Debtors' ability, in connection with their eventual emergence from bankruptcy, to utilize their NOL carryforwards and certain other tax attributes for U.S. federal income tax purposes, pursuant to the rules under section 382 of the Internal Revenue Code; and it is further

FOUND that the trading procedures and restrictions set forth herein are necessary and proper in order to preserve such NOL carryovers and other tax attributes and are therefore in the best interests of the Debtors, their estates, and their creditors, and the Court having determined that immediate relief is necessary to avoid irreparable harm; and it is further

FOUND that the relief requested in the Motion is authorized under sections 362 and 541 of the Bankruptcy Code.

THEREFORE, IT IS:

ORDERED that the Motion is granted on an interim basis as set forth herein; and it is further

ORDERED that effective as of the Petition Date the following procedures and restrictions are imposed and approved:



1. Notice of Substantial Equityholder Status. Any Person who is or becomes a Tax Owner of at least 4,500,000 shares, which represent approximately 4.85% of the issued and outstanding Stock as of the Petition Date (a “**Substantial Equityholder**”), must, on or before the later of: (A) 15 days after the Court’s entry of an order approving the procedures and restrictions herein or (B) 10 days after that Person becomes a Substantial Equityholder, serve on the Debtors, the attorneys for the Debtors and the attorneys for the Creditors’ Committee (when appointed) a notice (the “**Substantial Equityholder Notice**”) containing the Tax Ownership information substantially in the form of Exhibit C attached hereto.

2. Restrictions and Procedures for Trading in Stock. Any Person that, after the Effective Time,

- (i) is not a Substantial Equityholder and wishes to purchase or otherwise acquire Tax Ownership of an amount of Stock that would cause the Person to become a Substantial Equityholder;
- (ii) is a Substantial Equityholder and wishes to purchase or otherwise acquire Tax Ownership of any additional Stock; or
- (iii) is a Substantial Equityholder and wishes to sell or otherwise dispose of Tax Ownership of any Stock,

must, prior to the consummation of any such transaction, file with the Court (at the holder’s election, in a redacted form that does not include such holder’s taxpayer identification number and the aggregate principal amount of Stock that such holder beneficially owns) and serve on the Debtors, their counsel and counsel for the Creditors’ Committee (when appointed) an unredacted notice in the form attached hereto as Exhibit D, in the case of a proposed acquisition of Stock, or Exhibit E, in the case of a proposed disposition of Stock (either such notice, a “**Proposed Stock Transaction Notice**”). The

Debtors shall consult with counsel for the Creditors' Committee (when appointed) prior to responding to any Proposed Stock Transaction Notice. If written approval of the proposed transaction is filed with the Court by the Debtors within 15 calendar days following the receipt of a Proposed Stock Transaction Notice, then the transaction may proceed. If written approval of the proposed transaction is not filed by the Debtors with the Court within such period, then the transaction may not be consummated unless approved by a final and nonappealable order of the Court. Further transactions within the scope of this Section 2 must be the subject of additional notices as set forth herein with additional waiting periods.

3. Restrictions and Procedures for Trading in Covered Claims.

- (a) Any Person that, after the Effective Time,
  - (i) is not a Substantial Claimholder and purchases or otherwise acquires Tax Ownership of an amount of Covered Claims that causes the Person to become a Substantial Claimholder; or
  - (ii) is a Substantial Claimholder and purchases or otherwise acquires Tax Ownership of any additional Covered Claims,

will have an obligation, in the event that the Court issues a Sell Down Order at the request of the Debtors pursuant to Section 4, to sell or otherwise transfer Tax Ownership of an aggregate amount of Covered Claims sufficient to prevent such Person from having Tax Ownership of an amount of the reorganized Debtors' stock as a result of the implementation of the 382(l)(5) Plan that exceeds the greater of (a) the Applicable Percentage or (b) the percentage specified in the Sell Down Notice applicable to such

Person pursuant to Section 4; *provided, however*, that such Person shall not be required to make any sale or other transfer of Tax Ownership of Covered Claims that would result in such Person having Tax Ownership of an aggregate amount of Covered Claims that is less than either (x) the Threshold Amount, as revised from time to time, or (y) such Person's Protected Amount.

(b) Any Person that participates in formulating any chapter 11 plan of reorganization of or on behalf of the Debtors (which shall include, without limitation, making any suggestions or proposals to the Debtors or their advisers with regard to such a plan), shall not do so in a manner that makes evident to the Debtors that any Covered Claims of which such Person has Tax Ownership are Newly Traded Covered Claims (the "**Participation Restriction**"). For this purpose, the Debtors acknowledge and agree that the following activities alone shall not constitute a violation of the Participation Restriction: filing an objection to a proposed disclosure statement or to confirmation of a proposed plan of reorganization, voting to accept or reject a proposed plan of reorganization, reviewing or commenting on a proposed business plan, membership on a Creditors' Committee (when appointed) or an *ad hoc* Committee, providing information to the Debtors' counsel on a confidential basis, or taking any action required by this Order. Any Person found by the Court to have violated the Participation Restriction willfully shall be required to dispose of Newly Traded Covered Claims of which such Person has Tax Ownership (subject to the Equity Forfeiture Provision described in Section 6) to the extent necessary to protect the Debtors' ability to effect successful implementation of the 382(l)(5) Plan. For the avoidance of doubt, (i) such Person shall not be permitted to retain Tax Ownership of any Newly Traded Covered Claims if a Sell

Down Order has been or is subsequently issued pursuant to Section 4, and (ii) if a Claims Trading Notice Order has been issued pursuant to Section 4(e), such Person shall only be permitted to retain Tax Ownership of Newly Traded Covered Claims to the extent that such retention would not impair the reasonable “cushions” referred to in Section 4(c). Prior to taking any action to enforce the foregoing two sentences, the Debtors shall consult with counsel for the Creditors’ Committee (when appointed).

4. Sell Down Procedures.

(a) *Reporting of Substantial Claimholder Status.* In order to assess the feasibility of implementing a 382(l)(5) Plan and the need for petitioning the Court for a Sell Down Order, the Debtors, after consultation with counsel for the Creditors’ Committee (when appointed), may file with the Court and further publish and serve in the manner specified in Section 8 a notice (the “**Reporting Notice**”) requiring each Substantial Claimholder, within 30 calendar days of the Debtors’ filing of the Reporting Notice with the Court, to serve on the Debtors, their counsel and counsel for the Creditors’ Committee (when appointed), a notice in the form attached hereto as Exhibit F (a “**Substantial Claimholder Notice**”). A Person that is uncertain whether it is a Substantial Claimholder may serve a Substantial Claimholder Notice in the manner described above in order to preserve its rights under this Order. A Person serving a Substantial Claimholder Notice in the manner described above shall not be required to file the Substantial Claimholder Notice with the Court. For the avoidance of doubt, the Debtors will not be precluded from filing more than one Reporting Notice pursuant to this subsection (a).

(b) *Petition for Sell Down Order and Notification Procedures.* After filing a 382(l)(5) Plan and Disclosure Statement with respect thereto with the Court, but no later than the expiration of the 75-day period beginning with the date on which the Debtors file a Reporting Notice with the Court, the Debtors may, in consultation with counsel for the Creditors' Committee (when appointed), file a motion with the Court for the issuance of an order (the "**Sell Down Order**") that (i) authorizes the Debtors to issue Sell Down Notices to each Person that has timely filed a Substantial Claimholder Notice showing Tax Ownership of Covered Claims that, pursuant to the terms of the 382(l)(5) Plan (and prior to giving effect to the Sell Down Order), would entitle such Person to acquire Tax Ownership of more than the Applicable Percentage of the equity of the reorganized Debtors (a "**Potentially Substantial New Equityholder**") and (ii) provides that any Person other than a Potentially Substantial New Equityholder shall not be entitled to acquire Tax Ownership of more than the Applicable Percentage of the equity of the reorganized Debtors (or consideration in lieu thereof) if the 382(l)(5) Plan is consummated. The motion for a Sell Down Order shall be published and served in the manner described in Section 8. Each Potentially Substantial New Equityholder shall be served with a copy of the motion and the Sell Down Notice applicable to such Person. Counsel for the Creditors' Committee (when appointed) shall be served with a copy of the motion and all Sell Down Notices. For the avoidance of doubt, the Debtors will not be precluded from filing more than one motion for the issuance of a Sell Down Order pursuant to this subsection (b).

Each Sell Down Notice shall indicate (i) the Debtors' calculation of the percentage of the equity of the reorganized Debtors of which the Potentially Substantial

New Equityholder would otherwise acquire Tax Ownership under the terms of the 382(l)(5) Plan, based on the Substantial Claimholder Notice filed by such person (such person's "**Preliminary Percentage**"), and (ii) the percentage of equity of the reorganized Debtors of which such person will be permitted to acquire Tax Ownership under the 382(l)(5) Plan, based on a proportionate reduction to the Preliminary Percentage of each Potentially Substantial New Equityholder (except to the extent that the Debtors determine that such a reduction would result in the requirement that a Potentially Substantial New Equityholder sell or otherwise transfer Covered Claims that are not Newly Traded Covered Claims). For instance, if Potentially Substantial New Equityholders are required to reduce their Preliminary Percentage by 20%, a Potentially Substantial New Equityholder whose Preliminary Percentage was 15% generally would be required to sell Covered Claims such that it would be entitled to receive no more than 12% of the equity of the reorganized Debtors under the 382(l)(5) Plan. If a Potentially Substantial New Equityholder holds more than one category of Covered Claims, the category or categories of Covered Claims to be sold in order to comply with the Sell Down Notice will be left to the discretion of the Potentially Substantial New Equityholder.

(c) *Procedures for Objection to a Sell Down Notice.* A Potentially Substantial New Equityholder in receipt of a Sell Down Notice will be permitted to object on any one or more of the following grounds: (i) the Sell Down Notice applicable to it contains a mathematical error and (ii) compliance with the Sell Down Notice applicable to it would require the Potentially Substantial New Equityholder to reduce its Tax Ownership of Covered Claims below the Threshold Amount (so long as it has complied and continues to comply with the Participation Restriction) or below its Protected Amount or would

require it to transfer Tax Ownership of Covered Claims that are not Newly Traded Covered Claims. If an objection is filed, the Debtors will be permitted to serve new Sell Down Notices in their discretion.

Unless the Court determines otherwise for good cause shown, a Sell Down Order and the related Sell Down Notices will remain effective notwithstanding amendments to the 382(l)(5) Plan; *provided, however*, that if the Debtors withdraw the 382(l)(5) Plan, the Sell Down Notices will have no further effect.

(d) *Procedures for Implementing a Sell Down Order.* Each transfer of Covered Claims required by a final Sell Down Notice shall occur prior to the later of (i) the date that is 10 calendar days after the date of confirmation of the 382(l)(5) Plan, (ii) the date that is 30 calendar days after receipt of the Sell Down Notice and (iii) the date specified in all of the Sell Down Notices.

Once a Potentially Substantial New Equityholder has transferred its Covered Claims in accordance with the preceding paragraph, such Person (i) shall, no later than one business day following the latest date for completing such transfer in accordance with the preceding paragraph, serve on the Debtors, their counsel and counsel for the Creditors' Committee (when appointed) a notice in the form attached hereto as Exhibit G (a "**Notice of Completed Sell Down**") and (ii) under no circumstances shall acquire additional Covered Claims in a manner that would increase the amount of the reorganized Debtors' equity to which such Person would be entitled pursuant to the implementation of the 382(l)(5) Plan above the percentage specified in the Sell Down Notice applicable to such Person.

(e) *Procedure If No Sell Down Notices Are Required.* If the Debtors determine, based on the Substantial Claimholder Notices filed in response to the Reporting Notice, that no Sell Down Notices appear necessary in order to implement the 382(l)(5) Plan, the Debtors may move the Court for an order requiring advance notice of certain acquisitions of Covered Claims (the “**Claims Trading Notice Order**”). Under the Claims Trading Notice Order,

(i) any Potentially Substantial New Equityholder proposing to acquire Covered Claims in a transaction following which such Person would have Tax Ownership of Covered Claims that, pursuant to the terms of the 382(l)(5) Plan, would entitle such Person to receive equity of the reorganized Debtors in excess of the amount of equity to which such Person would have been entitled based on the holdings reported on such Person’s Substantial Claimholder Notice, and

(ii) any Person that would become a Potentially Substantial New Equityholder by virtue of a proposed acquisition of Covered Claims

will be required, prior to the consummation of any such transaction, to serve on the Debtors, their counsel and counsel for the Creditors’ Committee (when appointed), a notice in the form attached hereto as Exhibit H (a “**Proposed Covered Claim Transaction Notice**”). The same procedures applicable to a Proposed Stock Transaction Notice (described in Section 2) will apply with respect to a Proposed Covered Claim Transaction Notice. If the Debtors do not give written consent to the proposed transaction and the Person that has delivered the Proposed Covered Claim Transaction Notice requests a hearing, the procedures described in Subsection (c) of this Section 4 will apply.

In addition, the Claims Trading Notice Order will require any Person that has acquired Tax Ownership of Covered Claims for which it did not file a Substantial Claimholder Notice and as to which a motion would have been required under the



preceding paragraph, but for the fact that such acquisition occurred prior to the entry of the Claims Trading Notice Order, to serve notice of such fact on the Debtors, their counsel and counsel for the Creditors' Committee (when appointed) within 15 calendar days of the entry of the Claims Trading Notice Order. If the Debtors determine that the retention by such Person of such Covered Claims could jeopardize the implementation of the 382(l)(5) Plan, they will serve a Sell Down Notice on such Person, in which case the procedures described in Subsection (c) of this Section 4 will apply.

5. Confidentiality.

The Debtors, their counsel and counsel for the Creditors' Committee (when appointed) shall keep all information provided in all notices delivered pursuant to this Order strictly confidential and shall not disclose the contents thereof to any person (including any member of any Creditors' Committee (when appointed)), except (i) to the extent necessary to respond to a petition or objection filed with the Court, (ii) to the extent otherwise required by law, or (iii) to the extent that the information contained therein is already public; *provided, however*, that the Debtors may disclose the contents thereof to their professional financial advisers, who shall keep all such notices strictly confidential and shall not disclose the contents thereof to any other person, subject to further Court order. To the extent confidential information is necessary to respond to a petition or objection filed with the Court, such confidential information shall be filed under seal or in redacted form. For the avoidance of doubt, the foregoing provisions shall not preclude the Debtors from including in their unredacted, unsealed filings with the Court summary information regarding the amount of equity of the reorganized Debtors that Potentially Substantial New Equityholders (not identified by name or otherwise)

would be expected to receive under the terms of the 382(l)(5) Plan before and after the implementation of the Sell Down Order.

6. Sanctions for Noncompliance.

(a) *Noncompliance Relating to Stock.* Acquisitions and dispositions of Tax Ownership of Stock in violation of the restrictions and procedures set forth in Section 2 shall be void *ab initio*, and the sanction for violating Section 2 shall be reversal of the noncompliant transaction or such other (or additional) measures as the Court may consider appropriate.

(b) *Noncompliance Relating to a Sell Down Notice or a Claims Trading Notice Order.* In the event that any Person fails to comply with a final Sell Down Notice applicable to it, such Person shall not be entitled to acquire Tax Ownership of any equity of the reorganized Debtors (or consideration in lieu thereof) in connection with the implementation of the 382(l)(5) Plan in excess of the greater of (i) the Applicable Percentage (which, only with respect to such Person, shall be deemed to be zero unless such Person has complied and continues to comply with the Participation Restriction) or (ii) the percent specified on such Sell Down Notice. Any Person that did not file a Substantial Claimholder Notice shall not be entitled to acquire Tax Ownership of any equity of the reorganized Debtors (or consideration in lieu thereof) in excess of the Applicable Percentage in connection with the implementation of the 382(l)(5) Plan. Any Person that acquires Covered Claims in violation of a Sell Down Order or a Claims Trading Notice Order shall not be entitled to acquire Tax Ownership of any equity of the reorganized Debtors (or consideration in lieu thereof) in connection with the implementation of the 382(l)(5) Plan in excess of the percentage of equity to which such Person would have been entitled had it not acquired such Covered Claims. The foregoing

sanctions (the “**Equity Forfeiture Provisions**”) shall be effective without any further order of the Court. Any purported acquisition of Tax Ownership of stock of the reorganized Debtors pursuant to the implementation of the 382(l)(5) Plan that is precluded by the Equity Forfeiture Provisions (such stock the “**Forfeited Equity**”) shall be void *ab initio*. Any Person that receives Forfeited Equity shall, immediately upon becoming aware of such fact, return such Forfeited Equity to the Debtors or, if all of the shares properly issued to such Person and all or any portion of such Forfeited Equity have been sold prior to the time such Person becomes aware of such fact, such Person shall return to the Debtors (i) any Forfeited Equity still held by such Person and (ii) the proceeds attributable to the sale of Forfeited Equity, calculated by treating the most recently sold shares as Forfeited Equity. Any Person that receives Forfeited Equity and deliberately fails to comply with the preceding sentence shall be subject to such additional sanctions as the Court may determine. In no event, however, shall an acquisition or disposition of Tax Ownership of Covered Claims be rendered void or unenforceable by reason of this Order.

7. Discretionary Waiver by Debtors. The Debtors may, in their sole discretion, waive any sanctions, remedies or notification procedures imposed by this Order.

8. Notice Procedures. If the Debtors file a Reporting Notice, a motion for a Sell Down Order or a change to the definition of the term Threshold Amount with the Court, within five business days of such filing, the Debtors shall (i) submit a notice of the filing for publication on the Bloomberg newswire service and the Depository Trust Company Legal Notice System (also known as LENS), (ii) post such notice together

with a copy of the filing on the case information website (<http://www.PatriotCaseInfo.com>) and (iii) serve such notice of the filing on (a) the Office of the United States Trustee for the Southern District of New York, (b) all indenture trustees or transfer agents for the Covered Claims or Stock, as applicable, (c) counsel for the Creditors' Committee (when appointed), (d) any identified Substantial Equityholders and Substantial Claimholders, (e) the Internal Revenue Service, (f) the Securities and Exchange Commission, (g) the United States Environmental Protection Agency and (h) the United States Attorney's Office for the Southern District of New York. Upon receipt of such notice, counsel for the Creditors' Committee (when appointed) shall send such notice to their respective committee members. Upon receipt of such notice and at least once every three months during the pendency of these chapter 11 cases, all indenture trustees and transfer agents shall send the notice to all holders of Covered Claims of more than \$15 million or at least 2,000,000 shares of Stock, as applicable, registered with the indenture trustee or transfer agent. Any registered holder shall, in turn, provide the notice to any holder for whose account the registered holder holds Covered Claims of more than \$15 million or at least 2,000,000 shares of Stock, as applicable. Any such holder shall, in turn, provide the notice to any Person for whom the holder holds Covered Claims of more than \$15 million or at least 2,000,000 shares of Stock, as applicable. Any Person, or broker or agent acting on such Person's behalf, that sells Covered Claims in the aggregate amount of \$15 million or sells an aggregate amount of at least 2,000,000 shares of Stock (or an option with respect thereto) to another Person (other than pursuant to a transaction consummated on the New York Stock Exchange) shall provide a copy of the notice to

such purchaser or to any broker or agent acting on such purchaser's behalf.

9. Continued Compliance with Other Applicable Laws and Rules. The requirements set forth in this Order are in addition to the requirements of Bankruptcy Rule 3001(e) and applicable securities, corporate, and other laws, and do not excuse compliance therewith.

10. Special Rules. A Person acquiring or disposing of Tax Ownership of Stock or Covered Claims in the capacity of Agent of another Person shall not be treated as a Substantial Equityholder or Substantial Claimholder solely to the extent acting in the capacity of Agent, and shall not have an affirmative duty to inquire whether the account, customer, investment fund, principal, trust or beneficiary is subject to any restrictions or requirements under this Order; *provided, however,* that the account, customer, fund, principal, trust or beneficiary shall not be excluded from this Order by reason of this Section. Specifically and for the avoidance of doubt, the trustee of any trust, any indenture trustee, owner trustee, pass-through trustee, subordination agent, registrar, paying agent or transfer agent, in each case for any ownership interests, bonds, debentures or other debt securities (collectively, "**Debt Securities**") (i) issued by any of the Debtors, (ii) issued by any governmental or quasi-governmental authority for the benefit of any of the Debtors, (iii) secured by assets of any of the Debtors or agreements with respect to such assets or (iv) secured by assets leased to any of the Debtors (any such person, an "**Indenture Trustee**"), shall not be treated as a Substantial Claimholder solely to the extent acting in the capacity described above; *provided, however,* that neither any transferee of Covered Claims nor any Person for whom an Indenture Trustee acts shall be excluded solely by reason of this provision.

11. Definitions. For purposes of this Order:

“**382(l)(5) Plan**” means a plan of reorganization for the Debtors under chapter 11 of the Bankruptcy Code pursuant to which there is a reasonable possibility that section 382(l)(5) will be utilized and which provides that transfers of Tax Ownership of the reorganized Debtors’ equity will be subject to reasonable restrictions for not less than two years after the reorganization.

“**Agent**” means a broker, account manager, agent, custodian, nominee, prime broker, clearinghouse or trustee (including an Indenture Trustee but not including a trustee qualified under section 401(a) of the Internal Revenue Code).

“**Applicable Percentage**” means, if only one class of common equity of the reorganized Debtors is to be issued pursuant to the terms of a 382(l)(5) Plan, 4.85% of the number of such shares that the Debtors reasonably estimate will be issued at the effective time of such 382(l)(5) Plan. If more than one class of equity of the reorganized Debtors is to be distributed pursuant to the terms of a 382(l)(5) Plan, the Applicable Percentage shall be determined by the Debtors in their reasonable judgment in a manner consistent with the estimated range of values for the equity to be distributed reflected in the valuation analysis set forth in the Disclosure Statement, and shall be expressed in a manner that makes clear how many shares of common equity would constitute the Applicable Percentage.

“**Bankruptcy Code**” means title 11 of the United States Code.

“**Claims Trading Notice Order**” has the meaning given in Section 4(e).

“**Covered Claims**” means any claims within the meaning of section 101(5) of the Bankruptcy Code against one or more Debtors that are not first priority claims, *provided that*

(i) if a holder of a claim is uncertain as to the extent to which such claim is a first priority claim, such holder may serve upon the Debtors and Debtors’ counsel, written notice of the requesting holder’s uncertainty along with a description of the underlying claim, and within 10 calendar days after actual receipt of such notice, the Debtors shall, in consultation with the requesting holder, reasonably determine, solely for purposes of this Order, the portion of the applicable claim at such time that is a first priority claim; and

(ii) if a holder of claims is uncertain as to the extent to which this Order applies to it, it can consult counsel for the Creditors’ Committee (when appointed).

For purposes of clause (i), the Debtors' determination is not binding on the holders and shall not preclude a holder from seeking a determination from the Court.

**"Creditors' Committee"** means the official committee of unsecured creditors that is typically appointed in these cases.

**"Debtors"** has the meaning given in the first paragraph hereof.

**"Debt Securities"** has the meaning given in Section 10.

**"Disclosure Statement"** means a disclosure statement filed with the Court relating to a proposed plan of reorganization for the Debtors under chapter 11.

**"Effective Time"** means the time of effectiveness of the Interim Trading Order.

**"Equity Forfeiture Provision"** has the meaning given in Section 6(b).

**"Forfeited Equity"** has the meaning given in Section 6(b).

**"Hearing"** has the meaning given in the first paragraph hereof.

**"Indenture Trustee"** has the meaning given in Section 10.

**"Internal Revenue Code"** means the Internal Revenue Code of 1986, as amended.

**"Motion"** has the meaning given in the first paragraph hereof.

**"Newly Traded Covered Claims"** means Covered Claims (i) of which a Person acquired Tax Ownership after the date that was 18 months before the Petition Date and (ii) that are not "ordinary course" claims, within the meaning of section 1.382-9(d)(2)(iv) of the Treasury regulations, of which the same Person has always had Tax Ownership. For the avoidance of doubt, a transferee will be deemed to have owned such Covered Claims for the period that such Covered Claims were owned by the transferor if such Covered Claims were transferred in a "qualified transfer" within the meaning of section 1.382-9(d)(5) of the Treasury regulations.

**"NOL"** has the meaning given in first paragraph of the findings hereof.

**"Notice of Completed Sell Down"** has the meaning given in Section 4(d).

“**Participation Restriction**” has the meaning given in Section 3(b).

“**Person**” means a person or Entity (as such term is defined in section 1.382-3(a) of the Treasury regulations).

“**Petition Date**” means July 9, 2012.

“**Potentially Substantial New Equityholder**” has the meaning given in Section 4(b).

“**Preliminary Percentage**” has the meaning given in Section 4(b).

“**Proposed Covered Claim Transaction Notice**” has the meaning given in Section 4(e).

“**Proposed Stock Transaction Notice**” has the meaning given in Section 2.

“**Protected Amount**” means the amount of Covered Claims of which a Person has Tax Ownership at the Effective Time,

(i) *increased by* (A) the amount of Covered Claims of which such Person acquires Tax Ownership pursuant to contracts entered into before the Effective Time and (B) the amount of Covered Claims of which such Person acquires Tax Ownership after the Effective Time pursuant to the exercise of rights under a secured debt instrument (including a voluntary foreclosure) of which such Person has Tax Ownership before the Effective Time, *minus* the amount of Covered Claims of which such Person disposes pursuant to contracts entered into before the Effective Time;

(ii) *increased by* the amount of Covered Claims of which such Person acquires Tax Ownership from another Person that are Newly Traded Covered Claims in the hands of the transferor if either

(x) both the transferor and the transferee are Substantial Claimholders immediately before the transfer; or

(y) the transferor is a Substantial Claimholder immediately before the transfer and the transferee becomes a Substantial Claimholder as a result of the transfer, but the transferor ceases to be a Substantial Claimholder as a result of the transfer, and the transferor has complied and continues to comply with the Participation Restriction; *provided* that the transferee’s Protected



Amount shall only be increased to the extent that the aggregate amount of Newly Traded Covered Claims of which the transferor has Tax Ownership immediately before the transfer exceeds the aggregate amount of Newly Traded Covered Claims of which the transferee has Tax Ownership immediately before the transfer, and the transferor has complied and continues to comply with the Participation Restriction; and

*provided* that, in the case of (x) and (y), the transferee's Protected Amount shall only be increased to the extent that (i) the amount transferred to the transferee does not exceed the transferor's Protected Amount immediately before the transfer and (ii) the transferee can demonstrate that the transferor is bound by a written agreement to reduce its Protected Amount by a corresponding amount; and

- (iii) *decreased* by the amount of Covered Claims held by such Person as of the Effective Time that are not Newly Traded Covered Claims in the hands of such Person and that are subsequently disposed of by such Person.

**"Reporting Notice"** has the meaning given in Section 4(a).

**"section 382(l)(5)"** means section 382(l)(5) of the Internal Revenue Code.

**"section 382(l)(6)"** means section 382(l)(6) of the Internal Revenue Code.

**"Sell Down Notice"** means a notice to a Potentially Substantial New Equityholder requiring the Potentially Substantial New Equityholder to transfer Covered Claims in accordance with Sections 3 and 4.

**"Sell Down Order"** has the meaning given in Section 4(b).

**"Stock"** means the common stock of Patriot Coal Corporation.

**"Substantial Claimholder"** means a Person that has Tax Ownership of an aggregate amount of Covered Claims measured where applicable by principal and accrued interest as of the Petition Date, that equals or exceeds the Threshold Amount (as determined from time to time).

**"Substantial Claimholder Notice"** has the meaning given in Section 4(a).

**"Substantial Equityholder"** has the meaning given in Section 1.

“**Substantial Equityholder Notice**” has the meaning given in Section 1.

“**Tax Ownership**” means beneficial ownership of a Covered Claim or of Stock as determined in accordance with the applicable rules under section 382 and, to the extent provided in those rules shall include, but not be limited to, direct and indirect ownership (*e.g.*, a holding company would be considered to have Tax Ownership of all shares owned or acquired by its 100% owned subsidiaries), ownership by members of a person’s family and Persons acting in concert and, in certain cases, the creation or issuance of an option (in any form). Any variation of the term Tax Ownership shall have the same meaning and an “option” to acquire stock or claims shall include 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. Tax Ownership of Covered Claims shall be determined as if such Covered Claims were stock of the Debtors.

“**Threshold Amount**” means, as an initial matter, \$20 million. The Debtors will periodically review the definition of the Threshold Amount, in consultation with the Creditors’ Committee (when appointed), with a view to ensuring the reasonableness thereof, but in no event shall the Threshold Amount be decreased with retroactive effect. Any changes to the definition of the term Threshold Amount will be filed with the Court and served and published in the manner described in Section 8.

ORDERED that nothing in this Order shall preclude any party-in-interest from seeking appropriate relief from the provisions of this Order or be deemed to prejudice, limit or waive the rights or claims of parties-in-interest to object to, or be heard in connection with, any request for the issuance of a Sell Down Notice, including the right to request limits on the duration (and effect) of such Sell Down Notice or any Equity Forfeiture Provision in connection therewith, all of which rights, claims and objections are expressly reserved; and it is further

ORDERED that notwithstanding the applicability of Bankruptcy Rule 6003 and the possible applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that, the relief provided in this Order is in addition to, and not in lieu of, any and all other rights and remedies available to the Debtors.

Dated: New York, New York

\_\_\_\_\_, 2012

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

**Exhibit B**

DAVIS POLK & WARDWELL LLP  
450 Lexington Avenue  
New York, New York 10017  
Telephone: (212) 450-4000  
Facsimile: (212) 607-7983  
Marshall S. Huebner  
Damian S. Schaible  
Brian M. Resnick  
Darren S. Klein

*Proposed Counsel to the Debtors  
and Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In re:**

**PATRIOT COAL CORPORATION, et al.,**

**Debtors.**

**Chapter 11**

**Case No. 12-[ ] (\_\_\_)**

**(Jointly Administered)**

**NOTICE OF INTERIM TRADING ORDER ESTABLISHING  
NOTIFICATION PROCEDURES AND APPROVING  
RESTRICTIONS ON CERTAIN TRANSFERS OF CLAIMS  
AGAINST AND INTERESTS IN DEBTORS' ESTATES**

**TO ALL PERSONS OR ENTITIES WITH CLAIMS AGAINST OR EQUITY  
INTERESTS IN ANY OF THE DEBTOR ENTITIES LISTED IN THE  
ATTACHED SCHEDULE A:**

PLEASE TAKE NOTICE that on July 9, 2012, the debtor entities listed in Schedule 1 of the Motion<sup>9</sup> (collectively, the “**Debtors**”) commenced cases under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). Upon the commencement of a chapter 11 case, section 362(a) of the Bankruptcy Code operates as a stay of any act to

<sup>9</sup> Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to it in the Interim Trading Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Claims Against and Interests in the Debtors’ Estates dated \_\_\_\_\_, 2012 (the “Order”).

obtain possession of property of the Debtors' estates or of property from the Debtors' estates or to exercise control over property of the Debtors' estates.

PLEASE TAKE FURTHER NOTICE that on July 9, 2012, the Debtors filed a motion seeking entry of an order establishing notification procedures and approving restrictions on certain transfers of claims against and interests in the Debtors and their estates (the "**Motion**").

PLEASE TAKE FURTHER NOTICE that on [\_\_\_\_\_, 2012], the United States Bankruptcy Court for the Southern District of New York (the "**Court**") having jurisdiction over these chapter 11 cases entered an order (i) finding that the Debtors' net operating loss ("**NOL**") carryforwards are property of the Debtors' estates and are protected by section 362(a) of the Bankruptcy Code, (ii) finding that unrestricted trading of the common stock of Patriot Coal Corporation (the "**Stock**") and Covered Claims (as defined below) could severely limit the Debtors' ability to use their NOL carryforwards for U.S. federal income tax purposes and (iii) approving the procedures (the "**Procedures**") set forth below to preserve the Debtors' NOL carryforwards pursuant to sections 105(a) and 362(a) of the Bankruptcy Code (the "**Order**").

**Any sale or other transfer 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 sections 105(a) and 362 of the Bankruptcy Code.**

PLEASE TAKE FURTHER NOTICE that the following procedures and restrictions have been approved by the Court:

1. Notice of Substantial Equityholder Status. Any Person who is or becomes a Tax Owner of at least 4,500,000 shares, which represent approximately 4.85% of the issued and outstanding Stock as of the Petition Date (a "**Substantial Equityholder**"), must, on or before the later of: (A) 15 days after the Court's entry of an order approving these Procedures or (B) 10 days after that Person becomes a Substantial Equityholder, serve on the Debtors and their attorneys a notice (the "**Substantial Equityholder Notice**") containing the Tax Ownership information substantially in the form of Exhibit C attached hereto.
2. Restrictions and Procedures for Trading in Stock. Any Person that, after the Effective Time,
  - (i) is not a Substantial Equityholder and wishes to purchase or otherwise acquire Tax Ownership of an amount of Stock that would cause the Person to become a Substantial Equityholder;
  - (ii) is a Substantial Equityholder and wishes to purchase or otherwise acquire Tax Ownership of any additional Stock; or
  - (iii) is a Substantial Equityholder and wishes to sell or otherwise dispose of Tax Ownership of any Stock,

must, prior to the consummation of any such transaction, file with the Court (at the holder's election, in a redacted form that does not include such holder's taxpayer identification number and the aggregate principal amount of Stock that such holder beneficially owns), and serve on the Debtors, their counsel and counsel for the Creditors' Committee (when appointed), an unredacted notice in the form attached hereto as Exhibit D, in the case of a proposed acquisition of Stock, or Exhibit E, in the case of a proposed disposition of Stock (either such notice, a "**Proposed Stock Transaction Notice**"). The Debtors shall consult with counsel for the Creditors' Committee (when appointed) prior to responding to any Proposed Stock Transaction Notice. If written approval of the proposed transaction is filed with the Court by the Debtors within 15 calendar days following the receipt of a Proposed Stock Transaction Notice, then the transaction may proceed. If written approval of the proposed transaction is not filed by the Debtors with the Court within such period, then the transaction may not be consummated unless approved by a final and nonappealable order of the Court. Further transactions within the scope of this Section 2 must be the subject of additional notices as set forth herein with additional waiting periods.

3. Restrictions and Procedures for Trading in Covered Claims.

- (a) Any Person that, after the Effective Time,
- (i) is not a Substantial Claimholder and purchases or otherwise acquires Tax Ownership of an amount of Covered Claims that causes the Person to become a Substantial Claimholder; or
  - (ii) is a Substantial Claimholder and purchases or otherwise acquires Tax Ownership of any additional Covered Claims,

will have an obligation, in the event that the Court issues a Sell Down Order at the request of the Debtors pursuant to Section 4, to sell or otherwise transfer Tax Ownership of an aggregate amount of Covered Claims sufficient to prevent such Person from having Tax Ownership of an amount of the reorganized Debtors' stock as a result of the implementation of the 382(l)(5) Plan that exceeds the greater of (a) the Applicable Percentage or (b) the percentage specified in the Sell Down Notice applicable to such Person pursuant to Section 4; *provided, however,* that such Person shall not be required to make any sale or other transfer of Tax Ownership of Covered Claims that would result in such Person having Tax Ownership of an aggregate amount of Covered Claims that is less than either (x) the Threshold Amount, as revised from time to time; or (y) such Person's Protected Amount.

(b) Any Person that participates in formulating any chapter 11 plan of reorganization of or on behalf of the Debtors (which shall include, without limitation, making any suggestions or proposals to the Debtors or

their advisers with regard to such a plan), shall not do so in a manner that makes evident to the Debtors that any Covered Claims of which such Person has Tax Ownership are Newly Traded Covered Claims (the “**Participation Restriction**”). For this purpose, the Debtors acknowledge and agree that the following activities alone shall not constitute a violation of the Participation Restriction: filing an objection to a proposed disclosure statement or to confirmation of a proposed plan of reorganization, voting to accept or reject a proposed plan of reorganization, reviewing or commenting on a proposed business plan, membership on a Creditors’ Committee (when appointed) or an *ad hoc* Committee, providing information to the Debtors’ counsel on a confidential basis, or taking any action required by the Interim Trading Order. Any Person found by the Court to have violated the Participation Restriction willfully shall be required to dispose of Newly Traded Covered Claims of which such Person has Tax Ownership (subject to the Equity Forfeiture Provision described in Section 6) to the extent necessary to protect the Debtors’ ability to effect successful implementation of the 382(l)(5) Plan. For the avoidance of doubt, (i) such Person shall not be permitted to retain Tax Ownership of any Newly Traded Covered Claims if a Sell Down Order has been or is subsequently issued pursuant to Section 4, and (ii) if a Claims Trading Notice Order has been issued pursuant to Section 4(e), such Person shall only be permitted to retain Tax Ownership of Newly Traded Covered Claims to the extent that such retention would not impair the reasonable “cushions” referred to in Section 4(c). Prior to taking any action to enforce the foregoing two sentences, the Debtors shall consult with counsel for the Creditors’ Committee (when appointed).

4. Sell Down Procedures.

(a) *Reporting of Substantial Claimholder Status.* In order to assess the feasibility of implementing a 382(l)(5) Plan and the need for petitioning the Court for a Sell Down Order, the Debtors, after consultation with counsel for the Creditors’ Committee (when appointed), may file with the Court and further publish and serve in the manner specified in Section 8 a notice (the “**Reporting Notice**”) requiring each Substantial Claimholder, within 30 calendar days of the Debtors’ filing of the Reporting Notice with the Court, to serve on the Debtors, their counsel and counsel for the Creditors’ Committee (when appointed), a notice in the form attached hereto as Exhibit F (a “**Substantial Claimholder Notice**”). A Person that is uncertain whether it is a Substantial Claimholder may serve a Substantial Claimholder Notice in the manner described above in order to preserve its rights under the Interim Trading Order. A Person serving a Substantial Claimholder Notice in the manner described above shall not be required to file the Substantial Claimholder Notice with the Court. For the avoidance of doubt, the Debtors will not be

precluded from filing more than one Reporting Notice pursuant to this subsection (a).

(b) *Petition for Sell Down Order and Notification Procedures.* After filing a 382(l)(5) Plan and Disclosure Statement with respect thereto with the Court, but no later than the expiration of the 75-day period beginning with the date on which the Debtors file a Reporting Notice with the Court, the Debtors may, in consultation with counsel for the Creditors' Committee (when appointed), file a motion with the Court for the issuance of an order (the "**Sell Down Order**") that (i) authorizes the Debtors to issue Sell Down Notices to each Person that has timely filed a Substantial Claimholder Notice showing Tax Ownership of Covered Claims that, pursuant to the terms of the 382(l)(5) Plan (and prior to giving effect to the Sell Down Order), would entitle such Person to acquire Tax Ownership of more than the Applicable Percentage of the equity of the reorganized Debtors (a "**Potentially Substantial New Equityholder**") and (ii) provides that any Person other than a Potentially Substantial New Equityholder shall not be entitled to acquire Tax Ownership of more than the Applicable Percentage of the equity of the reorganized Debtors (or consideration in lieu thereof) if the 382(l)(5) Plan is consummated. The motion for a Sell Down Order shall be published and served in the manner described in Section 8. Each Potentially Substantial New Equityholder shall be served with a copy of the motion and the Sell Down Notice applicable to such Person. Counsel for the Creditors' Committee (when appointed) shall be served with a copy of the motion and all Sell Down Notices. For the avoidance of doubt, the Debtors will not be precluded from filing more than one motion for the issuance of a Sell Down Order pursuant to this subsection (b).

Each Sell Down Notice shall indicate (i) the Debtors' calculation of the percentage of the equity of the reorganized Debtors of which the Potentially Substantial New Equityholder would otherwise acquire Tax Ownership under the terms of the 382(l)(5) Plan, based on the Substantial Claimholder Notice filed by such person (such person's "**Preliminary Percentage**"), and (ii) the percentage of equity of the reorganized Debtors of which such person will be permitted to acquire Tax Ownership under the 382(l)(5) Plan, based on a proportionate reduction to the Preliminary Percentage of each Potentially Substantial New Equityholder (except to the extent that the Debtors determine that such a reduction would result in the requirement that a Potentially Substantial New Equityholder sell or otherwise transfer Covered Claims that are not Newly Traded Covered Claims). For instance, if Potentially Substantial New Equityholders are required to reduce their Preliminary Percentage by 20%, a Potentially Substantial New Equityholder whose Preliminary Percentage was 15% generally would be required to sell Covered Claims such that it would be entitled to receive no more than 12% of the equity of the reorganized Debtors under the 382(l)(5) Plan. If a Potentially Substantial New



Equityholder holds more than one category of Covered Claims, the category or categories of Covered Claims to be sold in order to comply with the Sell Down Notice will be left to the discretion of the Potentially Substantial New Equityholder.

(c) *Procedures for Objection to a Sell Down Notice.* A Potentially Substantial New Equityholder in receipt of a Sell Down Notice will be permitted to object on any one or more of the following grounds: (i) the Sell Down Notice applicable to it contains a mathematical error and (ii) compliance with the Sell Down Notice applicable to it would require the Potentially Substantial New Equityholder to reduce its Tax Ownership of Covered Claims below the Threshold Amount (so long as it has complied and continues to comply with the Participation Restriction) or below its Protected Amount or would require it to transfer Tax Ownership of Covered Claims that are not Newly Traded Covered Claims. If an objection is filed, the Debtors will be permitted to serve new Sell Down Notices in their discretion.

Unless the Court determines otherwise for good cause shown, a Sell Down Order and the related Sell Down Notices will remain effective notwithstanding amendments to the 382(l)(5) Plan; *provided, however*, that if the Debtors withdraw the 382(l)(5) Plan, the Sell Down Notices will have no further effect.

(d) *Procedures for Implementing a Sell Down Order.* Each transfer of Covered Claims required by a final Sell Down Notice shall occur prior to the later of (i) the date that is 10 calendar days after the date of confirmation of the 382(l)(5) Plan, (ii) the date that is 30 calendar days after receipt of the Sell Down Notice and (iii) the date specified in all of the Sell Down Notices.

Once a Potentially Substantial New Equityholder has transferred its Covered Claims in accordance with the preceding paragraph, such Person (i) shall, no later than one business day following the latest date for completing such transfer in accordance with the preceding paragraph, serve on the Debtors, their counsel and counsel for the Creditors' Committee (when appointed) a notice in the form attached hereto as Exhibit G (a "**Notice of Completed Sell Down**") and (ii) under no circumstances shall acquire additional Covered Claims in a manner that would increase the amount of the reorganized Debtors' equity to which such Person would be entitled pursuant to the implementation of the 382(l)(5) Plan above the percentage specified in the Sell Down Notice applicable to such Person.

(e) *Procedure If No Sell Down Notices Are Required.* If the Debtors determine, based on the Substantial Claimholder Notices filed in response to the Reporting Notice, that no Sell Down Notices appear

necessary in order to implement the 382(l)(5) Plan, the Debtors may move the Court for an order requiring advance notice of certain acquisitions of Covered Claims (the “**Claims Trading Notice Order**”). Under the Claims Trading Notice Order,

(i) any Potentially Substantial New Equityholder proposing to acquire Covered Claims in a transaction following which such Person would have Tax Ownership of Covered Claims that, pursuant to the terms of the 382(l)(5) Plan, would entitle such Person to receive equity of the reorganized Debtors in excess of the amount of equity to which such Person would have been entitled based on the holdings reported on such Person’s Substantial Claimholder Notice, and

(ii) any Person that would become a Potentially Substantial New Equityholder by virtue of a proposed acquisition of Covered Claims will be required, prior to the consummation of any such transaction, to serve on the Debtors, their counsel and counsel for the Creditors’ Committee (when appointed), a notice in the form attached hereto as Exhibit H (a “**Proposed Covered Claim Transaction Notice**”). The same procedures applicable to a Proposed Stock Transaction Notice (described in Section 2) will apply with respect to a Proposed Covered Claim Transaction Notice. If the Debtors do not give written consent to the proposed transaction and the Person that has delivered the Proposed Covered Claim Transaction Notice requests a hearing, the procedures described in Subsection (c) of this Section 4 will apply.

In addition, the Claims Trading Notice Order will require any Person that has acquired Tax Ownership of Covered Claims for which it did not file a Substantial Claimholder Notice and as to which a motion would have been required under the preceding paragraph, but for the fact that such acquisition occurred prior to the entry of the Claims Trading Notice Order, to serve notice of such fact on the Debtors, their counsel and counsel for the Creditors’ Committee (when appointed) within 15 calendar days of the entry of the Claims Trading Notice Order. If the Debtors determine that the retention by such Person of such Covered Claims could jeopardize the implementation of the 382(l)(5) Plan, they will serve a Sell Down Notice on such Person, in which case the procedures described in this Section 4 will apply.

#### 5. Confidentiality.

The Debtors, their counsel and counsel for the Creditors’ Committee (when appointed) shall keep all information provided in all notices delivered pursuant to the Interim Trading Order strictly confidential and shall not disclose the contents thereof to any person (including any member of any Creditors’ Committee (when appointed)), except (i) to the extent necessary to respond to a petition or objection filed

with the Court, (ii) to the extent otherwise required by law or (iii) to the extent that the information contained therein is already public; *provided, however*, that the Debtors may disclose the contents thereof to their professional financial advisers, who shall keep all such notices strictly confidential and shall not disclose the contents thereof to any other person, subject to further Court order. To the extent confidential information is necessary to respond to a petition or objection filed with the Court, such confidential information shall be filed under seal or in redacted form. For the avoidance of doubt, the foregoing provisions shall not preclude the Debtors from including in their unredacted, unsealed filings with the Court summary information regarding the amount of equity of the reorganized Debtors that Potentially Substantial New Equityholders (not identified by name or otherwise) would be expected to receive under the terms of the 382(l)(5) Plan before and after the implementation of the Sell Down Order.

6. Sanctions for Noncompliance.

(a) *Noncompliance Relating to Stock.* Acquisitions and dispositions of Tax Ownership of Stock in violation of the restrictions and procedures set forth in Section 2 shall be void *ab initio*, and the sanction for violating Section 2 shall be reversal of the noncompliant transaction or such other (or additional) measures as the Court may consider appropriate.

(b) *Noncompliance Relating to a Sell Down Notice or a Claims Trading Notice Order.* In the event that any Person fails to comply with a final Sell Down Notice applicable to it, such Person shall not be entitled to acquire Tax Ownership of any equity of the reorganized Debtors (or consideration in lieu thereof) in connection with the implementation of the 382(l)(5) Plan in excess of the greater of (i) the Applicable Percentage (which, only with respect to such Person, shall be deemed to be zero unless such Person has complied and continues to comply with the Participation Restriction) or (ii) the percent specified on such Sell Down Notice. Any Person that did not file a Substantial Claimholder Notice shall not be entitled to acquire Tax Ownership of any equity of the reorganized Debtors (or consideration in lieu thereof) in excess of the Applicable Percentage in connection with the implementation of the 382(l)(5) Plan. Any Person that acquires Covered Claims in violation of a Sell Down Order or a Claims Trading Notice Order shall not be entitled to acquire Tax Ownership of any equity of the reorganized Debtors (or consideration in lieu thereof) in connection with the implementation of the 382(l)(5) Plan in excess of the percentage of equity to which such Person would have been entitled had it not acquired such Covered Claims. The foregoing sanctions (the “**Equity Forfeiture Provisions**”) shall be effective without any further order of the Court. Any purported acquisition of Tax Ownership of stock of the reorganized Debtors pursuant to the implementation of the 382(l)(5) Plan that is

precluded by the Equity Forfeiture Provisions (such stock the “**Forfeited Equity**”) shall be void *ab initio*. Any Person that receives Forfeited Equity shall, immediately upon becoming aware of such fact, return such Forfeited Equity to the Debtors or, if all of the shares properly issued to such Person and all or any portion of such Forfeited Equity have been sold prior to the time such Person becomes aware of such fact, such Person shall return to the Debtors (i) any Forfeited Equity still held by such Person and (ii) the proceeds attributable to the sale of Forfeited Equity, calculated by treating the most recently sold shares as Forfeited Equity. Any Person that receives Forfeited Equity and deliberately fails to comply with the preceding sentence shall be subject to such additional sanctions as the Court may determine. In no event, however, shall an acquisition or disposition of Tax Ownership of Covered Claims be rendered void or unenforceable by reason of the Interim Trading Order.

7. Discretionary Waiver by Debtors. The Debtors may, in their sole discretion, waive any sanctions, remedies or notification procedures imposed by the Interim Trading Order.

8. Notice Procedures. If the Debtors file a Reporting Notice, a motion for a Sell Down Order or a change to the definition of the term Threshold Amount with the Court, within five business days of such filing, the Debtors shall (i) submit a notice of the filing for publication on the Bloomberg newswire service and the Depository Trust Company Legal Notice System (also known as LENS), (ii) post such notice together with a copy of the filing on the case information website (<http://www.PatriotCaseInfo.com>) and (iii) serve such notice of the filing on (a) the Office of the United States Trustee for the Southern District of New York, (b) all indenture trustees or transfer agents for the Covered Claims or Stock, as applicable, (c) counsel for the Creditors’ Committee (when appointed), (d) any identified Substantial Equityholders and Substantial Claimholders, (e) the Internal Revenue Service, (f) the Securities and Exchange Commission, (g) the United States Environmental Protection Agency and (h) the United States Attorney’s Office for the Southern District of New York. Upon receipt of such notice, counsel for the Creditors’ Committee (when appointed) shall send such notice to their respective committee members. Upon receipt of such notice and at least once every three months during the pendency of these chapter 11 cases, all indenture trustees and transfer agents shall send the notice to all holders of Covered Claims of more than \$15 million or at least 2,000,000 shares of Stock, as applicable, registered with the indenture trustee or transfer agent. Any registered holder shall, in turn, provide the notice to any holder for whose account the registered holder holds Covered Claims of more than \$15 million or at least 2,000,000 shares of Stock, as applicable. Any such holder shall, in turn, provide the notice to any Person for whom the holder holds Covered Claims of more than \$15 million or at least 2,000,000 shares of Stock, as applicable. Any

Person, or broker or agent acting on such Person's behalf, that sells Covered Claims in the aggregate amount of \$15 million or sells an aggregate amount of at least 2,000,000 shares of Stock (or an option with respect thereto) to another Person (other than pursuant to a transaction consummated on the New York Stock Exchange) shall provide a copy of the notice to such purchaser or to any broker or agent acting on such purchaser's behalf.

9. Continued Compliance with Other Applicable Laws and Rules. The requirements set forth in the Interim Trading Order are in addition to the requirements of Bankruptcy Rule 3001(e) and applicable securities, corporate, and other laws, and do not excuse compliance therewith.

10. Special Rules. A Person acquiring or disposing of Tax Ownership of Stock or Covered Claims in the capacity of Agent of another Person shall not be treated as a Substantial Equityholder or Substantial Claimholder solely to the extent acting in the capacity of Agent, and shall not have an affirmative duty to inquire whether the account, customer, investment fund, principal, trust or beneficiary is subject to any restrictions or requirements under the Interim Trading Order; *provided, however,* that the account, customer, fund, principal, trust or beneficiary shall not be excluded from the Interim Trading Order by reason of this Section. Specifically and for the avoidance of doubt, the trustee of any trust, any indenture trustee, owner trustee, pass-through trustee, subordination agent, registrar, paying agent or transfer agent, in each case for any ownership interests, bonds, debentures or other debt securities (collectively, "**Debt Securities**") (i) issued by any of the Debtors, (ii) issued by any governmental or quasi-governmental authority for the benefit of any of the Debtors, (iii) secured by assets of any of the Debtors or agreements with respect to such assets or (iv) secured by assets leased to any of the Debtors (any such person, an "**Indenture Trustee**"), shall not be treated as a Substantial Claimholder solely to the extent acting in the capacity described above; *provided, however,* that neither any transferee of Covered Claims nor any Person for whom an Indenture Trustee acts shall be excluded solely by reason of this provision.

11. Definitions. For purposes of this Notice:

"**382(l)(5) Plan**" means a plan of reorganization for the Debtors under chapter 11 of the Bankruptcy Code pursuant to which there is a reasonable possibility that section 382(l)(5) will be utilized and which provides that transfers of Tax Ownership of the reorganized Debtors' equity will be subject to reasonable restrictions for not less than two years after the reorganization.

“**Agent**” means a broker, account manager, agent, custodian, nominee, prime broker, clearinghouse or trustee (including an Indenture Trustee but not including a trustee qualified under section 401(a) of the Internal Revenue Code).

“**Applicable Percentage**” means, if only one class of common equity of the reorganized Debtors is to be issued pursuant to the terms of a 382(l)(5) Plan, 4.85% of the number of such shares that the Debtors reasonably estimate will be issued at the effective time of such 382(l)(5) Plan. If more than one class of equity of the reorganized Debtors is to be distributed pursuant to the terms of a 382(l)(5) Plan, the Applicable Percentage shall be determined by the Debtors in their reasonable judgment in a manner consistent with the estimated range of values for the equity to be distributed reflected in the valuation analysis set forth in the Disclosure Statement, and shall be expressed in a manner that makes clear how many shares of common equity would constitute the Applicable Percentage.

“**Bankruptcy Code**” means title 11 of the United States Code.

“**Claims Trading Notice Order**” has the meaning given in Section 4(e).

“**Covered Claims**” means any claims within the meaning of section 101(5) of the Bankruptcy Code against one or more Debtors that are not first priority claims, *provided that*

(i) if a holder of a claim is uncertain as to the extent to which such claim is a first priority claim, such holder may serve upon the Debtors and Debtors’ counsel, written notice of the requesting holder’s uncertainty along with a description of the underlying claim, and within 10 calendar days after actual receipt of such notice, the Debtors shall, in consultation with the requesting holder, reasonably determine, solely for purposes of the Interim Trading Order, the portion of the applicable claim at such time that is a first priority claim; and

(ii) if a holder of claims is uncertain as to the extent to which the Interim Trading Order applies to it, it can consult counsel for the Creditors’ Committee (when appointed).

For purposes of clause (i), the Debtors’ determination is not binding on the holders and shall not preclude a holder from seeking a determination from the Court.

“**Creditors’ Committee**” means the official committee of unsecured creditors that is typically appointed in these cases.

“**Debtors**” has the meaning given in the first paragraph hereof.

“**Debt Securities**” has the meaning given in Section 10.

“**Disclosure Statement**” means a disclosure statement filed with the Court relating to a proposed plan of reorganization for the Debtors under chapter 11.

“**Effective Time**” means the time of effectiveness of the Interim Trading Order.

“**Equity Forfeiture Provision**” has the meaning given in Section 6(b).

“**Forfeited Equity**” has the meaning given in Section 6(b).

“**Indenture Trustee**” has the meaning given in Section 10.

“**Internal Revenue Code**” means the Internal Revenue Code of 1986, as amended.

“**Interim Trading Order**” means the Interim Trading Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Claims Against and Interests in the Debtors’ Estates entered by the Court in connection with the above-captioned proceedings on \_\_\_\_\_, 2012.

“**Motion**” has the meaning given in the first paragraph hereof.

“**Newly Traded Covered Claims**” means Covered Claims (i) of which a Person acquired Tax Ownership after the date that was 18 months before the Petition Date, and (ii) that are not “ordinary course” claims, within the meaning of section 1.382-9(d)(2)(iv) of the Treasury regulations, of which the same Person has always had Tax Ownership. For the avoidance of doubt, a transferee will be deemed to have owned such Covered Claims for the period that such Covered Claims were owned by the transferor if such Covered Claims were transferred in a “qualified transfer” within the meaning of section 1.382-9(d)(5) of the Treasury regulations.

“**NOL**” has the meaning given in the first paragraph hereof.

“**Notice of Completed Sell Down**” has the meaning given in Section 4(d).

“**Participation Restriction**” has the meaning given in Section 3(b).

“**Person**” means a person or Entity (as such term is defined in section 1.382-3(a) of the Treasury regulations).

“**Petition Date**” means July 9, 2012.

“**Potentially Substantial New Equityholder**” has the meaning given in Section 4(b).

“**Preliminary Percentage**” has the meaning given in Section 4(b).

“**Proposed Covered Claim Transaction Notice**” has the meaning given in Section 4(e).

“**Proposed Stock Transaction Notice**” has the meaning given in Section 2.

“**Protected Amount**” means the amount of Covered Claims of which a Person has Tax Ownership at the Effective Time,

- (i) *increased by* (A) the amount of Covered Claims of which such Person acquires Tax Ownership pursuant to contracts entered into before the Effective Time and (B) the amount of Covered Claims of which such Person acquires Tax Ownership after the Effective Time pursuant to the exercise of rights under a secured debt instrument (including a voluntary foreclosure) of which such Person has Tax Ownership before the Effective Time, *minus* the amount of Covered Claims of which such Person disposes pursuant to contracts entered into before the Effective Time;
- (ii) *increased by* the amount of Covered Claims of which such Person acquires Tax Ownership from another Person that are Newly Traded Covered Claims in the hands of the transferor, if either
  - (x) both the transferor and the transferee are Substantial Claimholders immediately before the transfer; or
  - (y) the transferor is a Substantial Claimholder immediately before the transfer and the transferee becomes a Substantial Claimholder as a result of the transfer, but the transferor ceases to be a Substantial Claimholder as a result of the transfer, and the transferor has complied and continues to comply with the Participation Restriction; *provided* that the transferee’s Protected Amount shall only be increased to the extent that the aggregate amount of Newly Traded Covered Claims of which the transferor has Tax Ownership immediately before the transfer exceeds the aggregate amount of Newly Traded Covered Claims of which the transferee has Tax Ownership immediately before the transfer, and the transferor has complied and continues to comply with the Participation Restriction; and *provided* that, in the case of (x) and (y), the transferee’s Protected Amount shall only be increased to the extent that (i) the amount transferred to the transferee does not exceed the transferor’s Protected Amount immediately before the transfer and (ii) the transferee can demonstrate that the



transferor is bound by a written agreement to reduce its Protected Amount by a corresponding amount; and

- (iii) *decreased* by the amount of Covered Claims held by such Person as of the Effective Time that are not Newly Traded Covered Claims in the hands of such Person and that are subsequently disposed of by such Person.

“**Reporting Notice**” has the meaning given in Section 4(a).

“**section 382(l)(5)**” means section 382(l)(5) of the Internal Revenue Code

“**section 382(l)(6)**” means section 382(l)(6) of the Internal Revenue Code

“**Sell Down Notice**” means a notice to a Potentially Substantial New Equityholder requiring the Potentially Substantial New Equityholder to transfer Covered Claims in accordance with Sections 3 and 4.

“**Sell Down Order**” has the meaning given in Section 4(b).

“**Stock**” has the meaning given in the first paragraph hereof.

“**Substantial Claimholder**” means a Person that has Tax Ownership of an aggregate amount of Covered Claims measured where applicable by principal and accrued interest as of the Petition Date, that equals or exceeds the Threshold Amount (as determined from time to time).

“**Substantial Claimholder Notice**” has the meaning given in Section 4(a).

“**Substantial Equityholder**” has the meaning given in Section 1.

“**Substantial Equityholder Notice**” has the meaning given in Section 1.

“**Tax Ownership**” means beneficial ownership of a Covered Claim or of Stock as determined in accordance with the applicable rules under section 382 and, to the extent provided in those rules shall include, but not be limited to, direct and indirect ownership (*e.g.*, a holding company would be considered to have Tax Ownership of all shares owned or acquired by its 100% owned subsidiaries), ownership by members of a person’s family and Persons acting in concert and, in certain cases, the creation or issuance of an option (in any form). Any variation of the term Tax Ownership shall have the same meaning and an “option” to acquire stock or claims shall include 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. Tax Ownership of Covered Claims shall be determined as if such Covered Claims were stock of the Debtors.

“**Threshold Amount**” means, as an initial matter, \$20 million. The Debtors will periodically review the definition of the Threshold Amount, in consultation with the Creditors’ Committee (when appointed), with a view to ensuring the reasonableness thereof, but in no event shall the Threshold Amount be decreased with retroactive effect. Any changes to the definition of the term Threshold Amount will be filed with the Court and served and published in the manner described in Section 8.

**FAILURE TO FOLLOW THE PROCEDURES SET FORTH IN THIS NOTICE WILL CONSTITUTE A VIOLATION OF THE AUTOMATIC STAY PRESCRIBED BY SECTION 362 OF THE BANKRUPTCY CODE.**

**ANY PROHIBITED SALE, TRADE OR OTHER TRANSFER OF THE STOCK OR COVERED CLAIMS IN VIOLATION OF THE INTERIM TRADING ORDER WILL BE NULL AND VOID *AB INITIO* AND MAY LEAD TO CONTEMPT, COMPENSATORY DAMAGES, PUNITIVE DAMAGES OR SANCTIONS BEING IMPOSED BY THE COURT.**

PLEASE TAKE FURTHER NOTICE that the deadline to file an objection (“**Objection**”) to the Motion shall be 4:00 p.m. (prevailing Eastern Time) on the date set forth in the Order (the “**Objection Deadline**”). An Objection shall be considered timely if it is (i) filed with the Court, One Bowling Green, New York, New York 10004-1408 and (ii) actually received on or before the Objection Deadline by (a) the Office of the United States Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004, Attn: Elisabetta G. Gasparini and Paul K. Schwartzberg (b) proposed counsel to the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Marshall S. Huebner and Brian M. Resnick, (c) attorneys for the administrative agents for the Debtors’ proposed postpetition lenders, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Attn: Marcia Goldstein and Joseph Smolinsky, and Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019, Attn: Margot B. Schonholtz and Ana Alfonso and (d) attorneys for the official committee of unsecured creditors then appointed in these cases.

PLEASE TAKE FURTHER NOTICE that if timely objections are received there shall be a hearing held to consider the timely Objections to the Motion.

PLEASE TAKE FURTHER NOTICE that if no 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 granting the relief requested herein, which order shall be submitted and may be entered with no further notice or opportunity to be heard afforded to any party, and the Motion shall be approved *nunc pro tunc* to the date of the commencement.

Dated: New York, New York  
[\_\_\_\_\_], 2012

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

Marshall S. Huebner  
Damian S. Schaible  
Brian M. Resnick  
Darren S. Klein

DAVIS POLK & WARDWELL LLP  
450 Lexington Avenue  
New York, New York 10017  
Telephone: (212) 450-4000  
Facsimile: (212) 607-7983

*Proposed Counsel to the Debtors  
and Debtors in Possession*

**Exhibit C**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In re:**

**PATRIOT COAL CORPORATION, *et al.*,**

**Debtors.**

**Chapter 11**

**Case No. 12-[ ] (\_\_\_)**

**(Jointly Administered)**

**SUBSTANTIAL EQUITYHOLDER NOTICE**

PLEASE TAKE NOTICE that, as of \_\_\_\_\_, 2012, [Name] has Tax Ownership<sup>1</sup> of \_\_\_\_\_ shares of the common stock of Patriot Coal Corporation (the “**Stock**”).

PLEASE TAKE FURTHER NOTICE that pursuant to the Order, this Notice is being served upon (i) Patriot Coal Corporation, 12312 Olive Boulevard, Suite 400, St. Louis, Missouri 63141, (ii) proposed counsel to the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Marshall S. Huebner and Brian M. Resnick and (iii) counsel for the Creditors’ Committee (when appointed).

This notice is given in addition to, and not as a substitute for, any requisite notice under Rule 3001(e) of the Federal Rules of Bankruptcy Procedure.

Respectfully submitted,

\_\_\_\_\_  
[Name of Stockholder]  
[Address of Stockholder]  
[City, state]  
[Telephone of Stockholder]  
[Facsimile of Stockholder]  
Dated: \_\_\_\_\_, 2012

<sup>1</sup> Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to it in the Interim Trading Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Claims Against and Interests in the Debtors’ Estates dated \_\_\_\_\_, 2012 (the “**Order**”).

**Exhibit D**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In re:**

**PATRIOT COAL CORPORATION, *et al.*,**

**Debtors.**

**Chapter 11**

**Case No. 12-[ ] (\_\_\_)**

**(Jointly Administered)**

**NOTICE OF INTENT TO PURCHASE, ACQUIRE OR OTHERWISE  
OBTAIN TAX OWNERSHIP OF STOCK**

PLEASE TAKE NOTICE that [Name] intends to purchase, acquire or otherwise obtain Tax Ownership of \_\_\_\_\_ shares of the common stock of Patriot Coal Corporation (the “**Proposed Transaction**” and the “**Stock**”).<sup>1</sup>

PLEASE TAKE FURTHER NOTICE that, prior to giving effect to the Proposed Transaction, [Name] has Tax Ownership of \_\_\_\_\_ shares of the Stock.

PLEASE TAKE FURTHER NOTICE that, after giving effect to the Proposed Transaction, [Name] would have Tax Ownership of \_\_\_\_\_ shares of the Stock.

PLEASE TAKE FURTHER NOTICE that this notice is being filed with the Bankruptcy Court and served upon (i) Patriot Coal Corporation, 12312 Olive Boulevard, Suite 400, St. Louis, Missouri 63141, (ii) proposed counsel to the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Marshall S. Huebner and Brian M. Resnick and (iii) counsel for the Creditors’ Committee (when appointed), pursuant to the Order.

[Name] further acknowledges and agrees that (i) if the Debtors do not provide written approval of the Proposed Transaction within 15 calendar days of the date of this notice, the Proposed Transaction may not be consummated unless approved by a final and nonappealable order of the Bankruptcy Court, (ii) any transaction purportedly consummated in violation of the Order will be void *ab initio* and will result in the

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<sup>1</sup> Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to it in the Interim Trading Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Claims Against and Interests in the Debtors’ Estates dated \_\_\_\_\_ (the “**Order**”).

imposition of sanctions as provided in the Order and (iii) any further transactions contemplated by [Name] that may result in [Name] purchasing, acquiring or otherwise obtaining Tax Ownership of additional Stock will each require an additional notice be filed with the Bankruptcy Court and served in the same manner as this notice.

This notice is given in addition to, and not as a substitute for, any requisite notice under Rule 3001(e) of the Federal Rules of Bankruptcy Procedure.

Respectfully submitted,

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[Name of Acquiror]  
[Address of Acquiror]  
[City, state]

[Telephone of Acquiror]  
[Facsimile of Acquiror]

Dated: \_\_\_\_\_, 2012

**Exhibit E**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In re:**

**PATRIOT COAL CORPORATION, *et al.*,**

**Debtors.**

**Chapter 11**

**Case No. 12-[ ] (\_\_\_)**

**(Jointly Administered)**

**NOTICE OF INTENT TO SELL, EXCHANGE OR OTHERWISE  
DISPOSE OF TAX OWNERSHIP OF STOCK**

PLEASE TAKE NOTICE that [Name] intends to sell, exchange or otherwise dispose of Tax Ownership of \_\_\_\_\_ shares of the common stock of Patriot Coal Corporation (the “**Proposed Transaction**” and the “**Stock**”).<sup>1</sup>

PLEASE TAKE FURTHER NOTICE that, before giving effect to the Proposed Transaction, [Name] has Tax Ownership of \_\_\_\_\_ shares of the Stock.

PLEASE TAKE FURTHER NOTICE that, after giving effect to the Proposed Transaction, [Name] would have Tax Ownership of \_\_\_\_\_ shares of the Stock.

PLEASE TAKE FURTHER NOTICE that this notice is being filed with the Bankruptcy Court and served upon (i) Patriot Coal Corporation, 12312 Olive Boulevard, Suite 400, St. Louis, Missouri 63141, (ii) proposed counsel to the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Marshall S. Huebner and Brian M. Resnick and (iii) counsel for the Creditors’ Committee (when appointed), pursuant to the Order.

[Name] further acknowledges and agrees that (i) if the Debtors do not provide written approval of the Proposed Transaction within 15 calendar days of the date of this notice, the Proposed Transaction may not be consummated unless approved by a final and nonappealable order of the Bankruptcy Court, (ii) any transaction purportedly consummated in violation of the Order will be void *ab initio* and will result in the imposition of sanctions as provided in the Order, and (iii) any further transactions

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<sup>1</sup> Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to it in the Interim Trading Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Claims Against and Interests in the Debtors’ Estates dated \_\_\_\_\_ (the “**Order**”).

contemplated by [Name] that may result in [Name] selling, exchanging or otherwise disposing of Tax Ownership of additional Stock will each require an additional notice be filed with the Bankruptcy Court and served in the same manner as this notice.

This notice is given in addition to, and not as a substitute for, any requisite notice under Rule 3001(e) of the Federal Rules of Bankruptcy Procedure.

Respectfully submitted,

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[Name of Stockholder]  
[Address of Stockholder]  
[City, state]

[Telephone of Stockholder]  
[Facsimile of Stockholder]

Dated: \_\_\_\_\_, 2012



**Exhibit F**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In re:**  
  
**PATRIOT COAL CORPORATION, et al.,**  
  
**Debtors.**

**Chapter 11**  
  
**Case No. 12-[ ] (\_\_\_)**  
  
**(Jointly Administered)**

**SUBSTANTIAL CLAIMHOLDER NOTICE**

PLEASE TAKE NOTICE that [Name] has Tax Ownership of an aggregate amount of Covered Claims that equals or exceeds the Threshold Amount,<sup>1</sup> measured, where appropriate, by principal and accrued interest as of the Petition Date. As of \_\_\_\_\_, 2012 [Name] has Tax Ownership of the following Covered Claims:

<b><u>Debtor</u></b>	<b><u>Description of Covered Claim</u></b>	<b><u>Amount of Covered Claim</u></b>	<b><u>Directly Owned (✓)</u></b>

PLEASE TAKE FURTHER NOTICE that [Name] has Tax Ownership of the following Debt Securities described in Section 10 of the Order that are *not*, as of the date hereof, treated as Covered Claims:

<sup>1</sup> Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to it in the Interim Trading Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Claims Against and Interests in the Debtors' Estates dated \_\_\_\_\_, 2012 (the "**Order**").

<u>Debtor</u>	<u>Description of Covered Claim</u>	<u>Amount of Covered Claim</u>	<u>Directly Owned (✓)</u>

PLEASE TAKE FURTHER NOTICE that pursuant to the Order, this notice is being served upon (i) Patriot Coal Corporation, 12312 Olive Boulevard, Suite 400, St. Louis, Missouri 63141, (ii) proposed counsel to the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Marshall S. Huebner and Brian M. Resnick and (iii) counsel for the Creditors' Committee (when appointed).

This notice is given in addition to, and not as a substitute for, any requisite notice under Rule 3001(e) of the Federal Rules of Bankruptcy Procedure.

Respectfully submitted,

\_\_\_\_\_  
[Name]  
[Address]  
[City, state]

[Telephone]  
[Facsimile]

Dated: \_\_\_\_\_, 2012

**Exhibit G**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In re:**

**PATRIOT COAL CORPORATION, *et al.*,**

**Debtors.**

**Chapter 11**

**Case No. 12-[ ] (\_\_\_)**

**(Jointly Administered)**

**NOTICE OF COMPLETED SELL DOWN**

PLEASE TAKE NOTICE that [Name] has transferred Tax Ownership<sup>1</sup> of Covered Claims as required by the final Sell Down Notice applicable to it (the “**Sell Down**”).

PLEASE TAKE FURTHER NOTICE that, after giving effect to the Sell Down, [Name] has Tax Ownership of Covered Claims, as set forth below:

<b><u>Debtor</u></b>	<b><u>Description of Covered Claim</u></b>	<b><u>Amount of Covered Claim</u></b>	<b><u>Directly Owned (✓)</u></b>

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order, this notice is being served upon (i) Patriot Coal Corporation, 12312 Olive Boulevard, Suite 400, St. Louis, Missouri 63141, (ii) proposed counsel to the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Marshall S. Huebner and Brian M. Resnick and (iii) counsel for the Creditors’ Committee (when appointed).

<sup>1</sup> Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to it in the Interim Trading Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Claims Against and Interests in the Debtors’ Estates dated \_\_\_\_\_ (the “**Order**”).

PLEASE TAKE FURTHER NOTICE that [Name] acknowledges and agrees that, pursuant to the Order, (i) any further transactions contemplated by [Name] that result in [Name's] purchasing, acquiring or otherwise obtaining Tax Ownership of additional Covered Claims may be prohibited, and (ii) failure to comply with the obligations and procedures set out in Section 4 of the Order could subject [Name] to the Equity Forfeiture Provisions.

This notice is given in addition to, and not as a substitute for, any requisite notice under Rule 3001(e) of the Federal Rules of Bankruptcy Procedure.

Respectfully submitted,

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[Name]  
[Address]  
[City, state]

[Telephone]  
[Facsimile]

Dated: \_\_\_\_\_, 2012

**Exhibit H**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In re:**

**PATRIOT COAL CORPORATION, et al.,**

**Debtors.**

**Chapter 11**

**Case No. 12-[ ] ( )**

**(Jointly Administered)**

**PROPOSED COVERED CLAIM TRANSACTION NOTICE**

PLEASE TAKE NOTICE that [Name] intends to purchase, acquire or otherwise obtain Tax Ownership<sup>1</sup> of \$\_\_\_\_\_ of Covered Claims (the “**Proposed Transaction**”), as set forth below:

<u>Debtor</u>	<u>Description of Covered Claim</u>	<u>Amount of Covered Claim</u>	<u>Directly Acquired (✓)</u>

PLEASE TAKE FURTHER NOTICE that, before giving effect to the Proposed Transaction, [Name] has Tax Ownership of \$\_\_\_\_\_ of Covered Claims, as set forth below:

<u>Debtor</u>	<u>Description of Covered Claim</u>	<u>Amount of Covered Claim</u>	<u>Directly Owned (✓)</u>

PLEASE TAKE FURTHER NOTICE that, after giving effect to the Proposed Transaction, [Name] would have Tax Ownership of \$\_\_\_\_\_ of Covered Claims.

<sup>1</sup> Unless otherwise defined herein, each capitalized term shall have the meaning ascribed to it in the Interim Trading Order Establishing Notification Procedures and Approving Restrictions on Certain Transfers of Claims Against and Interests in the Debtors’ Estates dated \_\_\_\_\_ (the “Order”).

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order, this notice is being served upon (i) Patriot Coal Corporation, 12312 Olive Boulevard, Suite 400, St. Louis, Missouri 63141, (ii) proposed counsel to the Debtors, Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Marshall S. Huebner and Brian M. Resnick and (iii) counsel for the Creditors' Committee (when appointed).

[Name] further acknowledges and agrees that (i) if the Debtors do not provide written approval of the Proposed Transaction within 15 calendar days of the date of this notice, the Proposed Transaction may not be consummated unless approved by a final and nonappealable order of the Court, (ii) that any unapproved acquisition of Covered Claims may result in [Name's] being subject to the Equity Forfeiture Provisions and (iii) any further transactions contemplated by [Name] that may result in [Name] purchasing, acquiring or otherwise obtaining Tax Ownership of additional Covered Claims will require an additional notice to be served in the same manner as this notice.

This notice is given in addition to, and not as a substitute for, any requisite notice under Rule 3001(e) of the Federal Rules of Bankruptcy Procedure.

Respectfully submitted,

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[Name]  
[Address]  
[City, state]

[Telephone]  
[Facsimile]

Dated: \_\_\_\_\_, 2012