

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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**CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK
CORPORATION, AND CN'S RAIL OPERATING SUBSIDIARIES –
CONTROL – KANSAS CITY SOUTHERN, THE KANSAS CITY SOUTHERN
RAILWAY COMPANY, GATEWAY EASTERN RAILWAY COMPANY, AND
THE TEXAS MEXICAN RAILWAY COMPANY**

JOINT MOTION FOR APPROVAL OF VOTING TRUST AGREEMENT

EXPEDITED CONSIDERATION REQUESTED

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On May 17, 2021, the Board decided that the application of Canadian National Railway Company (“CNR”), Grand Trunk Corporation (“GTC”), and CN’s rail operating subsidiaries¹ (collectively, “CN”) seeking authority for the acquisition of control of Kansas City Southern (“KCS”)² would be subject to the Board’s current merger regulations, and denied CN’s motion to approve its proposed Voting Trust Agreement without prejudice as “incomplete.”³ CN and KCS (collectively, “Applicants”) now file this Joint Motion for Approval of their Voting Trust Agreement. In this Motion, Applicants will address each element of the Board’s test for voting trust approval, following the guidance the Board provided in its *May 17 Decision*. The revised Voting Trust Agreement and now-executed merger agreement were submitted to the Board on May 18, 2021, and a fully executed version is attached as Exhibit 8.

¹ CN’s U.S. rail operating subsidiaries include Illinois Central Railroad Company (“IC”), Wisconsin Central Ltd. (“WCL”), Grand Trunk Western Railroad Company (“GTW”), Bessemer and Lake Erie Railroad Company (“B&LE”), Chicago, Central & Pacific Railroad Company (“CC&P”), Cedar River Railroad Company (“CEDR”), The Pittsburgh & Conneaut Dock Company (“P&CD”), Sault Ste. Marie Bridge Company (“SSMB”), Waterloo Railway Company (“WLOO”), and Wisconsin Chicago Link Ltd. (“WCLL”). CN’s rail operating subsidiaries in Canada include Algoma Central Railway, Inc. (“ACR”), Quebec and Lake Saint John Railway Company (“QLSJR”), Canadian Northern Quebec Railway Company (“CNQ”), Canada Southern Railway Company (“CASO”), and BC Rail Partnership (“BCRP”).

² “KCS” is Kansas City Southern, The Kansas City Southern Railway Company, Gateway Eastern Railway Company, and The Texas Mexican Railway Company.

³ Decision No. 2; Decision No. 3, *Canadian Nat’l Ry. Co. et al.—Control—Kansas City Southern et al.*, STB Finance Docket No. 36514 (served May 17, 2021) (“*May 17 Decision*”), at 1.

EXECUTIVE SUMMARY

After an intense competition among CN, Canadian Pacific (“CP”), and private equity interests, all seeking to acquire KCS’s historic railroad franchise, KCS has determined that a partnership with CN will provide the greatest benefits to rail customers, employees, local communities, the North American economy, and KCS shareholders.⁴ The Board’s approval of Applicants’ Voting Trust Agreement—and the regulatory certainty that it provides—is essential to unlock the considerable public interest benefits of a CN-KCS combination.

Applicants appreciate that the STB will approve a voting trust for a major merger cautiously. Under the current merger rules, Applicants must demonstrate that the public benefits from the use of a voting trust exceed any potential harms. In this Motion, Applicants meet that standard. We will show that approval of the proposed voting trust conforms with all requirements set forth in 49 C.F.R. Part 1013, would achieve substantial public benefits, does not present any significant public interest harm, and thus satisfies the Board’s public interest test in 49 C.F.R. § 1180.4(b)(4)(iv).

First, the CN-KCS combination will bring overwhelming public interest benefits—benefits that cannot be realized without a voting trust. The competitive benefits of the transaction are detailed by CN’s President and Chief Executive Officer Jean-Jacques Ruest, by KCS’s President and Chief Executive Officer

⁴ See KCS Letter to STB, *Canadian National Ry. Co.—Control—Kansas City So. et al.*, STB Finance Docket No. 36514 (“CN-KCS”) CN-KCS (filed May 21, 2021).

Patrick J. Ottensmeyer, and in the more than 1,100 supporting letters filed with the Board by stakeholders, including customers, port authorities, and communities for whom the transaction will provide a safer, faster, cleaner, and stronger rail option. These stakeholders will particularly benefit from single-line North-South service from Mexico to Canada and service linking Mid-America to east and west coast markets and international ports. The proposed combination will enhance trade and the public policy supporting North American trade embodied in the United States-Mexico-Canada Agreement (“USMCA”), and create a more resilient supply chain. As these letters reflect, the combination will result not only in better service, more shipping options and streamlined routing, but also in substantial environmental benefits, as the single-line CN-KCS rail network will allow trains to compete more successfully with trucks, which produce far more pollution to haul the same loads. As Mr. Ruest and Mr. Ottensmeyer explain, use of a voting trust is essential to unlock those benefits.

Second, approval of the voting trust presents no public interest harms. The Board has identified potential financial harm to the applicants as a key focus of public interest review. Here, the Board has already concluded that divestiture would not cause financial harm to KCS.⁵ CN, too, will remain financially strong following the combination and would remain so if it were required to divest KCS.

⁵ Decision No. 5, *Canadian Pacific Railway Ltd.—Control—Kansas City Southern*, STB Finance Docket No. 36500 (May 6, 2021) (“*May 6 Decision*”), at 6 (“The Board also finds that, in the event divestiture were necessary, there is no significant risk that the financial strength or operational capabilities of Kansas City Southern ... would be compromised.”).

As detailed in the Verified Statement of Ghislain Houle, CN's Executive Vice President and Chief Financial Officer, the acquisition premium CN has proposed does not remotely threaten its financial integrity. CN's balance sheet is strong. CN has already committed to accelerating the reduction of debt resulting from the transaction by pausing share buybacks. Within a few years, CN's leverage would fall back below the railroad industry average. And divestiture poses no significant financial risk to CN, as it could sell KCS and easily cover the entire amount of its new debt. Indeed, CP awaits in the wings with a keen interest.

Third, claims that a CN-KCS combination would harm competition are wrong. As evidenced in the Verified Statement of William J. Rennie—a Partner in Oliver Wyman's Transportation & Services practice with over 40 years of railroad industry experience—the proposed merger is almost entirely end-to-end, with CN and KCS overlapping on less than 0.7 percent of their total route miles, all between New Orleans and Baton Rouge. Applicants are committed to remedy that small competitive overlap by divesting the KCS rail line between New Orleans and Baton Rouge, as confirmed in the Verified Statement of Jean-Jacques Ruest. Accordingly, CN's proposed acquisition of KCS is similarly situated to CP's proposal with respect to any competition concerns. And, in contrast to CP's proposal, any other genuine competitive issues uncovered in the merger review process can be analyzed under the current merger standards. Indeed, CN has already made multiple pro-competitive commitments, including keeping existing gateways open on commercially reasonable terms.

Finally, approving the voting trust serves a unique and important public interest by respecting KCS's choice of a merger partner, while preserving KCS's independence and preventing any unlawful control during Board review. After KCS decided to partner with CN, CP announced that it nonetheless intended to apply to combine with KCS. CP has also signaled that it will try to block approval of CN's voting trust, hoping to somehow force KCS to accept an inferior CP offer. The Board's assessment of the public interest supporting a voting trust should not be used to favor one merger partner over another or to aid a disappointed suitor attempting a hostile bid. To the contrary, *Major Rail Consolidation Procedures* signals that voting trust approval is uniquely appropriate when used to prevent a hostile takeover.⁶ In these circumstances, where the Board has approved CP's voting trust, it would be both fundamentally anticompetitive and contrary to the public interest for the Board to disapprove an identical voting trust agreement proposed by Applicants in this proceeding. As one competition expert explained: "To approve one and deny the other in these circumstances ...would likely work an injustice by effectively prejudging the review process, if not ending the viability of one party's bid outright. Such a decision would deprive the public of a competitive auction and in so doing likely harm the public interest."⁷

⁶ *Major Rail Consolidation Procedures*, 5 S.T.B. 535, 567 (2001).

⁷ Exhibit 5, Verified Statement of Professor Joshua D. Wright ("V.S. Wright"), at 9.

In short, Applicants’ proposed voting trust agreement would not create unlawful control, and approval has substantial public benefits and no risk of harm to the public interest. In these circumstances, the public interest overwhelmingly supports approval of Applicants’ voting trust.

ARGUMENT

Section I demonstrates that the proposed Voting Trust Agreement will prevent any unlawful control violation, as the Board has found with the identical voting trust proposed by CP. **Section II** summarizes the overwhelming public interest benefits that will result from the proposed transaction—benefits that cannot be realized without a voting trust. **Section III** shows that approval of the voting trust will not result in any public interest harms, the financial health of CN would remain strong, and the competition concerns from the use of a voting trust are baseless. Finally, **Section IV** describes the unique public benefit of respecting KCS’s choice and not granting CP’s request for unequal treatment so that CP can try to coerce KCS into a merger that it has already rejected in favor of a CN-KCS combination.

I. THE VOTING TRUST WILL PREVENT UNLAWFUL CONTROL OF KCS.

Under the current merger rules, the Board first considers whether a proposed voting trust “would insulate [applicants] from an unlawful control violation.” 49 C.F.R. § 1180.4(b)(4)(iv). The Board decided this issue when it approved CP’s identical voting trust for its combination with KCS. Specifically, it found that “subject to certain required modifications described below, the Voting

Trust Agreement would comply with the guidelines at 49 C.F.R. part 1013, comport with past agency policy and practice, and ensure that the day-to-day management and operation of KCS will not be controlled by Canadian Pacific or anyone affiliated with Canadian Pacific.”⁸ The only modification the Board required was an amendment precluding the trustee from owning the parent’s stock during the trust period (except through a mutual fund).

Applicants’ voting trust mirrors the Voting Trust Agreement that the Board approved in the *May 6 Decision* in every respect, including the same trustee, David Starling, who is former President and CEO of KCS. Pursuant to that decision, Applicants amended Paragraph 10 of their Voting Trust Agreement to prohibit the trustee from owning CN stock during the trust period (except through a mutual fund).⁹ Applicants’ Voting Trust Agreement complies with the Board’s Part 1013 guidelines, comports with past agency policy and practices, and ensures that KCS’s day-to-day management and operations will not be controlled by CN or anyone affiliated with CN.

Independent voting trusts have a well-established history at the agency as an appropriate mechanism for avoiding potential unlawful control of a rail carrier while the agency is reviewing the transaction.¹⁰ Pursuant to this agency policy,

⁸ *May 6 Decision* at 6.

⁹ See Exhibit 8, Exhibit A at ¶ 10.

¹⁰ *Voting Trusts Rules*, ICC Ex Parte No. 332, 44 Fed. Reg. 59909 (Oct. 17, 1979) (“The Commission has recognized that the use of an independent voting trust is an acceptable means of acquiring control of publicly held regulated carriers without prior Commission approval.”); see also *Water Transport Ass’n v. ICC*, 715 F.2d 581,

voting trusts have been used in both major transactions¹¹ and recent significant and minor transactions.¹²

Applicants' Voting Trust Agreement provides that immediately upon closing, all outstanding shares of KCS shall be placed into an irrevocable voting trust under the control of an independent trustee, who would have exclusive and independent authority to vote those shares until the trust is terminated. The trust would be established shortly before the closing of the merger, so that all of the outstanding shares of KCS can be deposited with the trustee immediately upon the effective date of the merger.

The trustee, David Starling, is completely independent from CN and has no direct or indirect business arrangements or dealings with CN. Mr. Starling is the former President and CEO of Kansas City Southern and is well qualified to exercise trustee duties independently during the trust period. (Mr. Starling was

582 (D.C. Cir. 1983) ("ICC has long permitted . . . use of an independent voting trust" while a potential acquiring carrier awaits the result of the agency's regulatory review).

¹¹ Examples include each of the three most recent major transactions approved by the Board: Canadian National/Illinois Central, Finance Docket No. 33556 (1999); CSX-Norfolk Southern/Conrail, Finance Docket No. 33388 (1998), and Union Pacific-Southern Pacific, Finance Docket No. 32760 (1996)

¹² Examples include Soo Line Corporation/Central Maine & Quebec, Finance Docket No. 36368 (2020); Genesee & Wyoming/Providence & Worcester, Finance Docket No. 36064 (2016); Watco/Ann Arbor, Finance Docket No. 35699 (2013), Genesee & Wyoming/RailAmerica, Finance Docket No. 35654 (2012); Canadian Pacific/Dakota, Minnesota & Eastern, Finance Docket No. 35081 (2008), and KCS/Texas Mexican, Finance Docket No. 34342 (2004).

also the proposed trustee for Canadian Pacific’s approved Voting Trust Agreement in Finance Docket No. 36500.)

The Voting Trust Agreement thus satisfies the “independence” guidelines of 49 C.F.R. § 1013.1. It similarly comports with the “irrevocability” guidelines of 49 C.F.R. § 1013.2. Paragraph 5 of the Voting Trust Agreement provides that the trust and the nomination of the trustee will be irrevocable, except as provided under Paragraphs 9 and 15. Paragraph 9 contains standard terms for the ultimate disposition of trust stock. Paragraph 15 contains standard terms for replacing the trustee in the event of resignation or disqualification (disqualification would only be allowed if the trustee were to materially violate the Voting Trust Agreement).

In short, the proposed Voting Trust Agreement is identical in all material respects to voting trusts that have been approved in connection with prior transactions under Board review, including CP’s. It presents no novel issues and does not attempt to exert any informal control through mechanisms like an early replacement of management.¹³ Applicants are committed to keeping KCS completely independent and operating under its current board and management unless and until the Board approves CN’s acquisition of control.¹⁴ The Voting Trust Agreement codifies that commitment in a binding contract, which should

¹³ *Cf. Canadian Pacific Ry., Ltd.—Pet. for Expedited Declaratory Order*, STB Finance Docket No. 36004 (Mar. 2, 2016).

¹⁴ While in the voting trust, KCS will continue to generate cash flow that will allow it to invest in accordance with its pre-existing capital allocation policy. *See Exhibit 3, Verified Statement of Ghislain Houle (“V.S. Houle”), at 14–15.*

give the Board and the public confidence that KCS will remain independent throughout the Board's review of this proposed transaction.¹⁵

II. APPROVAL OF THE VOTING TRUST HAS SUBSTANTIAL PUBLIC INTEREST BENEFITS.

Approval of the Voting Trust Agreement is in the public interest because it will allow the Board to consider a pro-competitive transaction explicitly designed to enhance competition in the way contemplated by *Major Rail Consolidation Procedures*.

A. The Use of a Voting Trust Is Essential to Unlock the Public Interest Benefits of a CN-KCS Combination.

The primary purpose of a voting trust is to create a mechanism to provide certainty to a target's shareholders while allowing sufficient time for agency review. The necessity for careful and lengthy Board review creates a substantial disparity between the time required to close a Class I transaction that is subject to Board review and the time required to close a transaction that is not. For example, Berkshire Hathaway closed its transaction to acquire BNSF just three months after it made an offer to acquire BNSF.¹⁶ Because Berkshire Hathaway

¹⁵ Applicants further commit to the Board that any modification of the Voting Trust Agreement will be submitted to the Board for review and approval under paragraph 16 of the Voting Trust Agreement, as the Board required for CP in the *May 6 Decision*.

¹⁶ According to press reports, Berkshire offered to acquire all shares of BNSF's stock that Berkshire did not already own on November 3, 2009, and the deal closed on February 12, 2010. See Nick Zieminski, *Buffett buying Burlington rail in his biggest deal*, REUTERS (Nov. 3, 2009), <https://www.reuters.com/article/us-burlingtonnorthern-berkshire/buffett-buying-burlington-rail-in-his-biggest-deal-idUSTRE5A22A720091103>; Jonathan Stempel, *Buffett unbound: Berkshire buys*

was a non-railroad, even its acquisition of a Class I railroad did not require an application under 49 U.S.C. § 11323, so long as it did not control another railroad.¹⁷ In contrast, the regulatory timeline for Board review of a major transaction under 49 U.S.C. §§ 11323–11325 is up to 19 months from the date a proceeding is initiated.¹⁸

The significant disparity in timelines means that target shareholders (and thus the target itself) are likely to prefer a transaction that is not subject to Board review than one that is, even where the latter transaction provides more value and poses little or no substantive regulatory concern. This distortion, which typically exists between financial bidders and rail carriers, is what voting trusts aim to solve. In the absence of a voting trust, a bidder subject to a Board review cannot match the speed at which other bidders can deliver consideration (or the certainty of such consideration).

Here, this disparity is compounded by the unique facts of the present situation. Before CN even became aware of an opportunity to combine with KCS,

BNSF, joins S&P 500, REUTERS (Feb. 12, 2010), <https://www.reuters.com/article/us-berkshire/buffett-unbound-berkshire-buys-bnsf-joins-sp-500-idUSTRE61B48N20100212>.

¹⁷ Berkshire Hathaway later acknowledged that it controlled two Class III carriers at the time of the BNSF acquisition, which were divested as a remedy. *See Western Coal Traffic League—Petition for Declaratory Order*, STB Response Letter, STB Finance Docket No. 35506, at 1–2 (Oct. 9, 2012).

¹⁸ A minimum of three months for a prefiling notification, plus one month for notice of the application to be published in the Federal Register after filing, plus a maximum 12 months for the evidentiary proceeding, plus three months for a Board decision after the record closes. *See* 49 U.S.C. § 11325(a), (b)(3); 49 C.F.R. § 1180.4(b)(1).

CP and KCS were already subject to a merger agreement that required the use of a voting trust. In order to present a competitive bid that KCS could consider under the terms of the CP merger agreement, CN was effectively required to propose the same structure. And once the Board approved the use of the CP's voting trust, it became virtually impossible for CN to present a competitive bid without use of a voting trust.

As CN's President and CEO Jean-Jacques Ruest explains: "In order for KCS to be able to terminate its agreement with CP and accept CN's superior proposal, CN was required to provide KCS shareholders the same amount of certainty of closing into a voting trust in 2021. This is especially true since the KCS-CP voting trust had been approved by the STB."¹⁹ KCS's President and CEO Patrick J. Ottensmeyer similarly explains that "[b]ecause private funds that do not own or control any other U.S. rail carriers could acquire KCS without any regulatory lag or complexity, to obtain an 'apples to apples' comparison between such funds and potential strategic rail partners, it was critical to KCS that any potential rail partners propose the use of a voting trust. Only with a voting trust structure could KCS's Board determine the market value of the company in an acquisition transaction."²⁰

As a result, use of a voting trust is essential to unlock the considerable public interest benefits of a CN-KCS combination.

¹⁹ Exhibit 1, Verified Statement of Jean-Jacques Ruest ("V.S. Ruest"), at 13.

²⁰ Exhibit 2, Verified Statement of Patrick J. Ottensmeyer ("V.S. Ottensmeyer"), at 3.

B. A Combination of CN and KCS Would Bring Substantial Public Benefits.

The Verified Statements of Jean-Jacques Ruest and Patrick J. Ottensmeyer detail some of the public interest benefits from a combination of CN and KCS. Mr. Ruest's statement begins by explaining the substantial benefits for rail customers, who will be able to better compete in new markets thanks to longer single-line service, faster transit times, and more effective equipment utilization.²¹

The expanded reach of the proposed CN-KCS rail network translates into new single-line routes for rail customers that are more competitive with truck, barge, and other rail routes. The combination will allow CN customers to have single-line reach to markets served by the KCS, including Kansas City and Dallas.²² Conversely, customers of KCS will gain single-line reach to U.S. markets served by CN, including Chicago, Detroit, and Memphis.²³ Single-line service provides substantial benefits to rail customers. On average, eliminating interchanges between rail carriers can reduce an estimated 24 to 48 hours per interchange.²⁴ Reducing transit times provides direct benefits to rail customers, including more reliable and timely service, with shorter equipment cycle times. Shorter cycle times mean fewer railcars are needed to move the same amount of product and greater car capacity for customers.²⁵

²¹ V.S. Ruest, at 1–2.

²² *Id.* at 5.

²³ *Id.*

²⁴ *Id.* at 6.

²⁵ *Id.*.

Mr. Ruest's Verified Statement includes an Attachment with detailed maps illustrating how particular supply chains would benefit from a combined CN-KCS network.²⁶ The Attachment illustrates supply chain benefits for six major market segments: (1) grain and grain byproducts; (2) intermodal; (3) imports, exporters, and ocean carriers who rely on ports; (4) automobiles and automotive parts; (5) lumber and panel customers; and (6) plastic resins, liquefied petroleum gases, and refined petroleum products.²⁷

Mr. Ruest's statement also details the significant environmental benefits of a CN-KCS combination. A key purpose of the transaction is to create more effective rail competition for north-south traffic flows, resulting in fewer trucks on congested highways and reduced greenhouse gas emissions.²⁸ Each additional freight train can remove more than 300 trucks from the road, leading to significant reduction in emissions,²⁹ because rail transportation is significantly more fuel efficient than transportation by truck. For example, over time after consummation, if CN-KCS were able to move four 100-car trains per day between Mexico City and Detroit instead of moving that same freight by truck, this would translate into 1,200 fewer trucks on the highway per day and 3,180 tons of carbon dioxide saved per day.³⁰ This will mean fewer trucks on highways and roads in communities and cleaner air.

²⁶ *Id.* at Attachment.

²⁷ *See id.* at 6–10.

²⁸ *Id.* at 2.

²⁹ *Id.* at 11.

³⁰ *Id.* at 10–12.

Mr. Ottensmeyer similarly sees “[t]remendous [o]pportunities [f]or CN and KCS [c]ustomers” from a transaction that will “provide our customers with many cost effective and efficient market opportunities that do not exist today because of the need to coordinate interchanges and joint routes between two companies that sometimes have conflicting goals and incentives to work together.”³¹ He notes that a combined CN-KCS would be able to provide efficient single-line service for north-south automotive parts traffic. That market is currently dominated by UP and BNSF, due to their more efficient routings, but a CN-KCS combination would introduce an effective competitive option.³² Similarly, he sees substantial opportunities for converting truck traffic to rail traffic, which has long been a goal of KCS.³³

Mr. Ottensmeyer notes that a combination that is about growing rail traffic will be good for railroad employees as well. As he explains, “KCS did not enter into this transaction on the basis of cost cutting through job reductions, reduced maintenance, or reduced capital investment. Our goal, a goal shared by CN, is to grow traffic volumes and grow the railroads. This will mean additional jobs, not cuts.”³⁴

Mr. Rennie’s statement also confirms the ways in which customers would benefit from broader single-line service. He notes that “One of the key tenets of

³¹ V.S. Ottensmeyer at 8.

³² *Id.* at 9.

³³ *Id.*

³⁴ *Id.* at 11.

modern railroad management is to minimize equipment dwell time,” and that “[e]ach time a freight car enters a classification yard, it stays 24 hours on average.”³⁵ A CN-KCS combination would “eliminate one day of yard time each time a car would otherwise have been interchanged between CN and KCS.”³⁶ Mr. Rennie also notes that the merged railroad could “build and manage blocks of cars moving over long distances without the need to stop en route in classification yards” and “better manage its cars, since they would remain under one management much more of the time.”³⁷ He provides specific examples of ways that a CN-KCS combination “would create new single-line options for current railroad customers, such as between Canadian and Midwestern grain producers and Mexican consumers.”³⁸ He also illustrates how it would create new single-line options to compete with existing single-line service offered by other railroads, such as CP and NS between Detroit and Kansas City.³⁹

In assessing the public interest here, the Board should give heavy weight to these particular public interest benefits that stakeholders would realize if the combination were ultimately approved. As demonstrated in Section III, there is no countervailing risk of public interest harm from approving CN’s voting trust. But even assuming *arguendo* that a party were to show some potential harm

³⁵ See Exhibit 4, Verified Statement of William J. Rennie (“V.S. Rennie”), at 19.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 20.

³⁹ See *id.* at 20–22.

from an eventual CN-KCS combination, the Board has tools to mitigate that harm through its conditioning power, or even to disapprove the transaction if those harms outweigh the public interest benefits. If the Board denies the voting trust, however, its ability to assess in the future, let alone realize all these public interest benefits would vanish. The Board would do immediate and irreparable harm to the public interest if it were to effectively block a CN-KCS combination at the voting trust stage.

C. Stakeholder Support Statements Confirm Substantial Public Benefits of a Voting Trust.

The public benefits of a voting trust detailed in Mr. Ruest's statement are affirmed by the enormous number of support statements submitted to the Board. It is easy to focus on the top-line number of over 1,100 support statements demonstrating the sheer volume of support which the Board received in fewer than four weeks.⁴⁰ But the Board should also consider the individual stories that supporters tell, and the particular benefits that they cite for supporting a CN-

⁴⁰ See Initial Submission of 409 Statements Supporting Proposed Transaction, CN-4, *Canadian National Ry. Co.—Control—Kansas City So. et al.*, STB Finance Docket No. 36514 ("CN-KCS") (filed Apr. 26, 2021); Submission of Port and Terminal Operators' Statements Supporting Proposed Transaction, CN-9, *CN-KCS* (filed Apr. 29, 2021); Submission of 200 Statements Supporting Proposed Transaction, CN-10, *CN-KCS* (filed Apr. 29, 2021); Submission of 100 Statements Supporting Proposed Transaction And/Or CN's Voting Trust, CN-12, *CN-KCS* (filed May 4, 2021); Submission of 100 Statements Supporting Proposed Transaction And/Or CN's Voting Trust, CN-13, *CN-KCS* (filed May 7, 2021); Submission of 183 Additional Statements Regarding Proposed Transaction And/Or CN's Voting Trust, CN-14, *CN-KCS* (filed May 12, 2021); Submission of 100 Additional Statements Regarding Proposed Transaction And/Or CN's Voting Trust, CN-17, *CN-KCS* (filed May 24, 2021).

KCS combination. In every case, these benefits will not be ultimately realized unless the Board approves use of a voting trust.

Longer Single-Line Service: A number of customers cited the advantage that longer single-haul service would give them in accessing particular markets. These benefits obviously would not flow from any pure financial transaction.

Examples of this sentiment include the following:

- “The proposed merger would enable a more cost-effective access to southern markets in the United States and Mexico, one of the primary importers of U.S. agricultural products. In addition, this same improved access from the south will create new opportunities for expansion of our business by creating more efficient routes to transport raw materials from the southern United States to our facility in northwest Indiana.”⁴¹
- “CN and KCS new single-line haul offerings will expand market reach and offer new competitive transportation options for our shipments of scrap metal from Chicalote, AG in Mexico to metals markets in the Midwest where previously business was cost prohibitive due to high freight rates and transit times.”⁴²
- “The combined company’s single-owner, single-operator service would enhance our ability to be competitive in the markets in which we operate, benefiting our shipments of asphalt from Beaumont to our Texas and Omaha terminals and to wholesalers in Mexico.”⁴³
- “We believe this would give us access to markets beyond what are currently available to our cooperative and its farmer/owners. The prospect of sending grain into markets other than Decatur, IL and St. Louis is exciting.”⁴⁴

⁴¹ Exhibit 7 at 1. Exhibit 7 is a compilation of the support statements cited in this filing. These support statements were previously submitted in CN-4, CN-9, CN-10, CN-12, CN-13, and CN-14.

⁴² *Id.* at 2.

⁴³ *Id.* at 4.

⁴⁴ *Id.* at 6.

- “Vicenza Energy welcomes the merger as it would allow Vicenza a more direct rail route to move Bitumen as a solid to Gulf Coast markets. This would allow for the environmentally safe transport of Bitumen from Alberta to new and existing markets.”⁴⁵

Convert Truck Moves to Rail: Other customers emphasized that the longer single-line hauls of a CN-KCS combination could allow them to convert truck shipments to rail:

- “Rail shipments are of the highest efficiency both operationally and logistically for our company. Truck shipments are more time consuming and less efficient. Most of our truck shipments are directed to the Mississippi river to become export bushels. With a combined CN-KCS rail line we could utilize shipping by rail to either the St Louis river market or direct to the Texas Gulf export terminals, either destination would greatly improve shipping efficiency and logistics.”⁴⁶
- “Roslin Enterprises currently ships a large percentage of its feedstock by truck. This merger would help us transition our business to larger portion of rail service. This will allow us to access markets in a direct and cost competitive manner.”⁴⁷
- “We currently rely mostly on trucks to move our product[,] [though] the U.S. Rail access is important to us for long haul routes that often need to connect Chicago with the southern U.S. and Canada. The merger of CN/KCS would open additional avenues of transportation which could impact us significantly and certainly open new markets to us.”⁴⁸

Increase Rail-to-Rail Competition: Many customers pointed to the increased rail-to-rail competition that would result from the merger. Examples include:

- “[W]e are hopeful that the merger will create additional competition with Union Pacific for shipments coming from the west and also from

⁴⁵ *Id.* at 8.

⁴⁶ *Id.* at 10.

⁴⁷ *Id.* at 12.

⁴⁸ *Id.* at 13.

Mexico. Competition serves the market by lowering prices for consumers and giving additional options, which is key in our business.”⁴⁹

- “Badger Mining ships over 90% of our products out of Wisconsin by rail. We strongly believe the proposed acquisition will provide greater efficiencies to Badger, particularly in the Mexico market. We also believe the proposed acquisition will increase competition between Badger and some of our competitors who have mining operations on the Union Pacific and enjoy a cost advantage due to having a single-line haul.”⁵⁰
- “The Southwest region of the U.S. is currently served by 2 dominant Western railroads. A CN-KCS merger would bring a new level of competition, pricing, and service to businesses that operate in this market, thereby making their products and services more competitive.”⁵¹

Increased Trade: Others cited the public benefits of enhanced trade that could accelerate United States-Mexico-Canada Agreement (“USMCA”) traffic:

- “[W]e feel this acquisition would open up a direct corridor between Canada and both Houston and Mexico which are key markets that are currently indirect and expensive to ship via intermodal. A seamless intermodal route would enable us to be more competitive vs. tank truck; allowing us to convert more shipments to a greener solution that helps with the industry’s driver capacity challenges while offering a savings in freight cost.”⁵²
- “[O]ur port operations in Lazaro Cardenas and Veracruz, both in Mexico, would enjoy greater market access by having a strong partner in CN, helping accelerate USMCA traffic in a more streamline[d] and efficient manner.”⁵³
- “The growing opportunities for cross-border North American trade under the USMCA are more likely to be achieved with an efficient

⁴⁹ *Id.* at 16.

⁵⁰ *Id.* at 17.

⁵¹ *Id.* at 19.

⁵² *Id.* at 20.

⁵³ *Id.* at 23.

cross-border rail carrier such as the one that would result from the CN/KCS combination.”⁵⁴

Importantly, support is not concentrated among individual commodity customers or individual geographic areas. Support comes from all over North America, from Canadian customers who see opportunities for cross-border shipments to or from the United States or Mexico, to Upper Midwestern customers in Wisconsin and Minnesota who see the extended reach that they can have to the KCS network, through customers in the heartland of Illinois and Iowa excited about the opportunity to reach new market facilities, and into southern states like Tennessee, Mississippi, Alabama, and Louisiana who already see the ways that a CN-KCS combination could benefit their businesses.

⁵⁴ *Id.* at 24–25.

And support comes from all commodity groups, from agricultural customers,⁵⁵ to petroleum and chemicals,⁵⁶ to automotive parts,⁵⁷ to forest products.⁵⁸

Many other stakeholders have expressed support. For example, the Illinois Manufacturers' Association, which represents nearly 4,000 member companies, expressed "strong support" for a CN-KCS combination, which "would serve our state well by expanding the collective reach of both railroads and bringing new, sustainable transportation solutions to businesses in Illinois, throughout the

⁵⁵ For example, Paterson Global Foods cites its ability to replace a current three-carrier service to Mexico with single-line CN-KCS service, and how these "significant efficiencies . . . will allow Paterson to be more competitive in this marketplace." *Id.* at 27. Paterson also cited CN's "dedication to intermodal" and the potential for new markets to be opened through intermodal grain shipments. *Id.* Likewise, Topflight Grain Cooperative in Monticello, Illinois noted that broader single-line service would "benefit[] our shipments of corn and soybeans from Illinois to additional destination markets in the US and Mexico." *Id.* at 28.

⁵⁶ For example, Windstar LPG, Inc., which "currently ship[s] over 1,000 railcars per month of hydrocarbon fuels," supports a CN-KCS combination because it will make it more competitive on shipments to Mexico and provide a "more economical rail option for us where we currently rely on trucks" *Id.* at 30. And Interstate Asphalt, a wholesaler of asphalt liquid that "provides asphalt for the heavy/highway construction industry in the Midwest" stated that a CN-KCS combination "would provide greater competition/lower cost to move product from the Gulf Coast region to the Midwest." *Id.* at 32.

⁵⁷ For example, Dakota Integrated Systems LLC notes that a combined CN-KCS's single-line service "would enhance our ability to be competitive in the markets in which we operate, benefiting our shipments of automotive parts from San Luis Potosi to Detroit." *Id.* at 34.

⁵⁸ The Mississippi Forestry Association supports the combination as a means to give Mississippi forest product manufacturers access to a broader single-line network to help them "compete on a global stage." *Id.* at 36. And Louisiana-Pacific supports the transaction because "[o]ur transit times from Canada to the Texas market would improve and become more consistent" and "LP will have multiple new opportunities to revise our material flows to better utilize rail and minimize regional and long-haul truck moves." *Id.* at 38.

Midwest, and across the nation.”⁵⁹ The Greater Memphis Chamber of Commerce commented that “CN’s strong track record of success with superior service, intermodal and safety gives us confidence that a combined CN-KCS would be best positioned to serve our needs.”⁶⁰

Similarly, both the Canadian and U.S. ports on CN’s network support the proposed CN-KCS combination based on the potential and expanded reach of the combined network and CN’s long and successful track record of partnering with ports. The Port of New Orleans “voic[ed] strong support for the combination of CN and KCS, because it will provide expanded options and drive efficiencies for customers of all sizes.”⁶¹ The Prince Rupert Port Authority cites CN’s history of “collaborat[ing] on infrastructure investments to our mutual benefit” and CN’s “strong commitment to invest in network capacity to support future growth.”⁶²

Third-party logistics providers similarly voice strong support. One sees substantial opportunities for the agricultural commodities it currently ships from Canada into the United States and Mexico, with “increased network velocity,” a “potential reduction in transit times,” and “shared systems with better information sharing and visibility.”⁶³ Oleum Energy Solutions, which specializes in supply chain management in the oil and gas industry, cites “the potential

⁵⁹ *Id.* at 40.

⁶⁰ *Id.* at 41.

⁶¹ *Id.* at 44.

⁶² *Id.* at 45, 46.

⁶³ *Id.* at 47.

synergies and advantages within this specific [CN-KCS] combination,” and “feels obligated to voice our support so that this opportunity is not missed.”⁶⁴ QSL America Inc. cites its successful work with CN to develop a multi-modal transload terminal in Chicago and the potential “to recreate a similar multimodal facility in the south.”⁶⁵

A number of local governments support the CN-KCS combination as well. Many cite economic opportunities. For example, the Village of Hanover Park, Illinois stated that the extended reach of a combined CN-KCS “would enhance our ability to be more competitive with other parts of the country and attract more businesses, jobs, and economic development to Northeastern Illinois.”⁶⁶ Others cite the environmental benefits of Applicants’ vision to offer “a sustainable transportation alternative to trucks” and the reduction of greenhouse gas emissions that results from moving truck shipments to rail.⁶⁷

The critical theme in all of these support letters is that the benefits these stakeholders see can only be realized if the voting trust is approved and the Board has an opportunity to review the transaction. Many stakeholders have

⁶⁴ *Id.* at 50.

⁶⁵ *Id.* at 51; *see also id.* at 52 (“[Charles City Rail Terminal] is developing a rail transloading facility to load and offload railcars and will provide transloading services for companies shipping on the CN. . . . CCRT’s transloading facility will service processing and production facilities in Iowa and surrounding states needing to transport multiple commodities (ethanol, corn/DCO, soybean/SBO, fertilizers, animal feedstock, etc.) to other regions of the country on the CN/KCS, into the Gulf region.”).

⁶⁶ *Id.* at 54.

⁶⁷ *Id.* at 55 (Village of Plainfield, Illinois), 56 (Village of Bedford Park, Illinois).

recognized this point, and explicitly expressed support for Applicants’ voting trust.⁶⁸ Thus far, 371 letters have been submitted supporting Applicants’ use of a voting trust. While the vast majority of those letters supporting the voting trust also supported the underlying transaction, a handful noted that they were still reviewing the transaction, but strongly supported voting trust approval so that the STB could engage in a full review. These include prominent customer voices like The Chemours Company, which “unequivocally supports approval of CN’s voting trust.”⁶⁹

III. A VOTING TRUST WILL NOT HARM THE PUBLIC INTEREST.

While the public interest benefits of voting trust approval are extensive, the public interest harms are nonexistent. Approval of this voting trust does not have any “effect . . . on the adequacy of transportation to the public.” 49 U.S.C. § 11324(b)(1). Approval of this voting trust involves no questions about whether the transaction should include “other rail carriers in the area involved in the proposed transaction.” 49 U.S.C. § 11324(b)(2). The Verified Statement of CN’s Chief Financial Officer, Ghislain Houle, details how approval of this voting trust presents no risk of harm to CN’s financial integrity, either during the trust period or from divestiture. *See* 49 U.S.C. § 11324(b)(3). Approval of the voting trust in which KCS remains independently managed will not adversely affect

⁶⁸ *See id.* at 57 (“Central to the CN’s bid for KCS is the establishment of a voting trust that benefits KCS shareholders. Custom Packaging Company unequivocally supports approval of CN’s voting trust.”); *id.* at 59 (same - Total Grain Marketing); *id.* at 61 (same - Innovative Ag Services).

⁶⁹ *See id.* at 62.

“the interest of rail carrier employees affected by the proposed transaction.” 49 U.S.C. § 11324(b)(4).⁷⁰ And approval of this voting trust—pursuant to which KCS would continue to operate independently until such time as the Board decides whether to approve a CN-KCS combination—will have no “adverse effect on competition among rail carriers in the affected region or in the national rail system.” 49 U.S.C. § 11324(b)(5). Indeed, claims that an end-to-end CN-KCS combination would harm competition are wrong.

A. The Transaction Will Not Harm CN’s Strong Financial Position.

In its *May 17 Decision*, the STB reaffirmed that § 11324(b)(3) was a strong factor in its public interest review, and indicated that the Board would need to consider the potential consequences to CN in the event of a divestiture after approval of the voting trust. *May 17 Decision* at 6-7. As the STB noted, under the merger rules, “to gain approval for the use of a voting trust, applicants would have to demonstrate either that any harm to the public interest associated with the divestiture process would be relatively small or that some countervailing public benefit would be associated with their proposed use of a voting trust that would outweigh this risk.” *Id.* at 7 (quoting *Major Rail Consol. Procs.*, 5 S.T.B. at 568). In *Major Rail Consolidation Procedures*, the Board pointed to section 11324(b)(3)’s requirement that it “consider the total fixed charges resulting from

⁷⁰ Applicants note that they expect that rail traffic growth from creating a better single-line competitor for north-south traffic currently moving by truck would create more opportunities for rail employees and be a true win-win for all stakeholders. Applicants look forward to working with labor during the application process.

[the proposed] transaction” as support for a public interest review of proposed voting trusts in major transactions.⁷¹ Specifically, the Board concluded that it needed to consider whether there could be harms to “the financial integrity of the applicant carriers” who would “risk having to sell [the railroad in trust] at a greatly reduced price if we do not approve the control application or if they choose not to consummate it.”⁷²

Here, a potential divestiture process would cause no harm to the public interest or to the financial strength of CN or KCS. First, the Board has already determined in the context of the formerly proposed CP-KCS combination that “in the event divestiture were necessary, there is no significant risk that the financial strength or operational capabilities of Kansas City Southern ... would be compromised.”⁷³ The same is true in this application.

And the same is true for CN. Applicants demonstrate, through the Verified Statement of Ghislain Houle, that CN will incur no harm from the level of debt being utilized to fund the proposed merger, or from the price CN has offered for KCS.⁷⁴ Five key points from Mr. Houle’s statement leave no doubt that the proposed transaction poses no risk to CN’s financial integrity:

⁷¹ *Major Rail Consol. Procs.*, 5 S.T.B. at 567.

⁷² *Id.*

⁷³ *May 6 Decision* at 6.

⁷⁴ Workpapers for Mr. Houle’s statement have been enclosed with this submission. They are designated Highly Confidential under the protective order and are available to other parties in this proceeding upon request.

1. CN has one of the strongest financial profiles of all the Class I carriers and a long history of conservative fiscal policy that has positioned the company to maintain its financial strength, notwithstanding the incurrence of additional debt⁷⁵;
2. CN expects to retain an investment grade credit rating throughout the transaction and beyond, an expectation that has been validated by two major credit rating agencies⁷⁶;
3. CN will have ample cash flow on a standalone basis (without considering cash flow from KCS) to service its existing debt and the debt being raised to fund the acquisition of KCS, while continuing to invest in the railroad at levels consistent with its historical practice⁷⁷;
4. CN has suspended share repurchases indefinitely to bolster cash available for debt repayment and contribute to a rapid deleveraging plan⁷⁸; and
5. CN will retain a strong balance sheet, even if forced to divest KCS. Even if CN received *no* proceeds in a sale—an unrealistically conservative assumption—CN’s debt to cash flow leverage ratio is projected to be 3.7x by the end of 2024, which is consistent with an investment grade credit profile. CN’s ability to retain a strong balance sheet is a testament to its existing best-in-class leverage ratio and strong free-cash flow.⁷⁹

Mr. Houle details CN’s strong financial profile and the lack of risk of financial harm. He further explains CN’s conservative financial stewardship and deep commitment to maintaining a strong credit profile, which has earned CN the highest investment grade credit rating among the publicly listed Class I

⁷⁵ V.S. Houle at 4–7.

⁷⁶ *Id.* at 8–9.

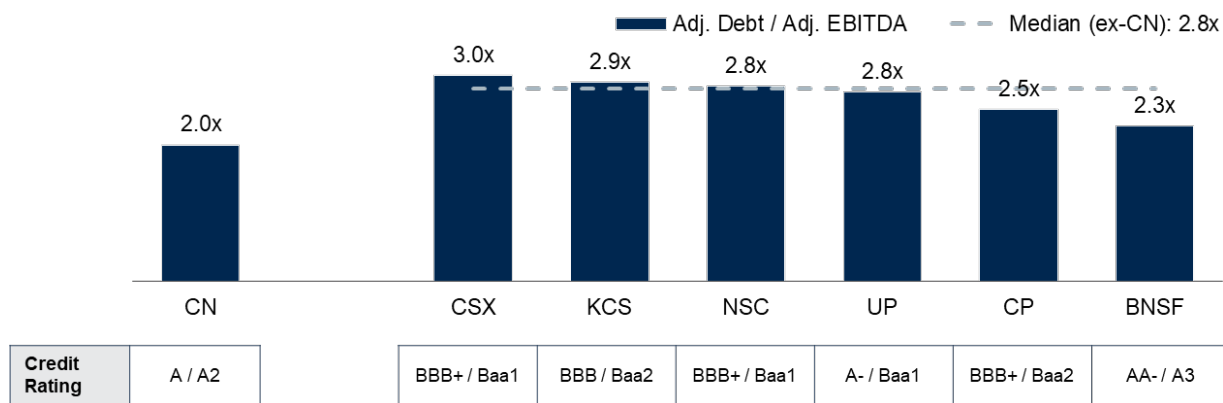
⁷⁷ *Id.* at 12–13.

⁷⁸ *Id.* at 7.

⁷⁹ *Id.* at 15.

railroads today.⁸⁰ He shows that CN also currently has the lowest level of financial leverage among Class I railroads.⁸¹ This is the direct result of CN's commitment to a strong balance sheet that allows it to be resilient during economic cycles and to invest in strategic opportunities—like the KCS opportunity.

Chart 1
Class I Railroads Current Leverage Ratios and Credit Ratings



Moreover, Mr. Houle details CN's historic practice of reducing share repurchase activity after large acquisitions and during periods of economic crisis, precisely because of its broader strategy of maintaining low leverage and a strong balance sheet.⁸² Here, CN has already publicly committed to continue that historic practice, stating that it will pause share buybacks and not consider resuming them until its financial leverage reaches ~2.5–3.0x.⁸³

⁸⁰ *Id.* at 4.

⁸¹ *Id.* at 6.

⁸² *Id.* at 7.

⁸³ *Id.*

Mr. Houle further states that CN's offer to acquire KCS was warranted because of the significant benefits of a CN and KCS transaction, and that the price was deemed to be justified by senior CN management and CN's Board of Directors, after advice from multiple outside advisors with substantial knowledge of and expertise in the industry.⁸⁴ The purchase price will be funded in part by new debt, which J.P. Morgan and RBC Capital Markets have fully committed to financing.⁸⁵ Mr. Houle notes that in his experience, CN's projected level of debt is manageable for a company of CN's size, scope, and overall financial health and will not harm its ability to continue investing in the railroad and provide quality service to customers.⁸⁶

Mr. Houle also details how CN will have adequate cash flow to fully fund its capital investment plans and service CN's existing debt and the new transaction-related debt on a CN-only basis, even without the benefit of access to a portion of KCS cash flows.⁸⁷ Specifically, CN forecasts free cash flow before tax-affected interest payments in excess of \$3 billion or more, compared to \$0.7 billion of tax-affected interest expense (*i.e.*, fixed charges), leaving CN with more than \$2 billion of excess cash flow above our capital investment and debt service obligations.

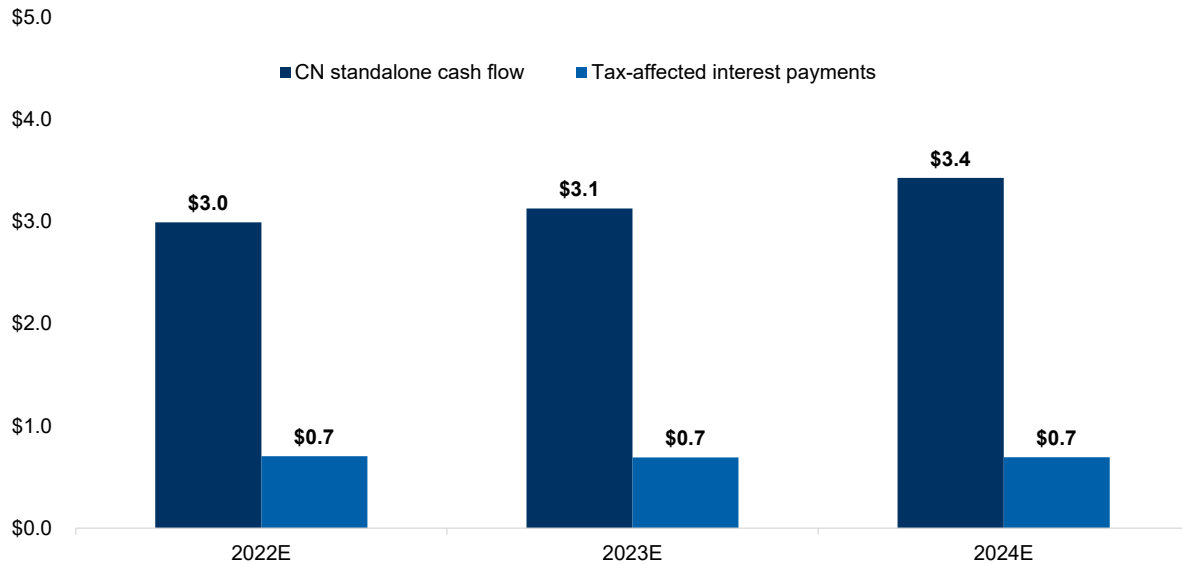
⁸⁴ *Id.* at 9.

⁸⁵ *Id.* at 9–10.

⁸⁶ *Id.* at 11–14.

⁸⁷ *Id.*

Chart 2
Projected CN Cash Flow
Before Tax-Affected Interest Payments vs. Tax-Affect Interest Payments
(all figures in US\$bn)



Note: CN standalone cash flow calculated as cash from operations, less capital expenditures and investing activities, plus tax-affected interest payments; includes tax-affected interest payments on CN standalone debt and acquisition debt.

If the transaction is approved, then CN will be in an even stronger position to more rapidly reduce debt through the strong cash flow generation of the combined company.⁸⁸ Based on its analysis, CN expects significant revenue growth as the combined railroads attract more traffic from competing modes such as trucking.⁸⁹

And in the event that KCS had to be divested from the trust, based on the facts set forth above, CN is confident that it has more than enough ability to support the higher debt load as a standalone company.⁹⁰ Indeed, Mr. Houle demonstrates that CN would continue to have a strong balance sheet even if it

⁸⁸ *Id.* at 13.

⁸⁹ *Id.*

⁹⁰ *Id.* at 15–18.

generated *no proceeds* from divesting KCS.⁹¹ That eventuality has no likelihood, of course. A potential sale of KCS would attract strong interest, and divestiture would generate significant cash proceeds, whether to another railroad, to a private equity firm, or through a public offering. Mr. Houle illustrates several scenarios showing that a sale out of trust even at a steep discount would generate substantial proceeds.⁹² Of course, CP has already publicly disclosed its willingness to engage with KCS to enter into another agreement to acquire KCS in substantially the same form as the merger agreement previously entered into by CP and KCS.⁹³

In sum, the STB has an obligation under both 49 U.S.C. § 11324(b) and 49 C.F.R. § 1180.4(b)(4)(iv), to weigh potential consequences in the event of a divestiture. *May 17 Decision* at 6–7. As Applicants have shown, the use of a voting trust will not negatively affect CN’s capacity to meet fixed charges or create any risk of serious financial harm. Indeed, it is clear that there are willing buyers (including other railroads and private equity interests) for the KCS network, to whom the asset could be sold out of trust. Given the strong CN balance sheet, the commitment to curtail stock repurchases until the debt leverage reaches pre-merger levels, the expectation that CN will retain its investment grade credit rating, and the plausible sale prices for KCS if divestiture were required, “any harm to the

⁹¹ *Id.* at 15.

⁹² *Id.* at 16–17.

⁹³ See CP Letter to STB, *Canadian Pacific Railway Ltd.—Control—Kansas City Southern*, STB Finance Docket No. 36500 (filed May 21, 2020).

public interest associated with the divestiture process [at issue] would be relatively small” *Major Rail Consol. Procs.*, 5 S.T.B. at 568.

B. CN’s Proposed Acquisition of KCS Presents No Significant Competitive Concerns.

Under section 11324(b)(5), Congress has directed the STB to consider any “adverse effect on competition among rail carriers” in its approval of any major rail merger. When approving a voting trust, the STB has addressed this concern by ensuring an independent trustee and no control by the acquirer of the day-to-day operations of the acquired firm. The agency is then able to defer any competition analysis for the merits phase, where it has ample tools to consider and address any potential competition harms that will result from a change of control.

Despite that agency precedent, DOJ submitted comments repeating its historical concerns with voting trusts and stating that “CN’s proposed acquisition of KCS appears to pose greater risks to competition than the risks posed by a CP-KCS merger.”⁹⁴ As explained above, approval of the voting trust provides CN no control over KCS. Moreover, since DOJ’s filing, Applicants have committed to divest KCS’s line between Baton Rouge and New Orleans—the sole area where a small number of CN and KCS customers would see their railroad options reduced

⁹⁴ Comments of the United States Department of Justice, *Canadian National Railway Company—Control—Kansas City Southern*, STB Finance Docket No. 36514 (May 14, 2021) (“DOJ Comment”), at 1.

from two to one if the combination were approved.⁹⁵ (As Mr. Rennie demonstrates, the few number of 3-2 customers are also geographically concentrated in the Baton Rouge area.⁹⁶) This divestiture commitment demonstrates CN's willingness to eliminate any purported competitive concerns with the CN-KCS combination and means that Applicants' proposed transaction is similarly situated in this respect to the formerly proposed CP transaction.

In any event, DOJ's competition arguments are misplaced here. Voting trusts are designed to prevent potential anticompetitive effects while the Board is considering whether to approve a merger by scrupulously maintaining the acquired railroad's independence. Thus, the Board does not prejudge the competition effects of a proposed merger when deciding whether to approve a voting trust.

This is evident in the Board's treatment of CP's motion: It found that the form of Voting Trust Agreement would protect KCS's independence and prevent any unlawful control, and that there was no risk of harm to CP and KCS if divestiture were necessary. Even though DOJ raised competition arguments regarding the CP-KCS deal, the decision did not spend any time discussing the nature of the proposed combination, whether that combination might ultimately be in the public interest, or whether it created the potential for competitive harm

⁹⁵ As Mr. Ruest explains, CN-KCS will retain local and overhead trackage rights over the line so that customers may choose single-line service from CN-KCS. V.S. Ruest at 2, 5.

⁹⁶ V.S. Rennie at 10.

in the *May 6 Decision*.⁹⁷ Nor should it have. An appropriate voting trust will ensure that the two entities continue to make independent decisions until the merger is consummated. Whether a transaction ultimately proves to be in the public interest is distinct from the separate question of whether use of a voting trust is in the public interest.⁹⁸ In fact, use of voting trusts would be effectively eliminated if the Board was required to conduct a full public interest merits review in deciding whether to approve them.

In all events, DOJ falls well short of demonstrating that a CN-KCS merger raises more competitive concerns than a CP-KCS merger, or for that matter, competitive concerns at all. As explained in detail in the attached Verified Statement of William Rennie, CN and KCS operate in one of the most intensely competitive transportation regions in North America, specifically north-south

⁹⁷ In opposing CP's voting trust, DOJ argued that it had competition concerns even though the CP-KCS deal was vertical. *See Canadian Pacific Railway Company—Control—Kansas City Southern*, Comments of the United States Department of Justice, STB Finance Docket No. 36500 (Apr. 12, 2021) (hereafter “DOJ CP Voting Trust Comment”), at 8–10. DOJ stated that the Board “should thoroughly examine the competition concerns raised by commenters and ensure that this transaction would not exacerbate these trends.” *Id.* at 10. Yet the Board correctly did not address those issues at the voting trust stage. *See generally May 6 Decision*.

⁹⁸ *See also* Exhibit 6, Opinion of Lawson A.W. Hunter, May 19, 2021 (“Hunter Op.”), at 1–2 (refusing to approve a voting trust here “would prejudice a competitive bidding process without the involvement of KCS and its shareholders and without full consideration of the different public interest implications of each bid”). Mr. Hunter is the former Head of the Canadian Competition Bureau and an expert in regulatory review processes related to mergers and acquisitions. *Id.* at 1.

corridors in Mid-America.⁹⁹ Both railroads face extensive competition, not only from other railroads, but also from motor carriers and barge operators.¹⁰⁰

The proposed CN acquisition of KCS is a vertical, end-to-end merger that will enhance competition by creating new single-line service. Before CN's commitment to divest, CN and KCS only overlap for a combined 178.6 route miles, which constitutes less than 0.7 percent of the approximately 27,000 route-miles they operate.¹⁰¹ Critically, as noted, Applicants have committed to divest KCS's line between Baton Rouge and New Orleans. Thus, these customers on the KCS line would continue to have access to at least as many rail options after consummation as they do today.¹⁰² The proposed CN-KCS merger will thus be entirely a vertical, "end-to-end" transaction.

This is not called into question by DOJ's further speculation that the combination may reduce competition in Mississippi by eliminating "build out[]" options.¹⁰³ As Mr. Rennicke explains in detail, CN's and KCS's North/South lines

⁹⁹ Workpapers for Mr. Rennicke's statement have been enclosed with this submission. They are designated Highly Confidential under the protective order, and are available to other parties in this proceeding upon request.

¹⁰⁰ See V.S. Rennicke at 5–7 & Exhibit 1 (North-South Modal Transportation Competition in Mid-America).

¹⁰¹ *Id.* at 7 & Exhibit 2 (The CN and KCS Systems Have Virtually No Overlap).

¹⁰² Although the divestiture commitment makes this irrelevant, DOJ's suggestion that there would be a significant loss of competition between Baton Rouge and New Orleans is wrong in any event. DOJ Comment at 2. Mr. Rennicke explains why in detail. See V.S. Rennicke at 10–11 & Exhibit 3.

¹⁰³ DOJ Comment at 2.

in Mississippi are far apart, and they do not compete with each other.¹⁰⁴ In fact, *they do not serve a single customer in common in this area.*¹⁰⁵ Indeed, it appears that no customer has ever built out from CN to KCS (or vice versa) in Mississippi.¹⁰⁶

The unsupported competition concerns raised by DOJ reveal its true position—that voting trusts should never be allowed, and that the Board should “reconsider” its longstanding policy to permit them. There are no documented concerns associated with the use of voting trust in the rail industry,¹⁰⁷ and the Board just recently declined to reconsider its current voting trust practice when reviewing CP’s proposed voting trust.¹⁰⁸

C. DOJ’s Remaining Arguments Contravene Board Rules and Misunderstand the Law and Facts.

As noted, for years, DOJ has expressed what is effectively a categorical opposition to the use of voting trusts in connection with mergers. After considering DOJ’s request that the Board reconsider its precedent in connection with CP’s voting trust, the Board stated that while it “appreciates DOJ’s views

¹⁰⁴ V.S. Rennieke at 13 & Exhibit 5.

¹⁰⁵ *Id.* at 13. At the same time, the DOJ has failed to account for the Grenada Railroad, which operates a line from Memphis to near Jackson and that parallels CN’s line, as well as effective competition from both railroads and barge operators. *Id.* at 13–15.

¹⁰⁶ As Mr. Rennieke explains, the reason why there have been no CN-KCS build outs is because they is not feasible in light of economic and regulatory issues. V.S. Rennieke at 16.

¹⁰⁷ V.S. Wright at 3.

¹⁰⁸ *See May 6 Decision* at 5–6.

regarding voting trusts and the need for careful consideration of their proposed use,” such agreements reflect “a long-standing agency practice that is subject to regulatory requirements as well as an established body of agency precedent.”¹⁰⁹

In its comment on Applicants’ voting trust, DOJ has simply repackaged its general objections to voting trusts as specific objections to the Board’s approval of a voting trust for Applicants, but it provides no good reason for a different result.

As just shown, DOJ’s claim that approval of the CN-KCS voting trust presents competitive concerns is wrong. Approval of the Voting Trust Agreement will *not* materially alter CN’s and KCS’s incentives to compete. The voting trust protects KCS’s independence with an independent trustee and continuation of KCS’s Board and management—the same safeguards the Board found sufficient in approving the identical voting trust proffered by CP. Further, with CN’s divestiture commitment, the CN-KCS merger is completely end-to-end.

DOJ argues, however, that for any industry participants, “unity in ownership will diminish the parties’ incentives to continue to engage in such competition even if the trust successfully prevents the acquiring firm from exercising any actual control.”¹¹⁰ This contention is wrong with respect to combinations involving end-to-end railroads subject to the Board’s extensive, ongoing regulatory authority. It is also contrary to the Board’s rules, history and

¹⁰⁹ *May 6 Decision*, at 6 & n.9 (citing use of voting trusts in “the three most recent major transactions approved by the Board”).

¹¹⁰ DOJ Comment at 2.

precedent. Indeed, the Board has already rejected the argument that voting trusts do not work—that is, that they “diminish the parties’ incentives to continue to engage in . . . competition.”¹¹¹ A company pursuing a merger application and a company that has signed a merger agreement and entered into a voting trust agreement pending regulatory review have comparable incentives (or disincentives) with respect to competition. The competitive concerns DOJ cites are not the result of entering into a voting trust agreement; to the extent they exist, they result from the “regulatory lag” between the time that two companies agree to merge and the time required for regulatory review of that transaction.¹¹²

For a railroad merger, the extended time of that “lag” is a necessary consequence of the Board’s comprehensive review of the public interest considerations for a transaction, which can stretch out over a year. This “lag” makes the voting trust an essential tool allowing railroads to compete with private investors (without concern about regulatory lag) in acquisitions of a railroad; but it does not alter the affected railroads’ competitive incentives.¹¹³

¹¹¹ *Id.*

¹¹² *See* Hunter Op., at 4 (“[v]oting trusts no more inhibit competitive behavior than the normal regulatory covenants in merger agreements”).

¹¹³ *See also* Hunter Op., at 3 (“[v]oting trust structures are appropriate in extended merger reviews, particularly when transactions involve public interest considerations”).

Approval of a voting trust aids the Board in preventing any premature control during its review of a transaction.¹¹⁴

DOJ further argues that voting trusts are not needed to level the playing field because railroads seeking to acquire other railroads are not differently situated from other buyers. In its 2001 rulemaking, however, the Board rightly determined that eliminating voting trusts in connection with railroad combinations “would give an enormous advantage to non-railroad entities in an attempted hostile takeover of a railroad system.”¹¹⁵ Private equity investors can move quickly and without any Board review. As Lawson Hunter explains, “[r]efusing to allow voting trusts would provide institutional investors with a significant advantage over a regulated business in proposing transactions, even where the regulated entity’s proposal offers substantially greater efficiencies, due to the extended time periods that the regulatory review process entails.”¹¹⁶

DOJ suggests that lengthy delays are an inherent feature of all competition review, “not a unique attribute of the Board’s process for rail mergers.”¹¹⁷ But DOJ ignores that under its governing statutes, the Board conducts a different, far broader evaluation of public interest considerations in railroad mergers than DOJ performs in its review. For DOJ, the sole question is

¹¹⁴ *See id.* (“Voting trust structures ensure that the target business continues to operate independently and separately while a regulatory review is completed and any concerns that arise in the course of the review are addressed”).

¹¹⁵ *Major Rail Consol. Procs.*, 5 S.T.B. at 567.

¹¹⁶ Hunter Op. at 1.

¹¹⁷ DOJ Comment at 3.

the merger's effect on competition.¹¹⁸ In contrast, this Board broadly considers the “public interest,” including not only competitive effects, but also rail service impacts, environmental benefits and costs, financial consequences, employment issues, labor, and effects on customers and other stakeholders.¹¹⁹

In the alternative, DOJ argues that to counter the “potential benefit of shorter, less burdensome antitrust or regulatory review [for private investors],” railroads may offer “a higher purchase price based on projected synergies,” or “make their offer more attractive by offering deal terms that confer greater certainty.”¹²⁰ DOJ asserts that other mechanisms can provide equally effective protection against regulatory risk, even during lengthy reviews, citing break-up fees and material adverse effect provisions.¹²¹

It is fundamentally unfair to simply brush aside the established regulatory framework and rules which have long authorized voting trust agreements. In any event, DOJ's claim that railroads can just “pay more” is precisely the point. A railroad buyer of another railroad is at a serious comparative disadvantage to financial investors who are able to consummate their acquisitions without Board review, and none of the tools DOJ cites address the risk and uncertainty inherent in the Board's lengthy review process. No

¹¹⁸ See 15 U.S.C. § 18.

¹¹⁹ See *Union Pacific/Southern Pacific Merger*, 1 S.T.B. 233, 366 (1996) (“[o]ur statutory mandate ... sharply contrasts with the approach to mergers taken by DOJ”).

¹²⁰ DOJ Comment at 3.

¹²¹ *Id.*

seller wants to endure uncertainty about whether the sale will close.¹²² Offering a larger premium or some protection such as a break-up fee if the sale does not close puts the railroad buyer at a disadvantage vis-à-vis the financial investor in *two* ways: it imposes costs *and* regulatory uncertainty that do not weigh down the offers of financial investors. The longer that uncertainty will endure, the less likely selling shareholders will take the risk of non-closure. And Board review of a proposed merger can easily stretch out for longer than a year.¹²³ That is particularly true where, as here, a railroad is an attractive asset, including to private investors. In DOJ's view, it is reasonable to require a railroad seeking to acquire another carrier to incorporate in its proposal crippling features that other potential buyers need not include.¹²⁴

In sum, DOJ's argument ignores that the independent trustee has a fiduciary obligation to make decisions for KCS that maximize its value, rather than assisting CN. In such circumstances, it is not in the public interest to

¹²² See Hunter Op. at 3–4 (“most businesses will not lock themselves up for the months that regulatory review processes can take—18-24 months, for example, for STB review of a major rail merger”).

¹²³ See, e.g., Hunter Op. at 2, 4.

¹²⁴ In DOJ's CP Voting Trust Comment, it also argued that under the Hart-Scott-Rodino Act, courts disfavor hold-separate agreements which are akin to voting trusts. *Id.* at 6–7. The comparison is inapt; and DOJ also misunderstands the relevant case law. Courts recognize that hold-separate agreements can be an appropriate tool where the merger might otherwise fall apart during DOJ review or litigation. See, e.g., *FTC v. Weyerhaeuser Co.*, 665 F.2d 1072, 1083–91 (D.C. Cir. 1981) (*affirming* a district court's decision *approving* a hold-separate agreement and denying the government's request for a preliminary injunction against the merger, *even though the government had established that the merger was likely to be found unlawful*).

remove the established regulatory option of a voting trust and thus to impose significant, inequitable burdens on a railroad seeking to acquire another railroad—burdens private investors do not bear.¹²⁵ Doing so could deprive the Board of the chance to assess a merger whose procompetitive and public interest benefits may be substantial, as the CN-KCS combination is.¹²⁶

D. No Other Comments Identify a Harm From Voting Trust Approval.

Applicants look forward to engaging with all stakeholders, including those that have expressed concerns, and believes that the Board’s major transaction process will provide an opportunity to explore and mitigate any legitimate concerns. Indeed, CN’s voluntary commitment to the current rules, and the multiple pro-competitive commitments that it has already made—from gateway commitments to bottleneck protections to divestiture of the only overlapping CN-KCS line—should leave no doubt about Applicants’ willingness to address and mitigate any valid issues that might be raised during merits review. Applicants will work with all stakeholders, including customers, communities, and rail employees, to address legitimate concerns arising from the proposed CN-KCS combination.

For the reasons addressed above, however, the voting trust phase of the proceeding is not the proper forum to prejudge the public-interest merits of the transaction. The Board has a robust process to review the ultimate proposed

¹²⁵ V.S. Wright at 4–5.

¹²⁶ *Id.* at 4–6.

combination of CN and KCS, and that will provide ample opportunity to address any concerns about environmental impacts, impact on passenger traffic, or labor implications. As CP itself has argued,

[I]mplementation of the Voting Trust does not in any way prejudice or foreclose the Board's review of Canadian Pacific [sic] proposed control of Kansas City Southern. On the contrary, use of the Trust allows for the Board's thorough public interest assessment to proceed before Canadian Pacific would wield any control over Kansas City Southern. Nor would the fact that Kansas City Southern was in Trust constrain the Board from reaching any decision it felt warranted by the record in the control proceeding.¹²⁷

Certain stakeholders claim that a CN-KCS combination will cause some degree of competitive harm from the ultimate combination and that Applicants therefore should not be allowed to use a voting trust. As discussed above, these claims are incorrect, particularly in light of Applicants' divestiture commitment and the fact that the transaction will be evaluated under the Board's current merger rules. The Board also has ample remedial tools to address any legitimate competition issues during its thorough review of the proposed merger. And most importantly, allegations of competitive harm are premature. Voting trust approval will in no way prejudice any aspect of the Board's analysis of potential adverse competitive impacts, as CP itself argued.

In the same vein, the Village of Barrington and several Chicago-area communities suggest that the Board should delay a voting trust decision until

¹²⁷ CP Request for Informal Opinion—Voting Trust Agreement, at 9 (submitted March 22, 2021; publicly filed as ordered by STB in CP-17, Finance Docket No. 36500 on May 10, 2021).

after it considers potential adverse impacts from increased train movements on nearby communities and the effect on passenger and commuter service.¹²⁸ These concerns may result in part from confusion over CN's announced plans to use a portion of the former Elgin, Joliet & Eastern Railway ("EJ&E") to route new growth traffic bound for Detroit, Toronto, and East Coast ports. As illustrated by Mr. Ruest's verified statement, this growth traffic would not pass through Barrington or other communities on the west side of the EJ&E. It would rather come north to Matteson, Illinois, and proceed *east* on the EJ&E en route to Michigan and eastern Canada.¹²⁹ More importantly, no adverse impacts could result from voting trust approval. Rather, any concerns about adverse impacts from a proposed CN-KCS combination will be fully explored and vetted in the Board's environmental review and addressed by appropriate mitigation measures if any are warranted. The Board's merits decision will be based on a full operating plan and environmental report, which Applicants expect will answer and alleviate many of these communities' concerns.

Finally, certain rail unions have expressed concern about potential labor impact from a "bidding war."¹³⁰ But as outlined above, the price CN has offered to pay is not excessive. Moreover, the fundamental value proposition of a CN-

¹²⁸ Comment of the Village of Barrington, Illinois, *Canadian National Railway Company—Control—Kansas City Southern*, STB Finance Docket No. 36514 (May 7, 2021).

¹²⁹ See V.S. Ruest, Attachment 1 at Slide 12.

¹³⁰ See ARU-2, Allied Rail Unions' Preliminary Comments at 2, *CN-KCS* (filed May 17, 2021).

KCS combination is about growing traffic in the future and converting truck shipments to rail shipments—not about cutting costs. Increased rail traffic means increased opportunities for railroaders, and Applicants look forward to continued conversations with labor about the benefits of the transaction.¹³¹

IV. CP SHOULD NOT BE ALLOWED TO USE THE BOARD’S VOTING TRUST REVIEW TO COERCE KCS INTO AN INFERIOR DEAL.

From the day CN announced its proposal for a CN-KCS combination, CN has expressed its view that a CN-KCS combination was a better opportunity for KCS with more compelling public interest benefits. CN recognized, however, that KCS had to choose its own merger partner, and asked only that the STB provide CN with the same opportunity to make a competitive bid that CP obtained.

Now KCS has made its choice. It has expressed its “excite[ment] about this combination with CN, which will provide customers access to new single-line transportation services at the best value for their transportation dollar, . . . increase competition among the Class 1 railroads[, and] create new growth opportunities for our customers, employees, labor partners, communities and shareholders.”¹³² Mr. Ottensmeyer explains in his verified statement that one of

¹³¹ In any event, any employees who are adversely affected as a result of the CN-KCS combination would be entitled to standard protective conditions.

¹³² See Statement of Patrick J. Ottensmeyer, KCS-CN Press Release (May 21, 2021), <https://www.cn.ca/en/news/2021/05/cn-to-combine-with-kansas-city-southern/>.

the factors driving KCS's decision was the vision for the future that CN and KCS share:

When I became CEO, we adopted a vision statement that KCS would be the “fastest-growing, best-performing, most customer-focused transportation provider in North America.” In determining whether to enter into a transaction with a strategic rail partner, it was important to find a partner that shared this vision and this goal. Our combination with CN fits perfectly within that vision. The proposed transaction is not based upon cost-cutting, job elimination, reduction in maintenance expenses and capital investment, and the elimination of excess capacity – motivations that drove many mergers in the past. This transaction is exactly the opposite. This transaction is directed at growth through improved service, faster transit times, shorter and more consistent routes, technological innovation, and providing customers with more choices, including new and expanded single-line routes for rail customers that are more competitive with truck, barge, and other rail routes. Improved service will beget growth.¹³³

Instead of respecting KCS's choice, CP will plow ahead with its application to acquire KCS. It is unclear how CP would proceed with such a nonconsensual control application, but a key component of its plan is to block CN and KCS from obtaining voting trust approval and then leverage the Board's approval of CP's proposed voting trust to force KCS to reconsider merging with CP instead.

CP's public suggestion that the Board should prevent CN and KCS from using a voting trust (while allowing CP to use the identical one) would be flatly inconsistent with the Board's consistent neutral and evenhanded approach to competitors for merger partners.

¹³³ V.S. Ottensmeyer at 8.

In past contested mergers, the Board and the ICC have carefully maintained neutrality and allowed potential applicants to make decisions about mergers without a regulatory thumb on the scales. For example, in the wake of the BN-SF transaction, Commissioner Gail McDonald touted the “success” of the ICC’s rapid actions to resolve a voting trust dispute, issuing five decisions in a six-week period.¹³⁴ She concluded that:

These decisions received little attention from those not directly involved, because they rightly kept the Commission in the background. But our prompt rulings, guaranteeing the availability of the voting trust mechanism, ensured that the contest for Santa Fe would be decided by the participants and the capital markets, unhindered by needless regulatory rules or delays.¹³⁵

As the Supreme Court put it, “one carrier cannot be railroaded by the [ICC] into an undesired merger with another carrier.”¹³⁶ CP’s plan to pursue a hostile application in Finance Docket 36500 while trying to block voting trust approval for KCS’s preferred partner in this docket is a blatant attempt to have the Board force KCS into an undesired merger.

Indeed, for the Board to allow its processes to be weaponized so that an unsuccessful bidder could force an unwilling railroad into a less-attractive merger would be fundamentally anti-competitive. As Professor Wright explains: “To grant a voting trust allowance to one party but not the other in this matter would effectively prejudice and short-circuit the entire regulatory review

¹³⁴ *Burlington Northern, Inc. – Control and Merger – Santa Fe Pacific Corp.*, 10 I.C.C.2d 661, 799 (1995) (separate comment of Commissioner McDonald).

¹³⁵ *Id.*

¹³⁶ *St. Joe Paper Co. v. Atlantic Coast Line R. Co.*, 347 U.S. 298, 309–10 (1954).

process—in turn adversely affecting the public interest by denying it the benefit of a competitive auction.”¹³⁷ As he explained:

As competitive concerns arise primarily out of the structure of such arrangements, there is no meaningful variation or reason as to why these two arrangements should be decided differently. ... To do otherwise might well harm the competitive process. It would threaten the ability of KCS shareholders to obtain the benefits of a viable competing bid; would distort the market for corporate control; and might ultimately unduly favor a less efficient deal, thereby harming the public interest. All else equal, ensuring that goods are sold to the highest bidder is in the public interest, as it leads to tangible benefits for the public in the efficient allocation of resources.¹³⁸

Mr. Rennie similarly notes that “Competition between CN and other carriers to acquire KCS is in itself an important form of competition that can deliver powerful public benefits to customers and communities.”¹³⁹

In sum, as stated by Mr. Ruest: “We do not ask for approval lightly, and we appreciate that the STB will permit a voting trust where the public benefits outweigh the potential public harms. In the case of CN’s voting trust, they clearly do. Furthermore, the use of the voting trust here is crucial to place the CN-KCS transaction on a level playing field for KCS shareholders in this unusual setting, particularly given the Board’s prior decision to approve the use of a voting trust by the other railroad that has sought to combine with KCS.”¹⁴⁰ And as Mr. Ottensmeyer adds, “it would be fundamentally unfair for the Board

¹³⁷ V.S. Wright at 4.

¹³⁸ *Id.* at 5.

¹³⁹ See V.S. Rennie at 19 & Exhibit 4.

¹⁴⁰ V.S. Ruest at 2–3.

to approve CP's voting trust, and then to deny CN's identical voting trust. This would effectively override KCS's judgment about its preferred merger partner and eliminate the public benefits of the CN-KCS partnership that over 1,000 stakeholders have already written letters supporting."¹⁴¹

The STB should not override KCS's choice of a preferred partner, and it should approve Applicants' voting trust so that Applicants have the opportunity to demonstrate why they believe that a CN-KCS combination would enhance competition; would grow, build and strengthen the North American rail network; and would deliver tangible and desired benefits to CN's and KCS's customers.

CONCLUSION

Applicants respectfully submit that they have fulfilled the Board's requirements for approval of a voting trust. The transaction will bring overwhelming public interest benefits—benefits that cannot be realized without a voting trust. CN will remain financially strong following the combination and would remain so even if it were required to divest. Claims that a CN-KCS combination would harm competition are incorrect, particularly in light of Applicants' commitments to preserve competition and the fact that the Board would review the ultimate combination under the current merger rules. In this unusual set of circumstances, Applicants urge the Board to approve their proposed Voting Trust Agreement.

¹⁴¹ V.S. Ottensmeyer at 6.

Respectfully submitted,

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Dated: May 26, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of May 2021, a copy of the foregoing Joint Motion for Approval of Voting Trust Agreement was served by first class mail or email on the service list for Finance Docket No. 36514.

/s/ Matthew J. Warren
Matthew J. Warren

Exhibit 1

Verified Statement of Jean-
Jacques Ruest (with
Attachment)

STB Finance Docket No. 36514

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36514

**CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK
CORPORATION, AND CN'S RAIL OPERATING SUBSIDIARIES
—CONTROL—
KANSAS CITY SOUTHERN, THE KANSAS CITY SOUTHERN RAILWAY
COMPANY, GATEWAY EASTERN RAILWAY COMPANY, AND
THE TEXAS MEXICAN RAILWAY COMPANY**

VERIFIED STATEMENT OF JEAN-JACQUES RUEST

My name is Jean-Jacques Ruest. I am the President and Chief Executive Officer of Canadian National Railway Company ("CN"). I became President and CEO of CN in 2018. Previously, I was Executive Vice-President and Chief Marketing Officer. I joined CN in 1996 at the time it was privatized. Prior to this, I worked for 16 years at a major international chemical company. I earned a Masters in Business Administration in Marketing from Université de Montréal and a Bachelor of Science degree in applied chemistry from Université de Sherbrooke. I also completed the executive program of the University of Michigan Business School, and CN's Railroad MBA program.

The purpose of this Verified Statement is to explain some of the public interest benefits that we expect to see from a combination of CN and Kansas City Southern ("KCS"), which will benefit rail customers, port operators, employees, stakeholders, and the communities along our rail lines. These benefits are within reach now that KCS has agreed to combine with CN. We are excited about the possibilities of this transformative opportunity to create the North American railway for the 21st century—a single-line north-south rail network in the United States, Canada, and Mexico. This transaction will have

substantial benefits for our customers, who will be able to better compete in new markets thanks to longer single-line service, faster transit times, more effective equipment utilization, and fluid commercial interchanges. It will have substantial environmental benefits, since a key purpose of the transaction is to create more effective rail competition for north-south traffic flows, thus taking trucks off of congested highways and reducing greenhouse gas emissions. And CN will bring its commitment to capital investment to the KCS network, benefiting all customers who rely on that network.

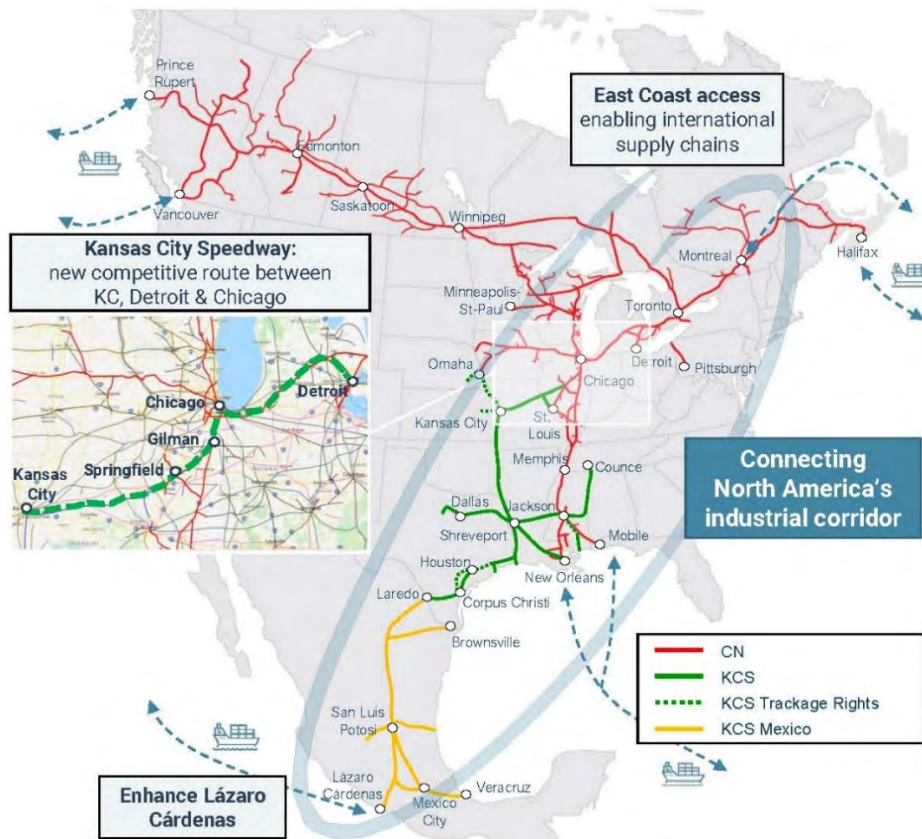
Moreover, CN is committed to assuring the Surface Transportation Board (“STB”) that our combined network is a pure “end-to-end” vertical combination. Some have noted that there is a small area—reflecting less than 1% of our combined network—where CN and KCS are the only two railroads to serve a small number of rail customers. With KCS agreeing to partner with us, CN has concluded that the cleanest and most pro-competitive solution is to divest the KCS line between New Orleans and Baton Rouge, the only area where the CN-KCS combination would reduce a small number of customers from two railroads to a single rail option. CN-KCS will retain local and overhead trackage rights to provide single-line service to customers on the KCS line. We will work to secure a suitable independent carrier to acquire the line, and seek STB approval for that divestiture in our Application.

With this commitment, CN-KCS will be a true “end-to-end” combination with zero competitive overlap and tremendous public benefits. But these public benefits can only be realized if the STB approves CN’s proposed voting trust. We do not ask for approval lightly, and we appreciate that the STB will permit a voting trust where the public benefits outweigh the potential public harms. In the case of CN’s voting trust, they clearly do. Furthermore, the use of the voting trust here is crucial to place the CN-KCS transaction on a level playing field for KCS shareholders in this unusual setting, particularly given the

Board's prior decision to approve the use of a voting trust by the other railroad that has sought to combine with KCS. Once the Board has assured itself that there is no public harm associated with the use of the voting trust in this circumstance and of the enormous potential public benefit from a CN-KCS combination, I would urge the STB to approve our plain vanilla voting trust arrangement.

I. CN-KCS Will Be a True “End-To-End” Combination, Given CN’s Commitment to Divest the KCS Line Between Baton Rouge and New Orleans.

From the outset, our proposed combination with KCS offers the promise of tremendous public benefits by connecting the continent, promoting growth, and competing more aggressively with the trucking industry for long-haul movements. Rail customers will benefit from more seamless single-line service, but so will local communities, employees, and the environment from converting truck traffic from busy interstates and highways to rail. A combined CN-KCS route would also be shorter, faster, and more direct than rail or truck competitors, resulting in improved efficiency, enhanced competition and greater options for customers. The map on the next page illustrates the vertical, “end-to-end” nature of the combined networks.



Nevertheless, some seek to overplay the competitive significance of the short New Orleans-Baton Rouge segment where CN and KCS have overlapping parallel lines. We have been very transparent from when CN first announced our bid to acquire KCS that CN would propose solutions for the very limited number of customers that are served only by CN and KCS (so-called 2-to-1 customers) between Baton Rouge and New Orleans, where the overlap in parallel lines amounts to less than 1% of the total combined network. In particular, CN previously committed to the STB that if KCS chooses to partner with CN, CN would propose effective, pro-competitive solutions to ensure that no customer will become sole served as a result of the transaction.

With the authorization of the CN Board of Directors, and with their shared commitment, I want to personally commit to the STB that, in connection with any approval for the combination, CN will divest the KCS line between Baton Rouge and New Orleans.

With KCS having now chosen to partner with CN, we have determined that divestiture is the most pro-competitive and clean solution. We will work to secure an independent third-party to acquire the overlapping KCS rail line, and to step into the shoes of KCS for any related haulage agreement. CN-KCS will retain local and overhead trackage rights to provide single-line service to customers on the KCS line. Once an agreement for the divestiture is in place, approval will be sought from the STB as part of our Application.

With this commitment, CN-KCS will be a true “end-to-end” combination. There will be zero overlapping lines, just gateways like St. Louis where the two railroads connect. This will prevent any potential 2-to-1 customer from losing rail competition, and will also address 3-to-2 customers on the New Orleans-to-Baton-Rouge line. I appreciate that the STB will remain vigilant and closely scrutinize this “end-to-end” combination to protect open gateways and require bottleneck commitments. These are steps CN has already committed to take. Now, given our commitment to remedy the small area of overlapping lines in the CN and KCS networks by divesting KCS’s line between Baton Rouge and New Orleans, we hope the conversation can refocus on the tremendous value from a true “end-to-end” North American railway, which will offer more choice for rail customers, port operators, employees, shareholders, stakeholders, and communities.

II. CN-KCS Single-Line Rail Service Will Create New Opportunities for Rail Customers.

The expanded reach of the CN-KCS rail network translates into new single-line routes for rail customers that are more competitive with truck, barge, and other rail routes. The combination will allow CN customers to have single-line reach to markets served by KCS, including Kansas City and Dallas. Conversely, customers on KCS will gain single-line reach to U.S. markets served by CN, including Chicago, Detroit, and Memphis. The increased connectivity between the U.S., Canada, and Mexico would result in increased

economic growth, trade and jobs for all three countries, reinforcing the benefits of the renegotiated North American trade agreement.

Single-line service provides real benefits to CN and KCS customers. On average, eliminating interchanges between rail carriers can reduce an estimated 24 to 48 hours per interchange. Reducing transit times has a direct benefit to rail customers of more reliable and timely service, with shorter equipment cycle times. In turn, those shorter cycle times mean that a smaller railcar fleet is needed to move the same amount of product, whether the cars are railroad-owned or private.

The Attachment to my Verified Statement illustrates some examples of the particular benefits that we see for rail customers from a combined CN-KCS network. These benefits have been developed based on our best current estimate of transit times, traffic flows, and market dynamics, informed by public information and our due diligence with KCS. The Attachment illustrates supply chain benefits for six major market segments: (1) grain and grain by-products; (2) intermodal; (3) imports, exporters, and ocean carriers who rely on ports; (4) autos and auto parts; (5) lumber and panel customers; and (6) plastic resins, liquefied petroleum gases, and refined petroleum products.

A. Grain and Grain By-products

The CN-KCS combination will create new options for grain producers and processors. Generally, CN's network has more grain origins, such as in Illinois, Iowa, and Wisconsin. KCS's network has more grain destinations, including in the southern United States and Mexico. This creates multiple opportunities. For example, customers on KCS's lines will have new single-line service to barge loading locations along the upper Mississippi River system.¹ Customers on CN's lines will have new single-line service to

¹ See Attachment at Slide 1.

ship grain to feedmill markets on KCS's lines in the United States and Mexico.² Grain exporters will benefit from diversified rail and barge options to sell grain to overseas markets, in containers or in bulk.³ The same is true for customers moving feed mill ingredients. A CN-KCS combination will improve customers' market reach by increasing the number of origin facilities and destination facilities for corn, soybean meal, and distillers dried grains.⁴ Moreover, customers sourcing ethanol, distillers dried grains, and corn oil will have improved options. Customers served by CN in Iowa, Illinois, and Wisconsin will be able to ship ethanol in single-line rail service to new domestic markets in the United States, Gulf Coast export in Texas, and markets in Mexico.⁵

B. Intermodal

The CN-KCS combination will continue CN's efforts over the last ten years to grow its own intermodal network. From 2010 to 2020, CN developed the fastest growing intermodal network in North America. CN is committed to continued development of its intermodal network, and we see significant opportunities for a CN-KCS combination to increase north-south intermodal traffic and intermodal port activities. For example, currently trucks are the primary transportation option for temperature-protected food products (such as produce, fruits, processed foods, beef, pork, and poultry) moving from the U.S. Midwest to and from Mexico.⁶ CN is a leader in the industry in its temperature-controlled domestic and overseas intermodal service, and a CN-KCS combination would provide single-line rail service to compete with trucks.

² *See id.*

³ *See id.* at Slide 2.

⁴ *See id.* at Slide 3.

⁵ *See id.* at Slide 4.

⁶ *See id.* at Slide 5.

Slides 6 and 7 illustrate more ways that the CN-KCS combination would take more trucks off the road by offering a new single-line rail service to connect major markets in Texas and Mexico with the US Midwest and Canada's largest consumer markets.

C. Exporters, Importers, and Ocean Carriers

Through the proposed CN-KCS combination, rail customers will gain seamless reach to multiple new international container terminals, driving growth in international trade.

Slide 8 shows how the CN-KCS combination will create new options and improve transit times by connecting importers and exporters to the CN-served and KCS-served ports on the Pacific Ocean, Atlantic Ocean, and Gulf of Mexico. Adding more port gateways and destinations that can be reached in single-line rail service can help attract larger and more frequent ocean vessel service in North American trade lanes. Ports with available capacity provide opportunities for importers to avoid congestion that may arise in larger ports.

Slide 9 illustrates how retail customers in Kansas City and St. Louis seeking to import goods will gain single-line rail service from port terminals served by CN or by KCS, which connect with vessel services from ports around the world. This network of ports also facilitates export opportunities from Kansas City and St. Louis. Slide 10 shows how the CN-KCS combination would also connect retail importers to ports in Mexico that have capacity, are not congested, and have lower rail dwell time. Slide 11 shows how this improved ability to reach additional markets benefits terminals and their customers.

D. Automotive Supply Chain

Slide 12 illustrates the substantial benefits to the automotive supply chain from a new CN-KCS single-line rail option to connect Ontario and Michigan with Texas and Mexico. This is beneficial for all participants of the automotive supply chain, including for raw materials (like steel and aluminum), inbound parts, vehicles, and after market parts.

Slide 13 shows how electric car manufacturers in the central United States and Mexico will have better access to sustainably sourced aluminum through single-line rail service. Slide 14 illustrates the benefits of the CN-KCS combination for the automotive manufactured parts supply chain. The new single-line service would connect automotive original equipment manufacturers (OEMs) and their suppliers in Texas and Kansas City and Mexico with markets in Michigan and Southern Ontario served by CN. Reduced transit time would improve speed to market and enable customers to reduce inventory carrying costs and the total costs of the automotive supply chains.

E. Lumber and Panels

Slide 15 shows how the CN-KCS combination will connect lumber origins in Canada to destination housing, building, and home repair and renovation markets in Texas with single-line rail service. Improving the cycle time of railcars will increase fleet utilization without requiring additional investment in cars. Moving loaded cars in larger origin to destination car blocks and unit trains will create additional rail capacity to support the housing supply chain.

F. Plastics, Liquefied Petroleum Gases, and Refined Petroleum Products

Plastic resin customers currently served by CN or KCS similarly will benefit from single-line rail service to North American end markets in Mexico, Canada, and the US upper Midwest. As Slide 16 illustrates, these customers will gain access to numerous storage in transit sites, including in Chicago and Memphis, that are located on CN's network in close proximity to the end-markets for consumers of such goods. This enables faster and more flexible order fulfillment. Customers served by KCS will also have access to CN's resin overseas container packaging options adjacent to the Ports of Mobile and Prince Rupert to reach global markets.

Slide 17 shows how customers shipping liquefied petroleum gases (*e.g.*, propane and butane) will also benefit from the CN-KCS combination. Customers, farmers, and residents in the U.S. Midwest that use propane for home heating and crop drying will have CN-KCS as another option to source propane. Producers in Sarnia, Ontario and in Western Canada will be able to ship single-line moves in unit trains to supply the growing markets in Mexico. A reduction in transit time will result in fleet savings for customers, which will need fewer private cars to ship the same amount of product.

Slide 18 shows how customers shipping refined petroleum products (*e.g.*, gasoline and diesel) will benefit from the CN-KCS combination. Customers in Western Canada and the United States Midwest and Gulf Coast will be able to reach the growing markets in Mexico in single-line rail service. Customers can realize economies of scale by shipping in larger destination car block sizes or unit trains. Improved transit times can reduce car cycle times and result in savings for customers.

In short, we expect that the benefits of a CN-KCS combination would be widely shared among rail customers, who would benefit from expanded market reach and more competitive single-line rail service, as well as other participants in the supply chain, including end users and consumers.

III. CN-KCS Will Grow by Competing to Take Trucks Off the Highways, Leading to Environmental Benefits for Communities.

The environmental benefits of a CN-KCS combination would also be significant and widely shared. One of our visions for the CN-KCS combination is to convert to intermodal rail service truck loads that are currently moving over highways between Mexico/Texas and Michigan/Southern Ontario. Our routing for this traffic growth would take trucks off the highways and utilize double-stack containers on trains that would travel north to Matteson, Illinois (which is south of Chicago) and turn east toward Indiana. If successful, the CN-

KCS combined network will drive reduction in the carbon footprint of the thousands of trucks that head up and down I-35, I-55, and I-94 between Mexico, Texas, and the Midwest. Each CN-KCS daily double stack intermodal train from San Luis Potosi to Detroit would take over 300 long-haul trucks off of the road, avoiding approximately 260K tons of carbon dioxide emissions per year.



Because CN is able to remove more than 300 trucks from the road with every additional freight train, transportation by rail is four to five times more fuel efficient than transportation by long-haul trucking. This means greenhouse gases are reduced by 75% by moving goods by rail versus truck. For example, if the combined CN-KCS are able to move four trains worth of cargo per day between Mexico City and Detroit by rail instead of that cargo moving by truck, this would translate into 1,200 fewer trucks on the highway per day. This will mean fewer trucks on highways and roads and cleaner air.

IV. CN Is Committed to Investing in the KCS Network.

CN has a strong record of investing in its network to provide safe service and is dedicated to apply that same approach to the combined CN-KCS network. CN made its highest capital investments on record in 2018–2020. These investments were focused on adding capacity to accommodate growth and resiliency, deploying technology to improve safety and productivity, and investing in railcars and locomotives to serve our customers. CN invested \$2.9 CAD billion (about 20% of revenue) in capital investments in 2020. Over the last three years, CN will have made a \$10.3 CAD billion capital investment (about 20% of revenue per year). CN does not intend to reduce its capital expenditure plans during the pendency of the voting trust, nor would we reduce CN's capital expenditure plans even if we were required to divest KCS out of trust.

If a CN-KCS combination were approved, CN would apply its capital investment philosophy to the KCS network. We would anticipate making infrastructure investments in key areas across the new network, including Illinois, Missouri, Michigan, Louisiana, and Texas. This includes investments in the route between Kansas City, Missouri and Springfield, Illinois. This will help create a new direct single-line competitive route between Kansas City and both Detroit, Michigan and the Port of Montréal, as well as create a more direct route to the barge loading market in St. Louis. These investments mean a better, more reliable rail network for automotive, grain, and port-related container business customers.

Moreover, the CN-KCS combination will also bring significant service and efficiency improvements by leveraging the networks, resources, best practices, and technology of the combined companies. Together CN and KCS will:

- Enhance fuel efficiency by leveraging CN's best practices, new technologies (e.g., Horse Power Tonnage Analyzer), efficient routings that reduce mileage and grade, and idling time policies.
- Create better overall locomotive and car fleet utilization and cycle times by applying best practices to managing the combined fleets, reduced transit times by utilizing CN's Chicago by-pass and leveraging newer, highly reliable locomotives with lower maintenance costs.
- Reduce customer logistics costs and carbon emissions costs by diverting truck traffic onto new CN-KCS premium intermodal services in key traffic lanes enabled by the combination.
- Leveraging CN's Automated Track Inspection Program ("ATIP") that promotes safe operating conditions and lowers long-term maintenance costs.

V. A Voting Trust Is Necessary to Realize These Significant Public Benefits From the Proposed CN-KCS Combination.

In closing, I reiterate that CN did not make its request to use a voting trust lightly, but rather out of necessity given the unique circumstances established by KCS's initial merger agreement with Canadian Pacific Railway ("CP"). The KCS-CP merger agreement required use of a voting trust as a structural feature of the combination. A voting trust gives certainty to KCS and its shareholders that the transaction will be able to close in 2021, without the delay of completing the full STB regulatory process, which will extend through 2022.

In order for KCS to be able to terminate its agreement with CP and accept CN's superior proposal, CN was required to provide KCS shareholders the same amount of certainty of closing into a voting trust and assurance of a closing in 2021. This is especially true since the KCS-CP voting trust had been approved by the STB. Like that approved

voting trust, the CN-KCS voting trust gives certainty of closing to KCS shareholders and ensures that KCS is independently managed by its management and the trustee, while the STB fully reviews and considers the CN-KCS combination.

Approval of the CN-KCS voting trust proposal under these unique circumstances is appropriate to maintain a level playing field for KCS and its shareholders. If the CN-KCS voting trust proposal is not approved by the STB, KCS would be deprived of its choice of CN as the winning bidder. Our merger agreement—like that previously proposed by CP—is conditioned on the use of this plain vanilla voting trust process. If the STB denies our request, having approved the voting trust of the inferior bidder, our merger agreement will terminate. KCS could be forced to accept the less valuable competing bid and deprive its shareholders and customers of the benefits that would flow from a CN-KCS transaction. With the utmost respect, it should be the decision of KCS—its management, Board of Directors, and, ultimately, its shareholders—to select which railroad is a better partner for the future, and to then have that transaction subject to the ultimate approval of the STB in accordance with the current rules. I am confident we will address any concerns and obtain that ultimate approval for our pro-competitive CN-KCS combination.

Conclusion

The CN-KCS combination will enable the creation of the North American railway for the 21st Century, with benefits of more choice for rail customers, port operators, employees, stakeholders, and the communities. These benefits can only be realized if the STB approves the CN-KCS voting trust to give KCS and its shareholders the certainty of closing in 2021.

VERIFICATION

I, Jean-Jacques Ruest, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 25th day of May, 2021.

A handwritten signature in black ink, appearing to read "JJ Ruest", written over a horizontal line.

Jean-Jacques Ruest
President and Chief Executive Officer of
Canadian National Railway Company

Attachment

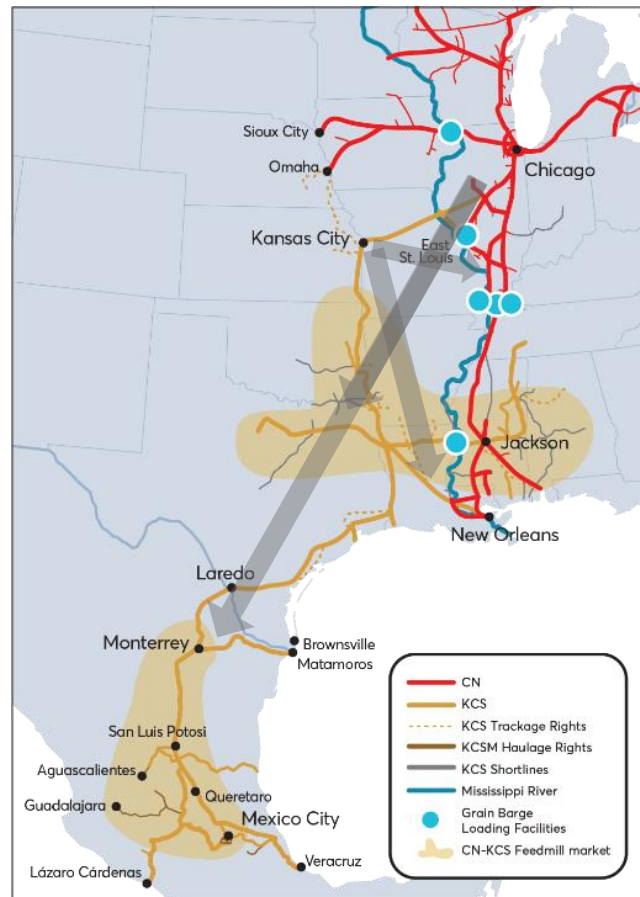
Verified Statement
of Jean-Jacques Ruest

STB Finance Docket No. 36514

Connected Continent

New Destination Markets for Grain

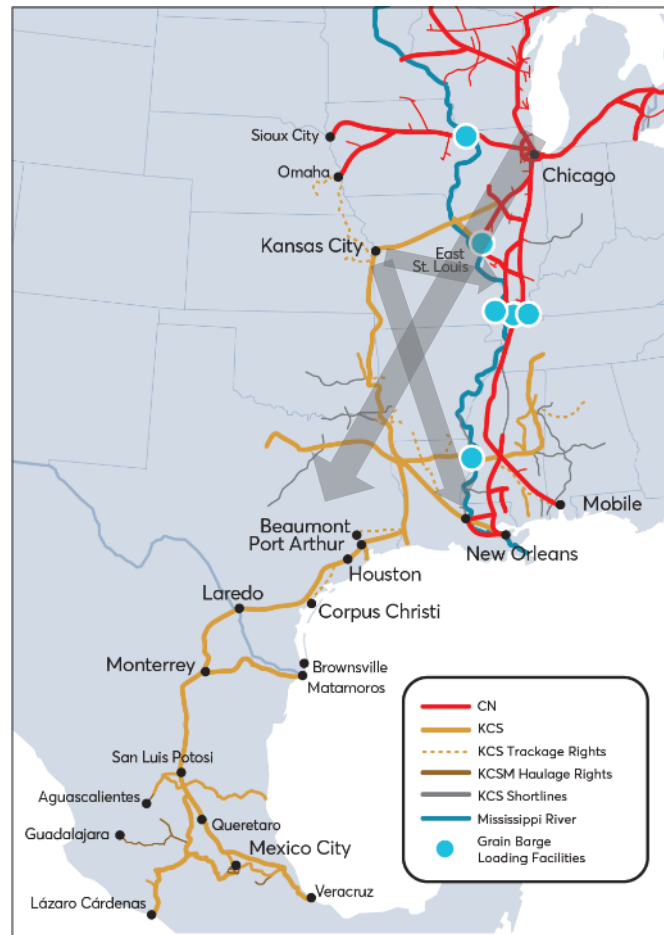
- KCS-served customers will **gain direct access to barge loading locations** along the river system along with grain export terminals in the Center Gulf.
- CN-served customers will have a more competitive single-owner, single-operator network to ship grain to the Mexico markets (anticipated **cost savings** of improved fleet utilization from the combination) and reach export facilities in the Texas Gulf.
- The number of feed mills, ethanol plants, and soybean processing plants that customers will be able to reach directly will increase considerably – **more markets** to market grain and/or feed ingredients to.
- **Increased optionality** and arbitrage opportunity for customers allows their commercial risk to be spread across a larger combined network.
- **Increased market liquidity** and a more dynamic rail freight market with more players in the market as part of a combined CN-KCS.



Connected Continent

Increased Barge/Rail Optionality for Grain Exporters

- The combination of CN-KCS will **diversify grain origination options** over a larger geography for customers selling grain into overseas markets
- **New direct access** for customers in MO, KS **to grain export terminals** in the New Orleans/Mobile area, plus multiple additional barge loading points
- **New direct access to Texas Gulf export destinations** for customers in IA, IL, WI along with reach to the Mexico market
- **Multiple efficient routing options** to the St. Louis and other barge loading locations will encourage CN-KCS direct origination as well as origination from offline origins, making the origination map bigger

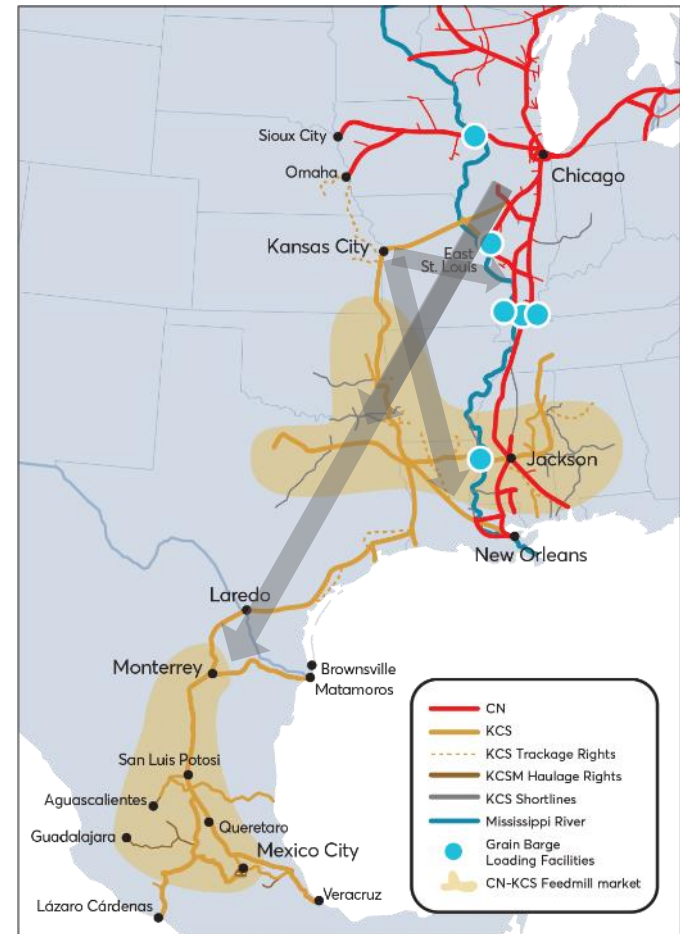


CN Significantly enhanced optionality to move grain to export position by barge and rail.

Connected Continent

Grain Feed Mill Market Reach

- **Increased direct single carrier product origination network** for corn, soybean meal and distillers dried grains (DDGS).
- Feed mills will be able to **spread out their product origination risk** across a much broader geography
- Direct single operator network will deliver more competitive origination options **improving supply chain costs**.
- **Increasing direct origination options** means more sellers offering product for purchase and more destinations for customers to sell to.
- Combined CN-KCS will eliminate interchange delays, **improving estimated transit time by >10% for moves over Jackson** and improving equipment utilization

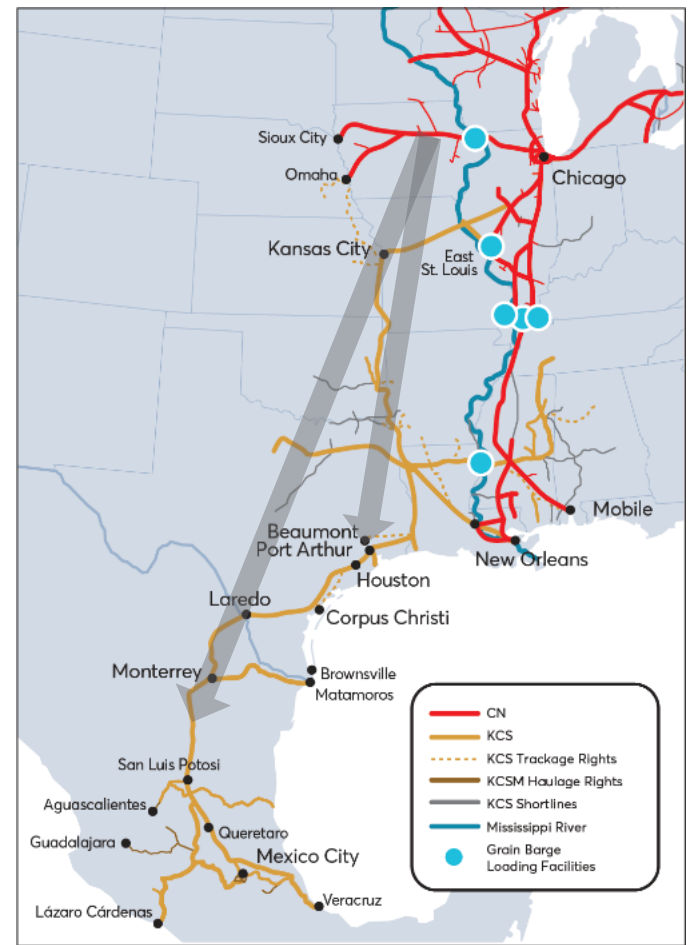


Combined CN-KCS network increases options for feed mill ingredient origination.

Connected Continent

Midwest Ethanol Plant Reach

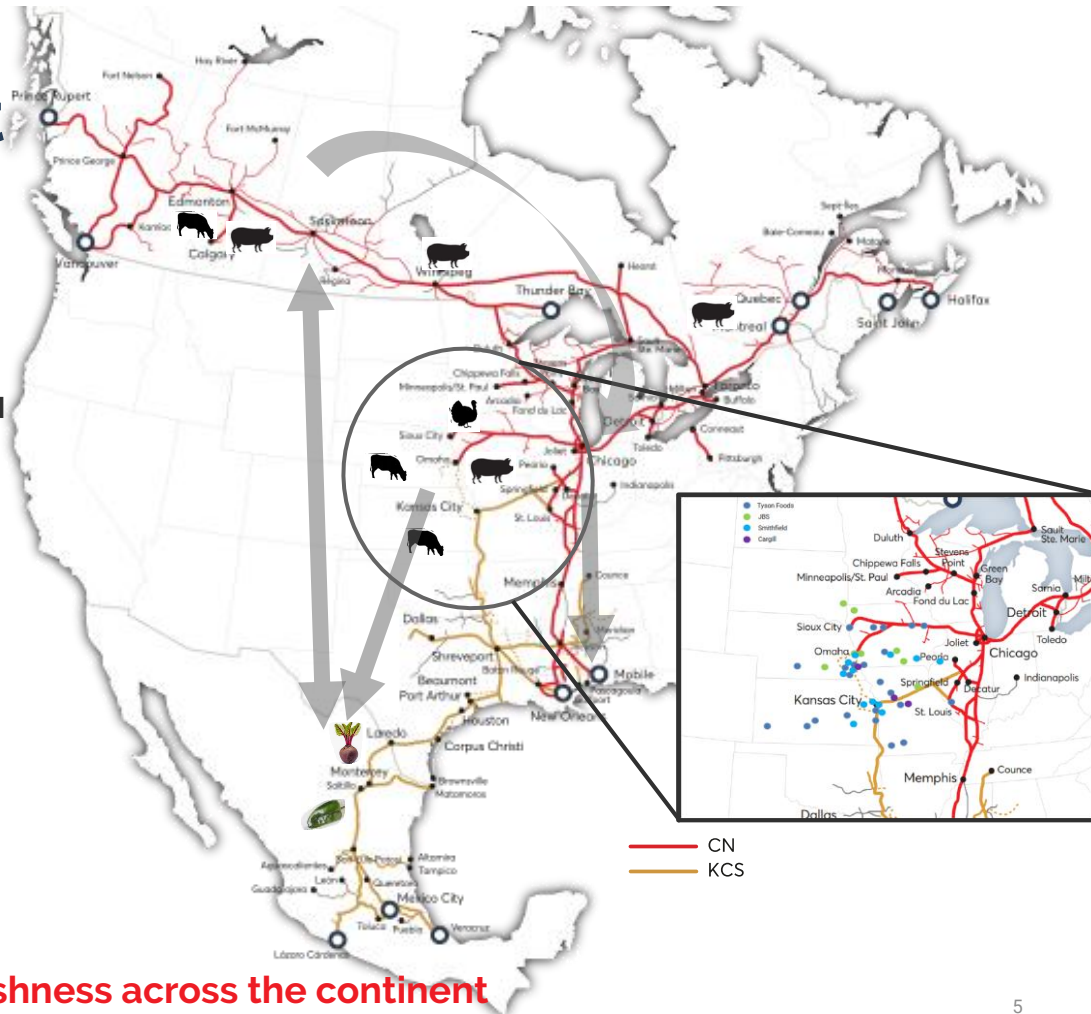
- **Increased market optionality** for ethanol, distillers dried grains and corn oil
- Customers in IA, IL, WI will be able to **reach Gulf Coast export** infrastructure and additional domestic destination markets for ethanol along with the emerging Mexico ethanol market
- Customers will be able to **tap into a wider array of feed markets** in Mexico and the US
- Replace multi-carrier routings with single operator network, improving market competitiveness, **improving cycle times**
- Combined CN-KCS creates opportunities to **enhance destination markets** for distillers' corn oil, whether domestic consumption or overseas export



Connected Continent

Temperature Protected Supply Chain

- **Directly connecting** by rail major markets in **Mexico**, **Texas**, the **US Midwest** and **Canada** using **single-owner, single-operator** rail service **improves speed** to store shelf
- Rail industry leading, innovative, temperature controlled domestic and overseas intermodal service with **integrated food safety** compliant processes and **state of the art equipment** – **2,115 CN owned** temperature controlled domestic container fleet, **105 genset/powerpacks** (power up to 17 containers) and **148 nose-mount gensets**
- **Facilitating** Intermodal movement of **produce, fruits, processed foods, proteins (beef, pork and poultry)** into and out of **Mexico** – (Currently all trucked to US Midwest & Canada at **10-20% higher costs** to consumers, and on **average 75% more GHG emissions**)



Connected Continent

Benefitting IMCs, 3PL & 4PL Logistics Providers that move the Consumer Economy

Directly connecting major markets in Mexico and Texas with the US Midwest and Canada's largest consumer markets using **single-owner, single-operator** rail service.

- **Direct service** between major markets avoiding street connections in Chicago increases customer owned **equipment utilization**, which provides **more capacity** to meet consumer demand **efficiently**.
- Each CN-KCS **daily Intermodal train** takes **300+ long-haul trucks off of the road** avoiding an estimated **260K tons of GHG emissions** per year.
- Significant **reduction in trucking connection** between railroads in the **Chicago** market can remove greater than **100K+ annual truck movements** from the Chicago streets **freeing up** greatly needed **chassis**.

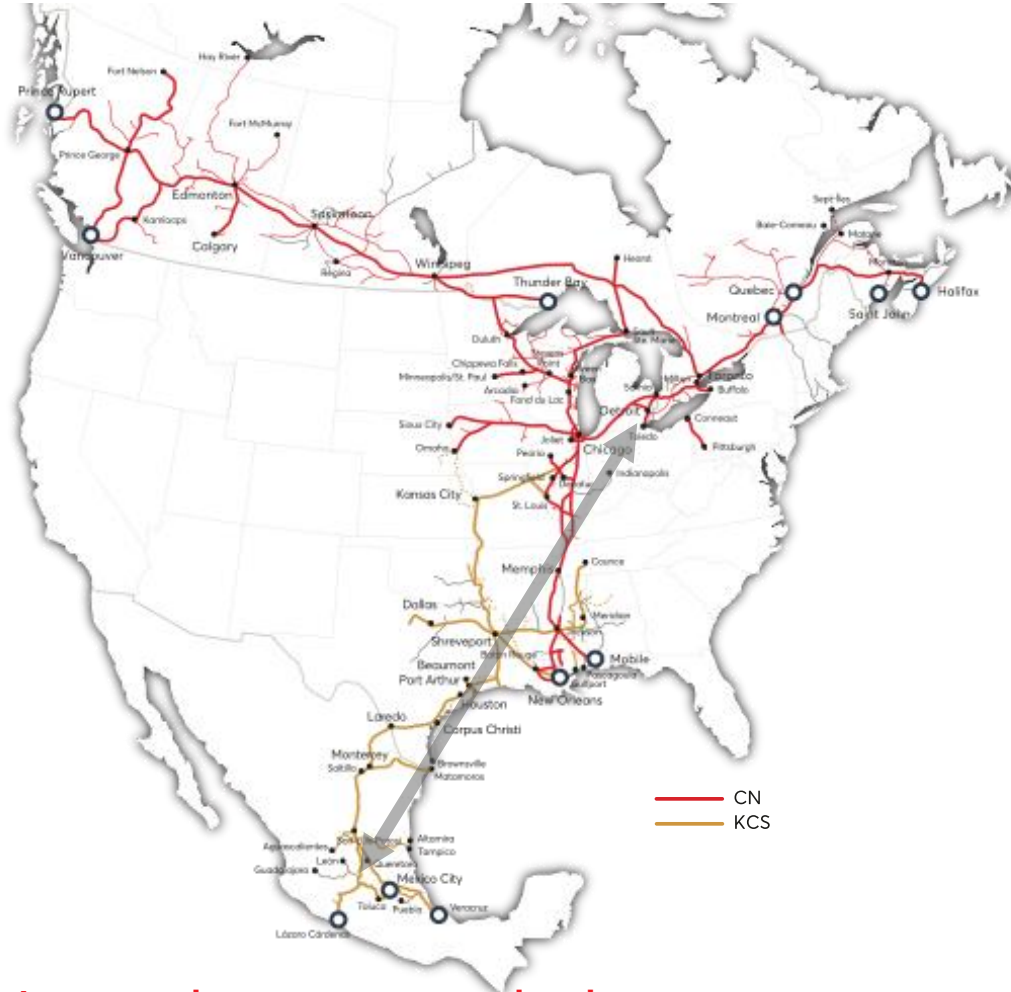


Connected Continent

Home Appliances & Electronics

Mexico is a world leading manufacturer of Home Appliances, including leading brands. CN-KCS connects these manufacturers with suppliers and sister manufacturers in the Midwest and Canada, as well as end consumers in the United States, Mexico and Canada.

- **Direct service** between key suppliers and Ohio Valley plants increases **speed to market**, **reduces inventory carrying costs** and **minimizes potential plant shortages**.
- **Shorter route** than alternative routings into Midwest and Canada, **improves speed to market** and **reduces costs**.
- Each CN-KCS **daily Mexico Intermodal train** takes 300+ longhaul trucks off of the road **avoiding an estimated 260K tons of GHG emissions** per year.
- **Seamless single-line service** ensures service **reliability**.



Directly connecting manufacturers and consumers seamlessly

Connected Continent

Single-Line Service to 3 coasts for Importers and Exporters and Ocean carriers

- The CN-KCS Combination will create a **safer, faster single-line, single-owner service link** for Gateways on all 3 Coasts.
- The East Coast Ports of **Halifax, Saint John, Montréal, and Quebec** and the West Coast **Ports of Vancouver and Prince Rupert** will be able to **connect to new origin/destinations options**. The same is true for **Gulf Coast Ports of New Orleans, Gulfport, and Mobile**, as well as ports in **Mexico**.
- Adding **connected single-line destinations** assist Ports in **attracting larger Ocean Carrier vessels** who continue to upsize vessels on the North American Trade lanes. Spreading cargo to **uncongested Ports** allows **all importers** to have **options** when dealing with congestion that may arise at larger ports.
- The ability to handle **big ships connected** to the **unit trains** creates the **lowest total transportation cost**. As **CN** is a true **supply chain collaborator**, we look forward to working with our **Port partners** to compete for **Imports and Exports** against other **Port/Rail supply chain combinations** to the **KCS** and **CN Midwest markets**

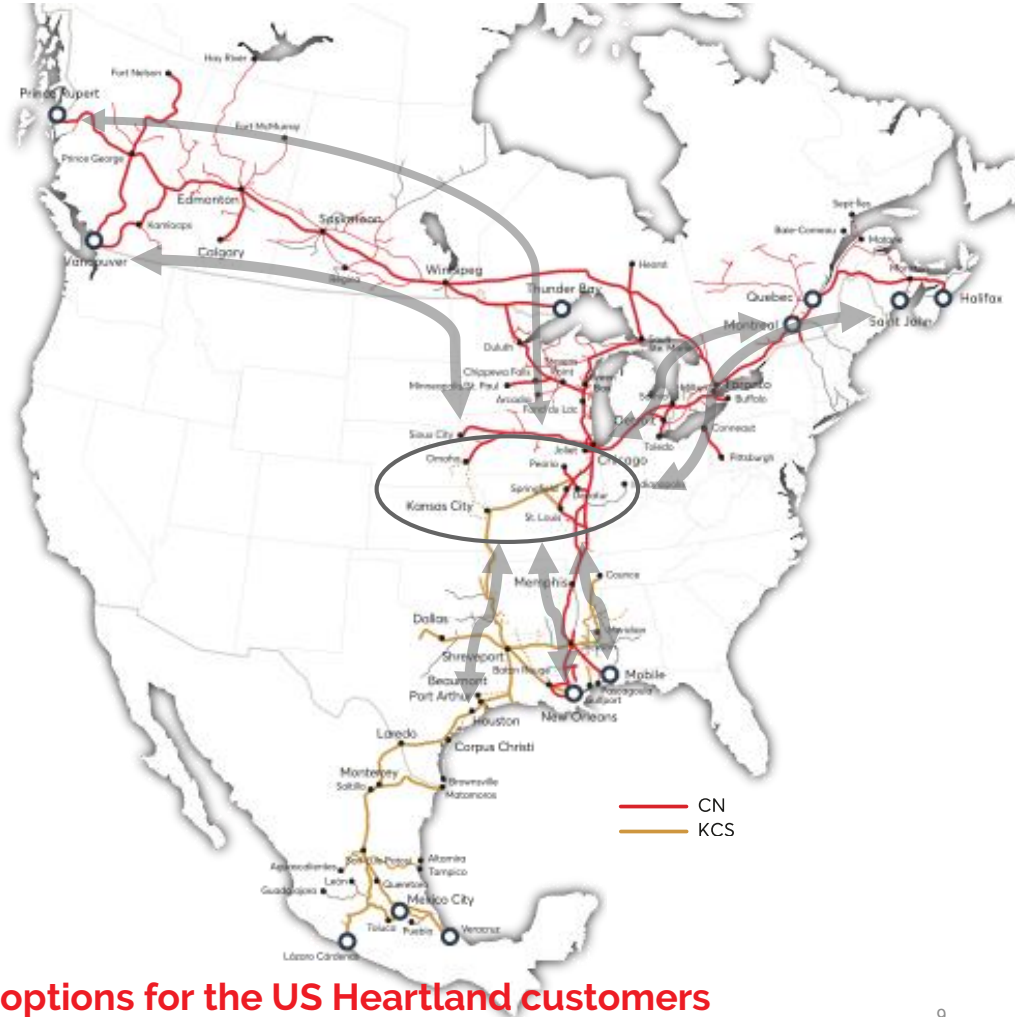


15 Port Terminals – 10 US Midwest Inland Terminals – 3 Countries – 1 Railroad

Connected Continent

Kansas City and St. Louis gain access to new gateways

- The **Kansas City** and **St. Louis** markets totaled approximately **250K+ containers** of imports with a large portion attributed to **machinery, auto parts and aeronautics**
- **CN-KCS** will now **directly and efficiently** connect the markets of **Kansas City** and **St. Louis** to the **15 port terminals** on its **3 coast network** which handle **54 vessel services** to ports around the world
- These **newly accessed terminals** will create **new, efficient, lower cost gateways** for the **importers and exporters** **avoiding** the costly **congestion** of the **U.S. West Coast Ports**
- CN-KCS's network provides **optionality** and proven **market expansion opportunities**
- The **export opportunities** from these markets include **Agri, DDG's, Beef, Pork and Poultry** - All of these products are highly sought after **export goods** shipped through the **CN-KCS served gateways**

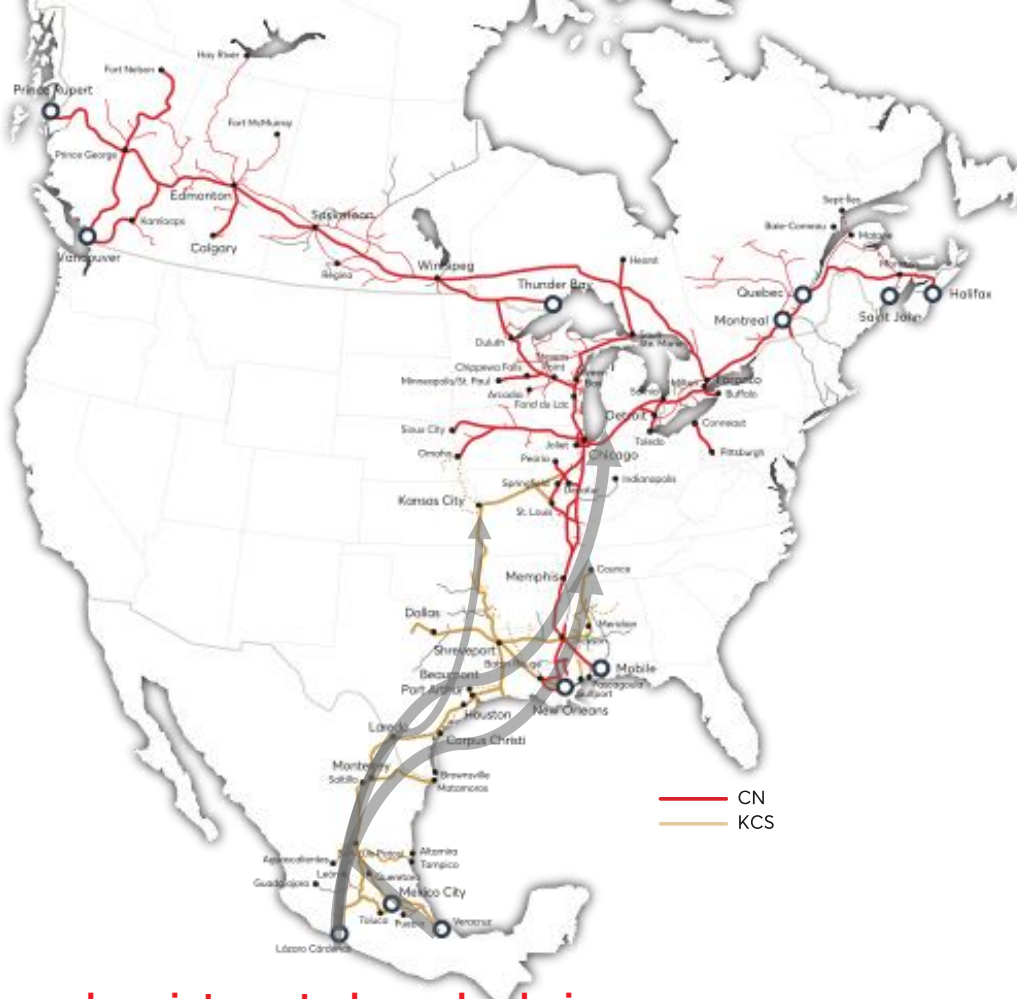


New single line service gateway options for the US Heartland customers

Connected Continent

Utilizing existing Mexico Port Capacity

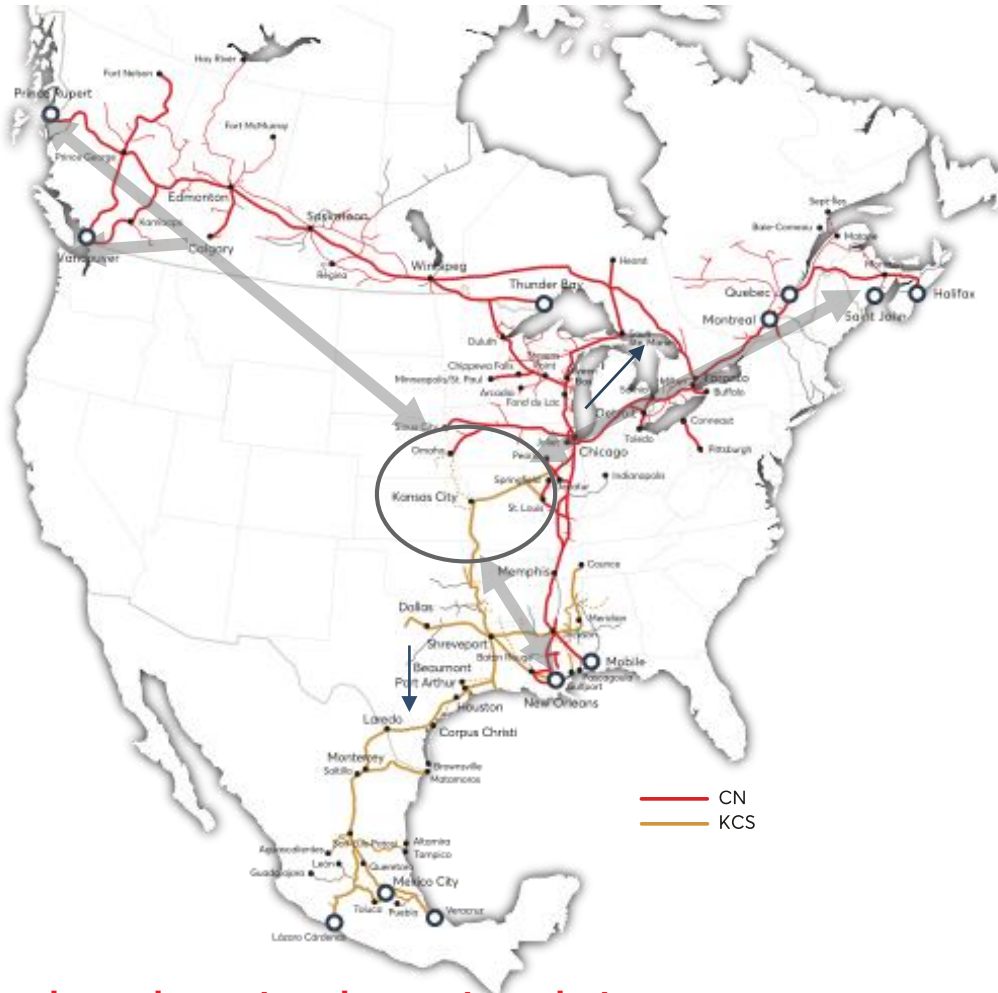
- **Connecting retail importers** to key US Midwest markets through the underutilized **Ports of Lázaro Cárdenas and Veracruz** (operating at 40%-60% capacity, low rail dwell time and congestion free)
- Providing direct, single line **competitive options** into the US Midwest (KC, Memphis, Chicago) by applying proven, round trip economics for Ocean Carriers and their import export customers
- **US Retail importers** add optionality, with **single line rail** and a **proven, supply chain minded operator, skilled at providing customers with access** to profitable markets (CN has grown its Intermodal business **77%** since 2010)



Connected Continent

Improved Gateway and Market Access for Large Beneficial Cargo Owners in KCS Geography

- CN provides **NEW optionality** and **multi-port connectivity** for business. Whether importing or exporting to **Northern Asia, Southeast Asia, Europe or South America**, CN's **tri-coast reach** creates new alternatives for **Kansas City and St. Louis shippers**
- CN has a history of **logistics enablement**, we have developed terminals in **Arcadia and Chippewa Falls, WI, Joliet, IL and Indianapolis, IN** – all with our customers and their customers in mind.
- All creating more **reliable, lower cost, sustainable options** and **directly linking** some of the **nation's largest retailers** with the world



More access to fluid gateways and new import and export markets

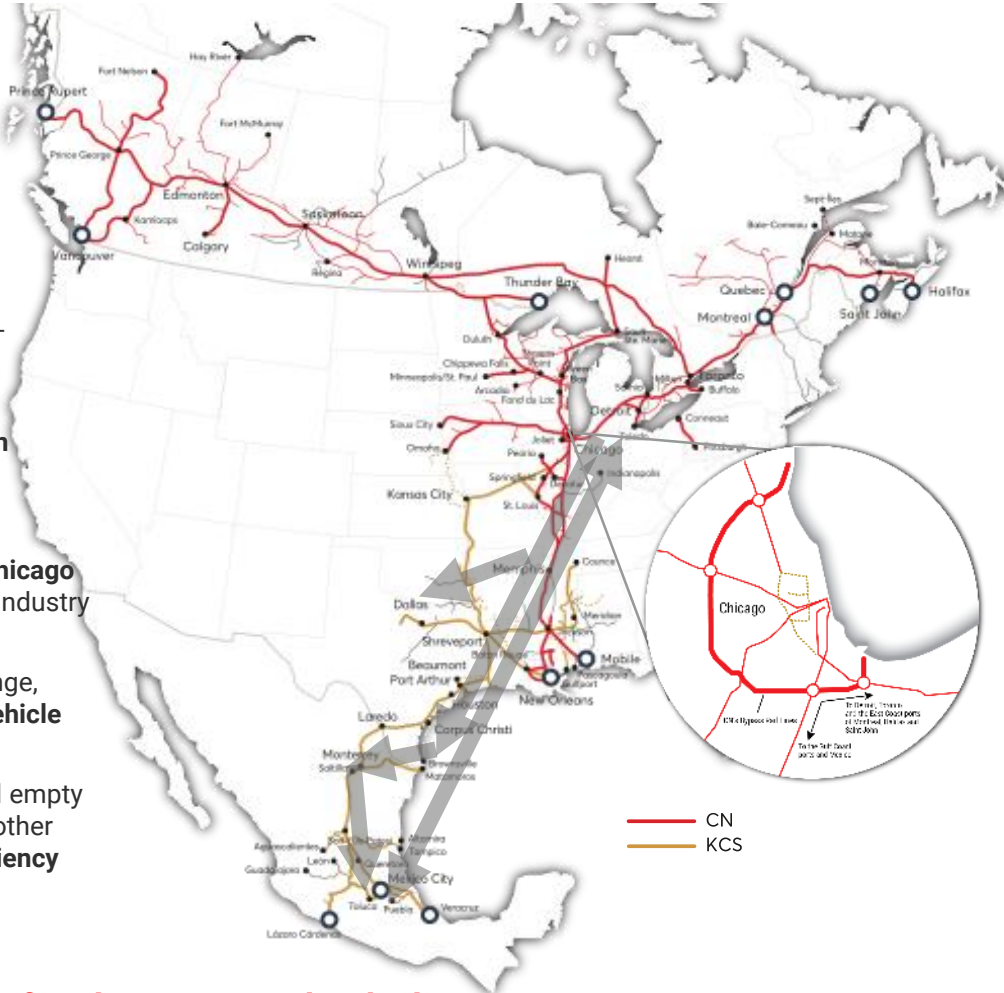
Connected Continent

CN-KCS Automotive Alley

Raw Materials Inbound Parts Vehicles After Market Parts

Only single-line, single-owner direct service linking Ontario-Michigan-Texas-Mexico

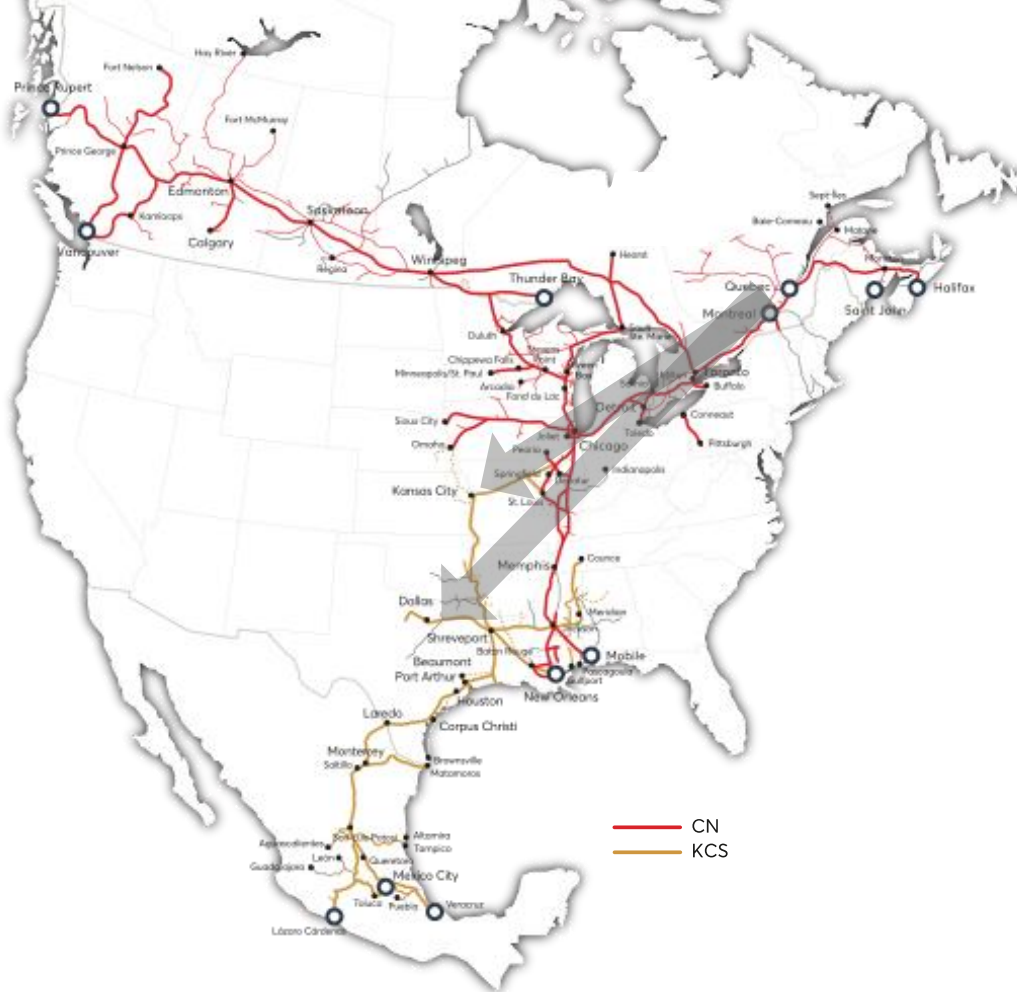
- **Single-owner, single-operator** rail service for complete end to end **finished vehicle supply chain (semi-finished materials, production parts, to finished vehicles for final delivery)**
- Automotive Alley will provide **non-stop direct service**
- **Estimated 25K-30K annual finished vehicle railcars will bypass Chicago interchange, saving an estimate average 24-36 hours, improving industry multilevel fleet cycles and increasing capacity**
- **Automotive customers** will benefit from Chicago bypass interchange, including **reduced dwell in yards, faster transit times, improved vehicle quality** and **reduction in potential theft**
- **80% of Mexico vehicle** production is exported to US & Canada and empty railcar supply can be a challenge at times. CN-KCS will provide another railcar **supply option** to position empty railcars into Mexico = **resiliency**



Connected Continent

Growing Markets with our Aluminum Customers

- CN-KCS combination provides electric car manufacturers in the Central US and Mexico with access to sustainably sourced aluminum through a single line-haul.
- In a market that is expected to grow by 20% over the next 8 years, improving cycles up to an estimated 15% will **increase their fleet utilization** supporting carload growth without additional investment.
- The CN-KCS combination will **save customers money** with better network efficiencies while expanding their market reach.
- New capacity through faster transit times
- New markets through single line-haul

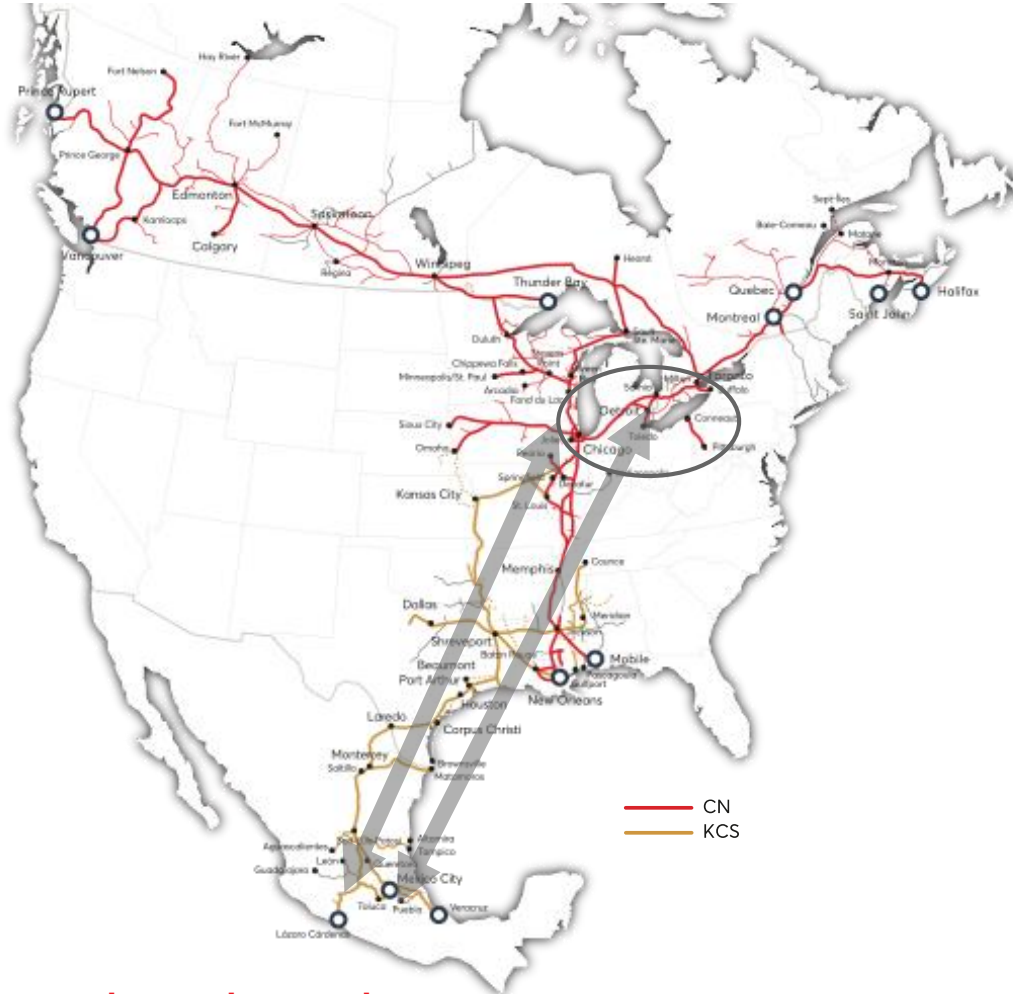


Connected Continent

Automotive Manufacturer Parts Supply Chain

Connecting Automotive OEMs and their suppliers in **Mexico, Texas and Kansas City** with the **US Midwest** and **Canada** using single-owner, single-operator rail service.

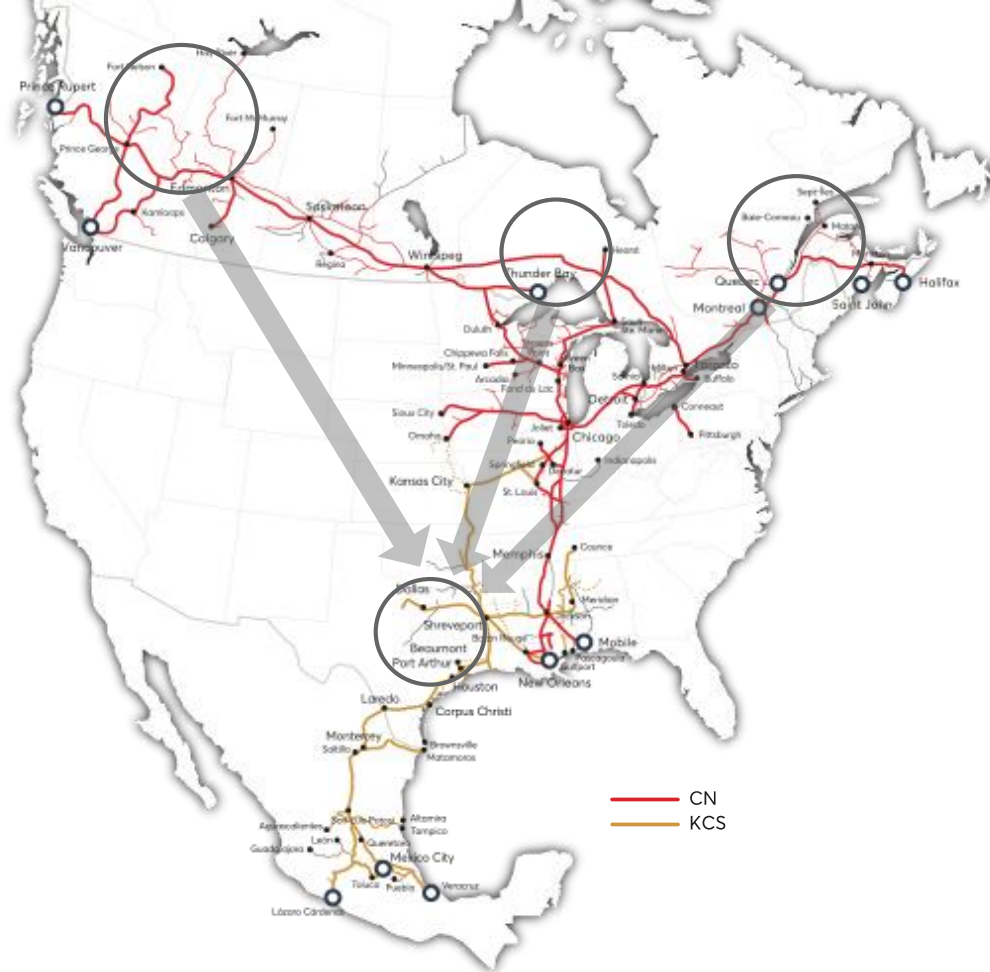
- **Direct, destination scheduled rail service** between major markets while avoiding interchanges in Chicago **increases speed** to market and **reduces inventory carrying costs, part shortages, and total costs of automotive supply chains**.
- Each CN-KCS **daily Mexico Intermodal train** will take **300+ long-haul trucks off of the road** avoiding an estimated **260K tons of GHG emissions** per year.
- Significant **reduction in truck drayage** between railroads in the **Chicago market** will **remove greater than 100K+ annual truck movements** from the Chicago streets.



Connected Continent

Lumber & Panels / Housing

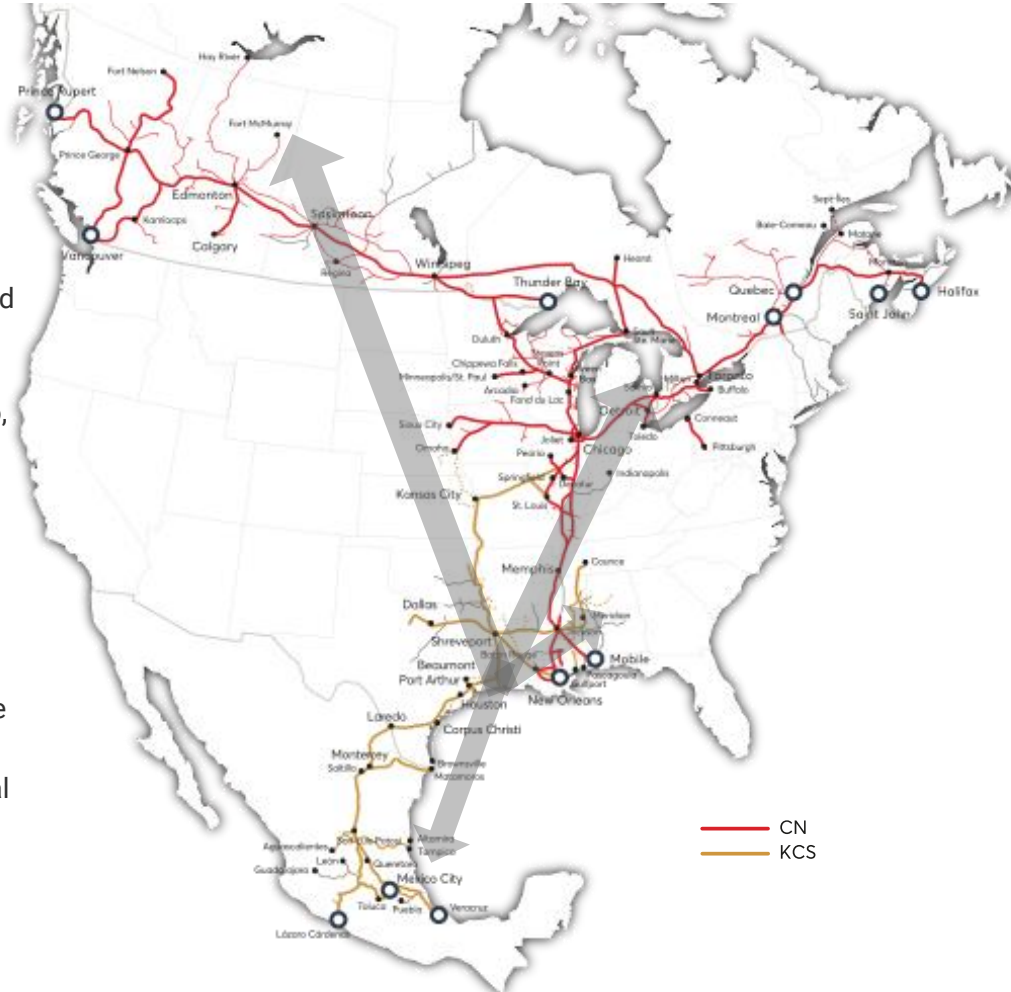
- The CN-KCS combination creates a robust network that optimizes single line access, **maximizes car utilization and competitive pricing** or customers by introducing **new single-line access into Texas while maintaining all current route options**.
- An estimated up to 6 day roundtrip cycle improvement will increase fleet utilization supporting carload growth without additional investment. From both Western and Eastern Canada, **cycles could be reduced in a range between 10%-15%, creating cheaper options** into this growing housing market that currently requires over 1 billion board feet of Canadian lumber annually.
- The ability to directionally **handle loads into large car blocks and unit trains will create capacity**, enhance connectivity, provide incremental efficiencies and **generate cost savings** that will support the Home Building and Repair & Renovation industries for years to come.



Connected Continent

Plastic Resins

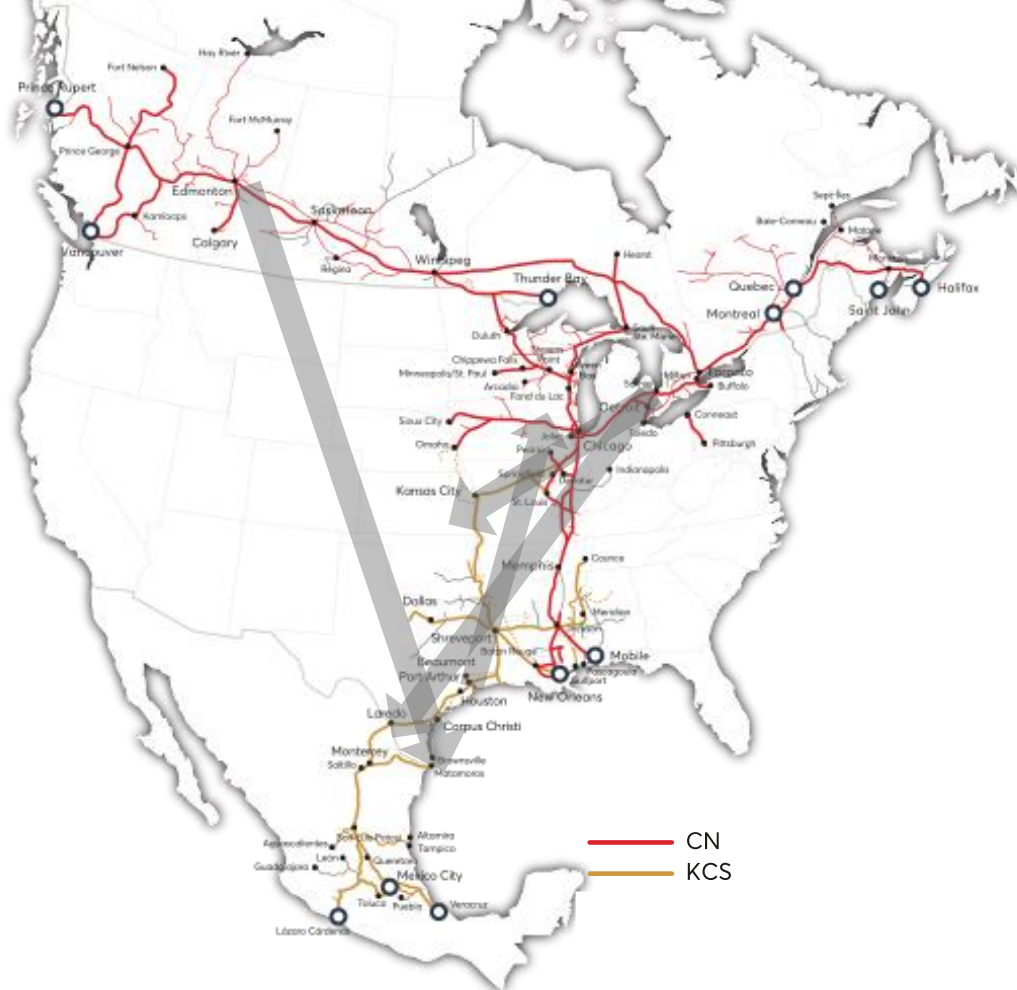
- **Single-Line Routing Efficiency** - New direct options for **Texas and Louisiana plastics** customers to reach North American end markets in Mexico, Canada and the US upper Midwest.
- Customers will experience **improved gateway optionality** and access to numerous **storage in transit sites** (Chicago, Toronto, Montreal, Memphis, others) strategically located along the CN network in **close proximity to end consuming markets** ultimately providing **faster and more flexible order fulfillment**.
- Customers can expect estimated savings of up to **6 to 8 days** on round trip transit and estimated savings of up to **\$120 to \$160 USD** on per trip fleet costs.
- Additional Arbitrage/Liquidity opportunities - **Single-line** access to CN's unique **resin packaging** options adjacent to the ports of **Prince Rupert, BC and Mobile, AL**.
- Providing **supply chain optionality and capacity** to reach global markets.



Connected Continent

Liquefied Petroleum Gases (LPG: Propane, Butane)

- The CN-KCS Network will provide LPG Customers in the US Midwest, Mexico, and Canada **reduced complexity** and **lower cost** supply chain options, **reduced transit times**, and **increased reliability** of supply.
- A new direct unit train service will allow customers to **save** and **react to arbitrage pricing** between Conway, KS, Mont Belvieu, TX and low cost Sarnia, ON and Western Canada production to service the expanding 2 billion gallon Mexican market.
- Reducing complexity to a **single carrier** a CN-KCS service improvement can save customers up to **4 days** in transit providing **fleet savings** in the range of **\$120 per trip**.
- The US Midwest is **reliant on propane** for **home heating and crop drying**. Increased CN-KCS routing options and single carrier service will **increase security of supply and reliability** for customers, farmers, and residents.



Connected Continent

Refined Petroleum Products (Gasoline & Diesel)

- **Liquidity and arbitrage opportunities** - New direct options allowing customers in the **US Gulf Coast, US Midwest and Western Canada** to access the **1.9M BPD Mexican markets** with best possible capacity and arbitrage opportunity.
- **Unique Access and Optionality** – single line access from **all major North American production areas (US Gulf Coast, US Midwest and Western Canada)** means customers can quickly **pivot between supply origins** and realize supply chain efficiencies.
- **Economies of scale and supply chain savings** Unit train, large car block sizes allowing customers to achieve economies of scale enhanced by **optionality of routing options** resulting in estimated **savings of up to 10 days on round trip cycles** and **\$300 USD per round trip**.

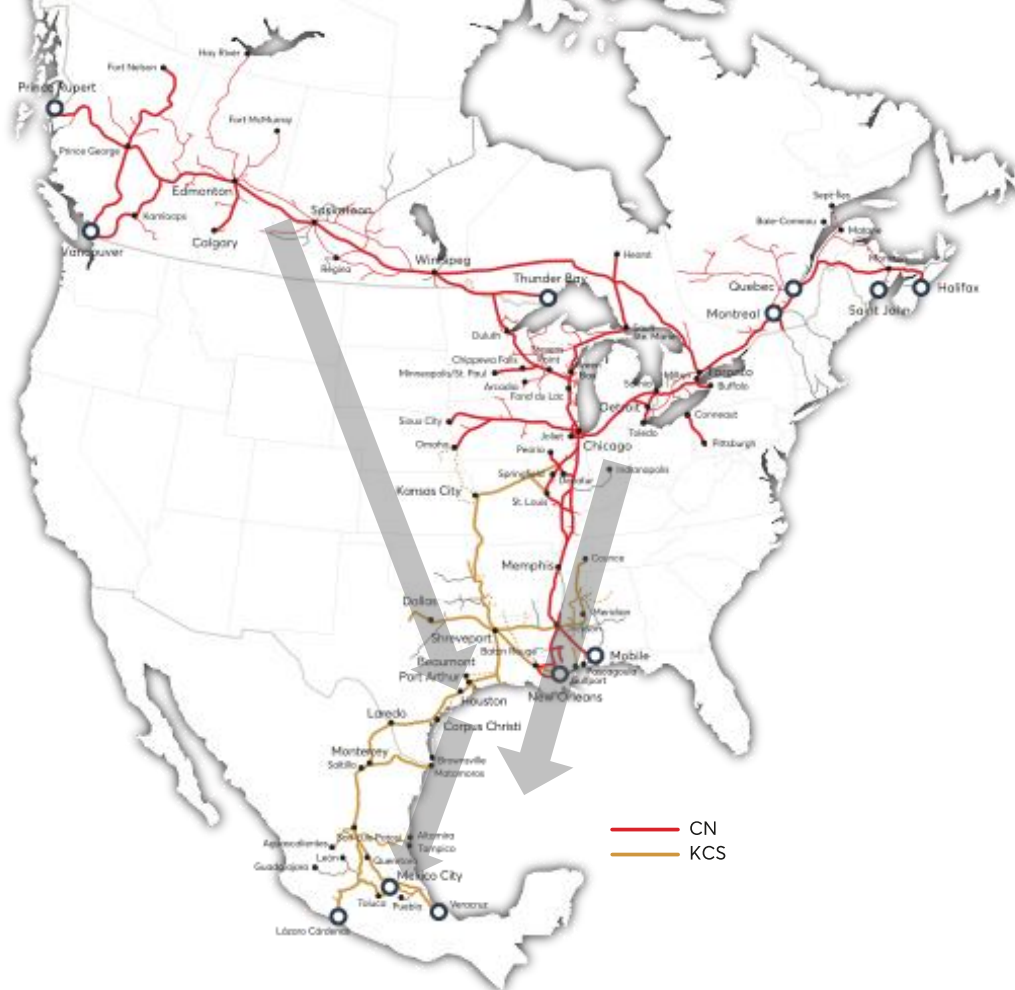


Exhibit 2

Verified Statement of Patrick
J. Ottensmeyer

STB Finance Docket No. 36514

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36514

**CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION,
AND CN'S RAIL OPERATING SUBSIDIARIES**

—CONTROL—

**KANSAS CITY SOUTHERN, THE KANSAS CITY SOUTHERN RAILWAY
COMPANY, GATEWAY EASTERN RAILWAY COMPANY, AND
THE TEXAS MEXICAN RAILWAY COMPANY**

VERIFIED STATEMENT OF PATRICK J. OTTENSMEYER

BACKGROUND

My name is Patrick J. Ottensmeyer. I have been the President of Kansas City Southern (KCS) since March 1, 2015 and its Chief Executive Officer and director since July 1, 2016. KCS is a non-carrier holding company that owns and controls The Kansas City Southern Railway (KCSR), The Texas Mexican Railway (Tex Mex), Gateway Eastern Railway, Kansas City Southern de México (KCSM), and other non-rail subsidiaries. From 2008 to 2015, I was Executive Vice President Sales and Marketing, and from 2006 to 2008, I was Executive Vice President and Chief Financial Officer.

Prior to my time at KCS, I served from 2000 to 2006 as executive vice president and chief financial officer of Intranasal Therapeutics, Inc., a specialty pharmaceutical company. From 1993 to 1999, I was vice president finance and treasurer for Santa Fe Pacific Corp and Burlington Northern Santa Fe Corp. Earlier in my career, I held executive positions at Security Pacific National Bank and Bank of America, including the position of senior vice president and

head of the corporate banking group in New York. I hold a bachelor of science in finance from Indiana University.

PURPOSE AND SUMMARY

The purpose of this Verified Statement is to first explain why the use of a voting trust is an important component of KCS's proposed combination, originally with Canadian Pacific and now with Canadian National. Most importantly, use of a voting trust was critical in putting potential strategic rail partners on equal footing with infrastructure funds, private equity funds, private wealth funds, or wealthy individuals. Once CP and KCS agreed to use of a voting trust, which voting trust was approved by this Board, it was important to KCS that CN propose an identical trust under identical terms, with the same trustee. CN and KCS now seek approval of that voting trust. To disapprove CN's proposed voting trust in light of the Board's approval of an identical trust for CP would be fundamentally unfair and deprive KCS customers, workforce, and shareholders of the vital public interest benefits a combined CN/KCS will achieve. Treating identical voting trusts differently would be an unnecessary intervention and distortion in determining the market value of KCS.

Second, I will explain some of the benefits that our customers, supply chain partners, and employees will experience from a combined CN and KCS. In short, KCS's combination with CN will provide customers access to new single-line transportation services at the best value for their transportation dollar. It will also make North America strong, providing a platform for customers to ship goods between Mexico, the United States, and Canada. The resulting combination will increase competition among the Class 1 railroads, while preserving access to all existing gateways to enhance route choices and ensure robust price competition. The common control of our two companies, whose companies' cultures are strongly aligned, will yield

demonstrable benefits for the environment by converting significant volumes of truck traffic onto rails, delivering better fuel efficiency at lower cost. The combined entity will provide a strong platform for revenue growth, continued capital investment, and job creation.

I. CN'S VOTING TRUST SHOULD BE APPROVED

A. Use Of A Voting Trust Was And Is Critically Important To KCS

Sometime in August of 2020, KCS was approached, unsolicited, by a private investor consortium that did not own or control any other U.S. railroads. This consortium desired to acquire KCS and take it private. Due to this offer, KCS engaged financial and legal advisors. It was important to analyze whether such an offer was fair to KCS shareholders and would be in the best interest of KCS's customers. It was also important to determine whether there would be strategic rail partners that would provide better value to KCS shareholders and customers. Because private funds that do not own or control any other U.S. rail carriers could acquire KCS without any regulatory lag or complexity, to obtain an "apples to apples" comparison between such funds and potential strategic rail partners, it was critical to KCS that any potential rail partners propose the use of a voting trust. Only with a voting trust structure could KCS's Board determine the market value of the company in an acquisition transaction.

The use of a voting trust evens the playing field between infrastructure funds, private equity funds, other private wealth funds, or wealthy individuals, all of whom do not need STB regulatory approval, and strategic rail partners, who, no matter how pro-competitive a potential merger could be, face significant lengthy and complex regulatory challenges through the STB process. Use of the voting trust removes the regulatory risk and uncertainty to KCS.¹

¹ Absent a voting trust, a buyer would likely have to offer a higher premium and a large break-up fee so as to reduce the risk to the seller's shareholders. Even then, seller shareholders may not be willing to take that risk.

Consequently, any transaction with a strategic rail partner without a voting trust would not have received the same consideration vis-à-vis a strategic rail partner that was proposing to use one.

It was critically important that any proposed voting trust for KCS comply with past STB precedent and avoid any elements that generated in the past significant controversy and that were not favorably received by the ICC or the STB because they constituted unlawful, premature control. Those proposed transactions and trusts involved changes in management of the target company, such as immediately replacing the seller's management and officers with managers and officers from the buyer and then placing the buyer into a voting trust, rather than the seller, which was customary. Having been aware of such controversies, and desiring to avoid it for any potential KCS transaction, it was important to KCS that any proposed voting trust by a potential strategic buyer be of the type and structure that had been previously approved and used for decades, i.e., a "plain vanilla" trust.

There were four other additional voting trust elements that were important to KCS as we entered into analysis of potential strategic rail partners. First, there should be no proposed changes in KCS management during the trust period. Second, KCS would be given freedom to continue to run KCS in the ordinary course of business, to pursue its strategic plan during the trust period, and to make the necessary continued and customary capital investments. Third, KCS employees would be given incentives to continue with the company during the trust. Finally, the trustee should be someone with knowledge of KCS's operating, marketing, and investment practices.

B. The CP Voting Trust And Trustee

As KCS progressed with its consideration of a strategic rail partner, CP, during the course of numerous discussions, agreed to KCS's request that a "plain vanilla voting trust" should be

used, that the trustee should it be someone with knowledge of KCS, and that KCS management should be allowed to continue to operate the company in the ordinary course of business and continue to make customary capital investments. CP and KCS agreed to select KCS's former CEO, Dave Starling, as the trustee. CP was willing to meet all of the critical elements for KCS to consider use of a voting trust, and to pay a price for KCS that exceeded that offered by the private consortium. KCS and CP thereby agreed to the proposed voting trust, which met all of KCS's concerns, and the trust was submitted to the STB for an informal staff opinion.

Of course, as we know now, after several rounds of public comments and replies regarding the applicability of the pre-2001 merger rules to a transaction involving KCS, the proposed trust was approved by the Board with a minor clarification. Importantly, the Board's May decision noted that the proposed voting trust comported with past agency policy and practice and was structured in such a way as to ensure that the day-to-day management and operation of KCS will not be controlled by CP or anyone affiliated with Canadian Pacific. The Board also found that, in the event divestiture was necessary, there was no significant risk that the financial strength or operational capabilities of KCS and CP would be compromised.² The Board required only minor changes to ensure that the trustee did not own CP stock. I applaud the Board's decision and believe it was the right decision.

C. CN's Voting Trust

As the Board is aware, KCS has now decided not to partner with CP, and instead has chosen to partner with CN, which made an offer that the KCS board of directors determined to

² FD 36500, CP et. al – Control – KCS et. al, Decision No. 5 at 6 (STB served May 6, 2021)

be superior to CP's offer. At this stage of the process, and as relevant, CN proffered the very same trust (as modified in accordance with the Board's decision when approving the CP voting trust), the same conditions with respect to management, and the same trustee. The trust, commitments, and trustee are identical. As the Board has already found when reviewing the identical CP voting trust, there is no issue of unlawful premature control with the proposed trust structure. CN's proposal to use a similar voting trust was an important factor in the KCS board of directors' determination that CN was a superior offer.

By this motion, CN and KCS are requesting the Board to approve the use of CN's trust. I understand that the CN/KCS control transaction is being processed under the post-2001 merger rules, and thus the proposed trust must meet the standard under those rules. But it would be fundamentally unfair for the Board to approve CP's voting trust, and then to deny CN's identical voting trust. This would effectively override the KCS board of directors' judgment about its preferred merger partner and eliminate the public benefits of the CN-KCS partnership that over 1,000 stakeholders have already written letters supporting. I expect those numbers to grow even more as KCS shippers can now have the opportunity to evaluate the benefits of a CN/KCS transaction. To grant one and deny the other would seem to favor one transaction over the other even before the merits of either transaction are presented in an application, subjected to public comment, and fully reviewed and analyzed.

I want to emphasize that during the trust period, KCS management will remain in control of KCS. I will continue as CEO as long as the Board and the Trustee provide me that privilege. My team and I have every intention of managing KCS in the same manner as we have during my tenure to date. Indeed, with the KCS board of directors' approval, we have put in place significant retention incentives to ensure our team stays in place and manages the company. We

will act in the ordinary course of business. We will pursue our strategic plan. We will make marketing and capital investments with the interests of KCS and its customers in mind, not those of CN.³ As the Board has already found in the decision to approve the CP voting trust, KCS is, and will remain, financially strong during the trust period.

In summary, I would respectfully ask the Board to approve the CN voting trust and to allow the application for the transaction to be submitted, parties to comment, and the merits of the transaction to be reviewed. It would be inappropriate to graft a premature merits review onto the voting trust approval. When the application is filed and the substantial merits of the transaction are considered by the Board, CN and KCS will address the issues and concerns that have been or might be raised. To do otherwise, and to deny CN and KCS the opportunity to present the compelling case for approval of the transaction, which denial of the use of a voting trust would do, I suggest would not be in the public interest.

II. THE TRANSACTION HAS SIGNIFICANT PUBLIC BENEFITS TO KCS'S CUSTOMERS, SUPPLY CHAIN PARTNERS, AND EMPLOYEES

KCS entered into the proposed transaction in part because it believes the combination with CN provides customers access to numerous new single-line markets; will provide an enhanced alternative competitive option for shippers to/from the Canadian, U.S. and Mexican markets, which markets are today dominated by UP and BNSF; will yield demonstrable benefits for the environment by converting significant volumes of truck traffic onto rails, delivering better fuel efficiency resulting in lower costs; and will provide a strong foundation for continued revenue growth, allowing for capital investment and job creation. While the statements included in this motion more fully detail the public interest benefits of the transaction, I would like to

³ The merger agreement allows KCS to continue to operate in the ordinary course of business and to continue to make capital investments at KCS's historic annual levels.

briefly explain from KCS's perspective how it views the transaction and how our customers will benefit from expanded markets, to discuss potential new market opportunities, and to provide a general comment on the overall public benefits.

When I became CEO, we adopted a vision statement that KCS would be the "fastest-growing, best-performing, most customer-focused transportation provider in North America." In determining whether to enter into a transaction with a strategic rail partner, it was important to find a partner that shared this vision and this goal. Our combination with CN fits perfectly within that vision. The proposed transaction is not based upon cost-cutting, job elimination, reduction in maintenance expenses and capital investment, and the elimination of excess capacity – motivations that drove many mergers in the past. This transaction is exactly the opposite. This transaction is directed at growth through improved service, faster transit times, more consistent and efficient routes, technological innovation, and providing customers with more choices, including new and expanded single-line routes for rail customers that are more competitive with truck, barge, and other rail routes. Improved service will beget growth.

A. Tremendous Opportunities For CN and KCS Customers

The transaction will provide our customers with many cost effective and efficient market opportunities that do not exist today because of the need to coordinate interchanges and joint routes between two companies that sometimes have conflicting goals and incentives to work together. By bringing CN and KCS together, the combination will allow CN customers to have single-line reach to markets served by the KCS, including Kansas City and Dallas. Conversely, customers on KCS will gain single-line reach to U.S. markets served by CN, including Chicago, Detroit, and Memphis. New competitive routes between Chicago, Detroit, and Upper Midwest to Kansas City and beyond to the Texas Gulf Coast and Mexico will be created.

KCS believes that these new market growth opportunities will benefit several commodity groups. Just one example is automotive traffic and other OEM parts manufacturers. Historically, KCS has interchanged much of this traffic at the border with UP and BNSF because KCS does not have as efficient a route to Detroit and Chicago as UP and BNSF, mainly due to KCS's need to interchange with other carriers and the lack of a coordinated investment platform needed to compete against those larger carriers. The combination with CN will improve the efficiencies of KCS's existing route options by eliminating costly and time consuming interchanges. This will provide customers an enhanced alternative to UP's and BNSF's dominance in this north-south trade. Based on our early conversations with our customers, we believe they are excited about this option.

Another substantial growth opportunity is in shifting truck traffic to rail. KCS has been interested in this space for many years, but it is much easier to achieve as a single line carrier (vs. KCS being interchange partner). CN has substantial expertise in intermodal growth. From 2010 to 2020, CN developed the fastest growing intermodal network in North America. As a result, KCS sees significant opportunities for a CN-KCS combination to increase north-south intermodal traffic and intermodal port activities.

In fact, the combined KCS/CN route will connect two line segments that are currently equipped and maintained so as to handle premium/ service sensitive business, such as intermodal auto parts. Those two segments would be the KCS' Meridian Speedway from Shreveport to Jackson, and the CN route from Jackson to Chicago. Operating these two premium segments with a unified vision under a unified service plan represents a significant growth opportunity for moving move commodities via rail rather than truck.

Another potential opportunity for moving truck traffic to rail involves temperature-protected food products (such as produce, fruits, processed foods, beef, pork, and poultry) moving between the U.S. Midwest and Mexico. Trucks are currently the primary mode of transportation for such products. CN is an industry leader in temperature-controlled domestic and overseas intermodal service, and a CN-KCS combination could provide single-line rail service to compete with trucks in this market. There are numerous other opportunities to take more trucks off the road through the new single-line rail service that will connect the major markets in Texas and Mexico with the US Midwest and Canada's largest consumer markets.

Besides intermodal traffic, there are other opportunities for growth in traditional rail commodities such as chemical and petroleum products; plastics from the Gulf Coast to manufacturing and industrial centers in US, Canada, and Mexico; expanded market reach for lumber and building products; new opportunities for grain producers (origins) and processors (destinations), and single-line access to a significant number of ports that our system currently does not reach. Many of these opportunities are discussed in the statement of J.J. Ruest. I share his comments and his vision.

B. Operational Integration And Benefits

While operational concerns regarding the possibility of service integration problems or service meltdowns in a post-control environment should not be relevant factors in approving a voting trust, I want to assure this Board that both KCS and CN are committed to ensuring a smooth transition and avoiding the types of problems that have occurred in prior transactions. Both KCS and CN have a reputation for being focused on quality transportation service and sound operations. Importantly, both companies have a strong history of integrating prior acquisitions. For example, KCS has smoothly integrated its operations in connection with its

prior transactions including KCS-MidSouth; KCS Gateway Eastern and Gateway Western; and most recently KCS-Tex Mex-TFM. KCS has also implemented two phases of PSR without the types of service issues or service complaints faced by others. Similarly, CN has integrated its recent acquisitions without service interruption. It has done so with Illinois Central, Wisconsin Central, and then with Elgin, Joliet, and Eastern. In this case, CN and KCS also connect in only a few cities, which should also simplify integration. Accordingly, if after a review on the merits, the Board approves of the CN-KCS transaction, we fully expect to and are fully committed to continue this track record of success.

Moreover, the integration of these two railroads, and their great route networks, will yield benefits that we look forward to presenting to the Board. In particular, there are substantial opportunities to change the routing of certain freight to bypass Chicago, and avoid the delays that going through Chicago can cause for our customers' freight. I am also committed to working with CN to listen to those communities who are concerned about potential increased rail traffic through their communities and to examine ways in which we can all work together to resolve any concerns.

I would be remiss not to mention the benefits to KCS employees, who will benefit from being part of a truly North American continental enterprise, which creates a strong platform for revenue growth, capital investment, and future job creation. KCS did not enter into this transaction on the basis of cost cutting through job reductions, reduced maintenance, or reduced capital investment. Our goal, a goal shared by CN, is to grow traffic volumes and grow the railroads. This will mean additional jobs, not cuts. I strongly believe that customers, labor partners, and shareholders will all benefit from the inherent strengths of this combination, including attractive synergies and complementary routes.

C. Competitive Concerns

At the appropriate time during the consideration of the merits of this proposed transaction, KCS will work with CN on its strategy to address any competitive issues that may be presented, including the divestiture of a KCS line segment between New Orleans and Baton Rouge. This is the only place where the railroads have parallel lines and jointly serve several customers. CN has committed to divesting the KCS line segment to preserve shippers' competitive options. KCS will work with CN to develop a solution that is acceptable to shippers, communities, and our employees. CN has also committed to maintaining existing gateways in order to preserve existing routing options and KCS supports CN's commitment.

Except for the Baton Rouge to New Orleans line segment, KCS and CN have always been partners and collaborators, not competitors. Connecting in only a few cities, KCS and CN is an end-to-end transaction given CN's commitment to divest the KCS line segment from Baton Rouge to New Orleans. The two railroads do not compete in same markets and have always offered complementary service into different geographic markets. Indeed, our collaboration and complementary services may be illustrated by the fact that at one time the parties had an Alliance Agreement⁴ that was intended to foster cooperation, joint movements, and provide the exact types of benefits that this control transaction is intended to provide. Unfortunately, as is often the case with joint marketing and joint operating agreements between railroads, for many reasons, some of which will be addressed in any forthcoming application, the benefits were never fully realized. If the Board allows this transaction to be heard on its merits, CN and KCS will be able to show that with the integration of our two systems, we can fully provide the service and benefits we had hoped to provide with the Alliance Agreement.

⁴ The Alliance Agreement was a significant element of the CN/IC merger transaction and was discussed extensively in the Board's decision approving the CN/IC merger.

CONCLUSION

In sum, the issue before the Board is whether to approve the voting trust proposed by CN. It is identical in every respect to the voting trust recently proposed by CP. Approval of that voting trust, while not a right, is compellingly necessary to place CN on the same ground as private equity bidders and CP. The use of a voting trust remains in the public interest in the railroad industry for this reason alone.

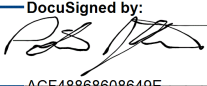
The Board has already determined that there is no premature unlawful control and that KCS is financially sound. And CN makes a compelling case in this motion that it is and will remain financially sound, even if the transaction were denied and CN were required to divest KCS at a discounted price, which would be a highly unlikely event. The process that has led up to this transaction shows that there is significant interest in acquiring KCS. Indeed, CP itself has made it clear in its recent press statements that it remains interested in KCS. In my opinion, there is no potential issue related to divestiture in the event that the Board does not approve this transaction after a complete review of the merits.

Finally, without the approval of the voting trust, the substantial public benefits from this transaction that will provide new routes, markets, and opportunities for customers cannot be reviewed and materialized. Under these facts where the voting trust is plain vanilla; there will be no unlawful control; both CN and KCS are financially healthy companies and will remain so during the trust period; CP and others remain interested buyers in the event divestiture is ordered; and there are significant benefits that will flow from the transaction, the voting trust should be approved.

VERIFICATION

I, Patrick J. Ottensmeyer, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 25th day of May, 2021.

DocuSigned by:


ACF48868608649E...
Patrick J. Ottensmeyer
President and Chief Executive Officer of Kansas
City Southern

Exhibit 3

Verified Statement of Ghislain
Houle

STB Finance Docket No. 36514

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 36514

**CANADIAN NATIONAL RAILWAY COMPANY,
GRAND TRUNK CORPORATION, AND CN'S RAIL OPERATING
SUBSIDIARIES
—CONTROL—
KANSAS CITY SOUTHERN, THE KANSAS CITY SOUTHERN RAILWAY
COMPANY,
GATEWAY EASTERN RAILWAY COMPANY, AND
THE TEXAS MEXICAN RAILWAY COMPANY**

VERIFIED STATEMENT OF GHISLAIN HOULE

My name is Ghislain Houle. I am the Executive Vice President and Chief Financial Officer (“CFO”) of Canadian National Railway Company (“CN”) and its United States rail operating subsidiaries. I have held that position since July of 2016. My business address is 935 de la Gauchetière Street West, Montreal, Quebec H3B 2M9.

Prior to becoming Executive Vice President and CFO of CN, I served in multiple roles during my 24-year tenure at CN including Vice President and Corporate Comptroller, Vice President – Financial Planning, Vice President & Treasurer, and Chief of Internal Audit. I have previously worked as a Senior Manager in tax and audit at a major accounting firm in Canada. I am a Chartered Professional Accountant (“CPA”) and hold both a Bachelor of Commerce degree from

Laval University and a Master of Business Administration (“MBA”) from McGill University.

The purpose of my Verified Statement is to explain the overall impact of CN’s proposed transaction with Kansas City Southern (“KCS”) on CN’s financial health. Although the acquisition of KCS will be partially financed by additional debt—not surprising given the scale of the proposed transaction—I am confident, for the reasons set forth below, that CN will retain its strong financial posture:

- CN’s strong financial position today, evidenced by CN having the lowest Leverage Ratio¹ and among the highest credit ratings of all Class I rail carriers, as well as our long history of conservative capital allocation, sets us up well to maintain financial strength, notwithstanding the incurrence of additional debt;
- We expect to retain an investment grade credit rating throughout the transaction approval process and beyond, an expectation that has been validated by the two major credit rating agencies;
- The amount of debt to be raised to fund the acquisition (US\$19 billion) is less than the unaffected market capitalization² of KCS (US\$20.5 billion), which essentially means that the premium being paid will be entirely funded by issuing CN equity;

¹ Leverage Ratio defined as adjusted debt to adjusted EBITDA. Refer to Non-GAAP Measures, unaudited, at 2, <https://www.cn.ca/financial-results>.

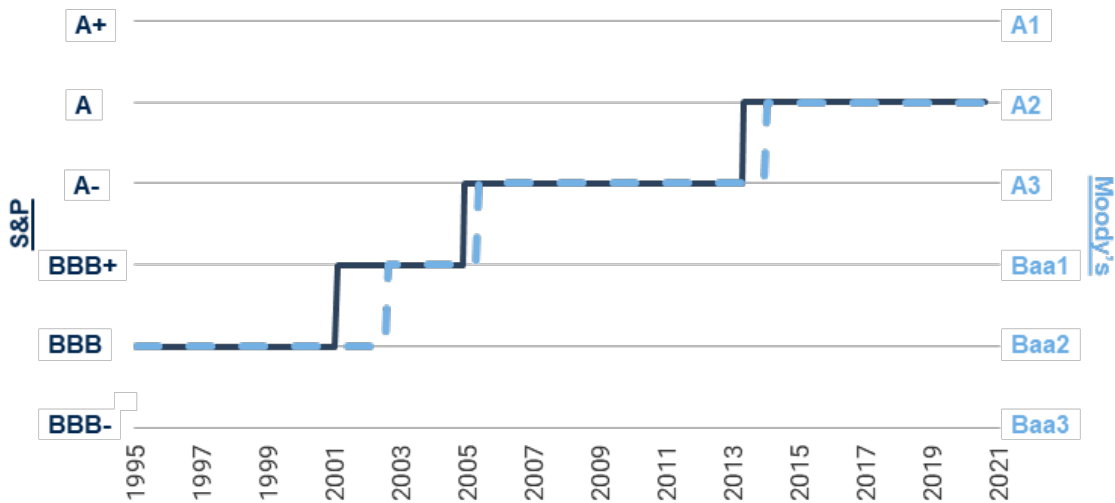
² Based on KCS’ unaffected stock price as of March 19, 2021, the last trading day prior to the announcement of CP’s agreement to acquire KCS.

- CN is projected to have sufficient cash flow on a standalone basis to service our existing debt and the debt being raised to fund the acquisition of KCS, while continuing to invest in the railroad at levels consistent with our historical practice, with cash flow before tax-affected interest payments in excess of four times the tax-affected interest payments associated with CN's current debt and new debt being raised;
- CN has suspended share repurchases indefinitely to bolster cash available for debt repayment and contribute to a rapid deleveraging plan;
- If we are successful in acquiring KCS, we project to generate significant combined Free Cash Flow that will allow us to rapidly reduce our Leverage Ratio over time;
- In a case where we are required to divest KCS, we believe there will be strong buyer appetite, as demonstrated by the current interest in KCS from both strategic and financial buyers; and,
- If forced to sell KCS, even at an extreme discount, we would nevertheless maintain a Leverage Ratio that would be consistent with, or below, the current Leverage Ratio of other Class I rail carriers. Even if we received no proceeds in a sale, our Leverage Ratio would be expected to be 3.7x by the end of 2024, which is consistent with an investment grade credit profile.

I. CN Has A Long Track Record Of Conservative Financial Management.

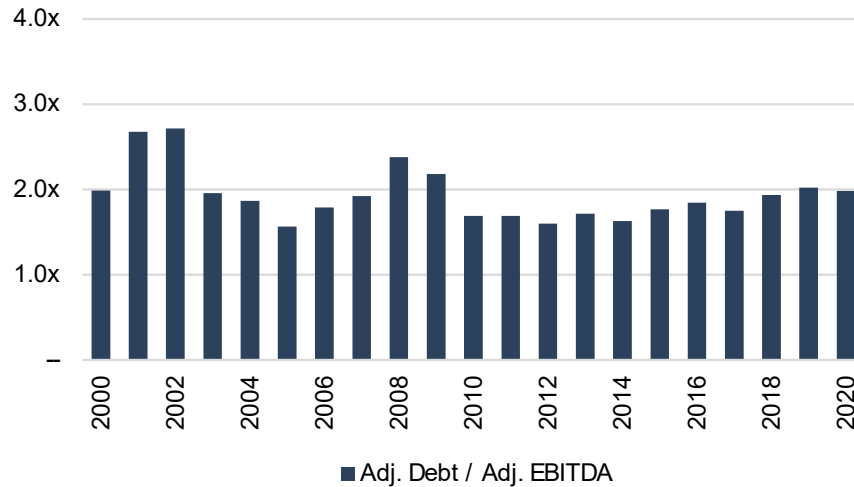
Since its Initial Public Offering in November 1995, CN has consistently demonstrated its conservative financial stewardship and a deep commitment to maintaining a strong credit profile. Since that time, CN has improved its S&P / Moody's credit rating from BBB / Baa2 to A / A2 currently, earning it the highest investment grade credit rating among the publicly-traded Class I railroads today.

CN Historical Credit Ratings



Over the past 15 years, our Leverage Ratio has consistently been below ~2x, excluding the 2008 and 2009 financial crisis.

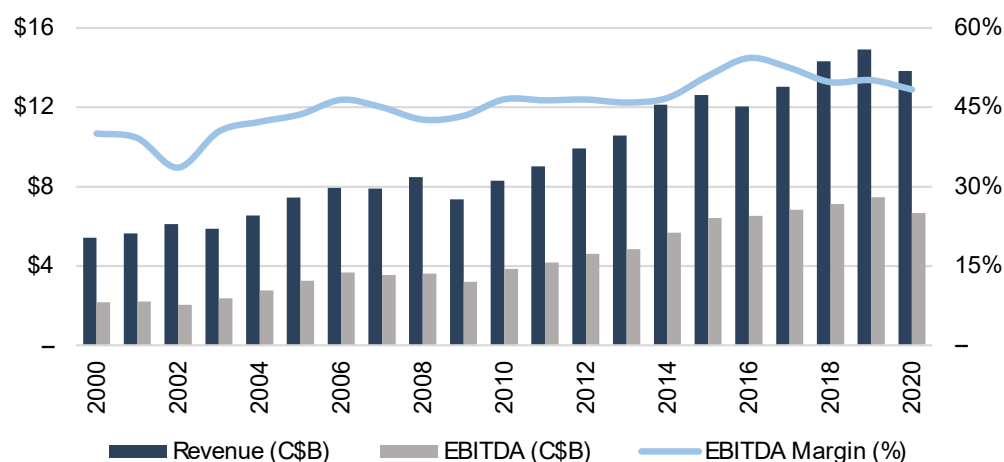
CN Historical Leverage Ratio



Note: Prior to 2006, Leverage Ratio shown above represents total debt / EBITDA. Sourced from CN's historical filings.

Robust operational performance, profitable growth and resilience in times of economic downturn have underpinned CN's strong and improving credit profile. In the 20 years from 2000 to 2020, CN has grown revenue by a compound annual growth rate ("CAGR") of ~5% and grown earnings before interest, taxes, depreciation and amortization, and other income ("EBITDA") by a CAGR of ~6%, all while expanding its EBITDA margin by 8 percentage points to 48% in 2020.

CN Historical Revenue, EBITDA and EBITDA Margin



Note: Sourced from CN's historical filings.

In addition to its operational stewardship, CN's strong credit history is also a testament to its consistent capital allocation strategy.

As a first priority, CN reinvests in its core business to maintain the safety and integrity of the network, and to support profitable volume growth and ongoing operational efficiency. Over the last 10 years, CN's annual capital expenditures have averaged C\$2.6 billion per year, equivalent to 21% of revenue. In 2021, CN expects to deploy C\$3 billion towards capital expenditures, which will go towards infrastructure maintenance, capacity, growth and information technology investments and equipment.

Second, CN is committed to maintaining a strong balance sheet to remain resilient through economic cycles and to quickly seize upon strategic opportunities, such as the potential KCS acquisition. As of March 31, 2021, CN's Leverage Ratio was 2.0x, the lowest level of financial leverage among the Class I railroad peers.

Third, CN is focused on consistent and stable dividends to common shareholders. CN has grown its dividend for 25 consecutive years since its IPO in 1995.

Fourth, CN uses share repurchases as a flexible tool to achieve its targeted capital structure. Over the last 10 years, CN's share repurchases have averaged C\$1.6 billion per year. Importantly, CN has historically reduced share repurchase activity to maintain credit quality following large acquisitions (*e.g.*, Illinois Central in 1999 and Wisconsin Central in 2001) and through periods of economic crisis (*e.g.*, the financial crisis in 2008 and 2009 and the effects of COVID-19 in 2020 and 2021). By way of example, at the onset of the COVID-19 pandemic in March 2020, CN was the first railroad to suspend share repurchases and was the last railroad to resume them in late January 2021. More recently in April 2021, CN announced that it had suspended share repurchases pending its proposed combination with KCS. We have publicly committed that we will not consider resuming share repurchases until our Leverage Ratio is reduced to $\sim 2.5x - 3.0x$, consistent with the other Class I railroads.

II. CN Is In A Strong Financial Posture Today.

Today, CN is in a solid financial position, despite the difficult period from which the railroad industry—and the economy as a whole—is emerging in the wake of the COVID-19 pandemic. In particular, CN's balance sheet and financial metrics are strong.

CN draws confidence from its robust Free Cash Flow, which we view as a useful financial metric as it demonstrates our ability to generate cash for debt obligations and other discretionary uses.³ In 2020, CN had record Free Cash Flow of C\$3.2 billion, up from C\$2.0 billion in 2019.⁴ Based on all relevant circumstances, including its performance to date, CN's current expectation is that 2021 Free Cash Flow will be in the range of C\$3 billion to C\$3.3 billion⁵, before considering costs related to the KCS transaction. That level of Free Cash Flow puts CN in a strong position to manage additional debt obligations going forward.

Moreover, our current Leverage Ratio reflects CN's long-standing conservative approach. CN's Leverage Ratio for the twelve months ended March 31, 2021 of 2.0x is the lowest of the Class I rail carriers. By the end of 2021, we expect our Leverage Ratio to decrease further to approximately 1.9x (without accounting for the proposed KCS acquisition debt or KCS' earnings contribution).

As a result of our strong balance sheet and our consistent, strong Free Cash Flow generating abilities, CN is well regarded by credit ratings agencies, which have given it a positive profile. Overall, CN maintains the highest credit rating among the publicly-traded Class I railroads for a variety of reasons, including a strong balance sheet, disciplined capital allocation strategy, and strong Free Cash

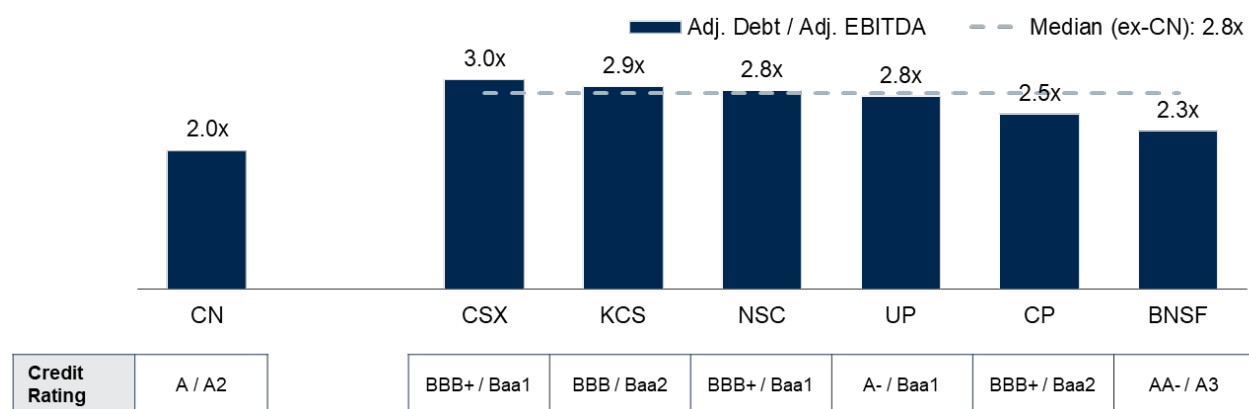
³ CN, Non-GAAP Measures, unaudited, at 2, <https://www.cn.ca/financial-results>.

⁴ See *id.* at 14; CN, Fourth Quarter and Full Year 2020 Financial Results (Jan. 26, 2021).

⁵ See *id.* CN, First Quarter 2021 Financial Results (Apr. 26, 2021).

Flow generation, as referenced in detail above. CN expects—and will work—to maintain an investment grade credit rating throughout the transaction approval process and beyond.

Current Leverage Ratios ⁽¹⁾ and Credit Ratings ⁽²⁾ for Class I Railroads



(1) Leverage Ratio based on company filings and Moody's Investor Services reports

(2) S&P / Moody's credit rating as of May 17, 2021

III. CN's Offer To Acquire KCS Is Competitive, But Justified.

CN has proposed to acquire KCS for a price of US\$325 per common share and an assumption of approximately US\$3.8 billion of existing KCS debt. Such a competitive offer is warranted because of the significant benefits of a CN and KCS transaction to shippers, the railroad industry, the economy, the environment and our shareholders. This price was deemed justified by me and other senior CN management and by CN's Board of Directors, after advice from multiple outside advisors with substantial knowledge of and expertise in the industry.

The transaction will be funded by US\$19 billion in new debt (which J.P. Morgan and RBC Capital Markets have fully committed to financing),

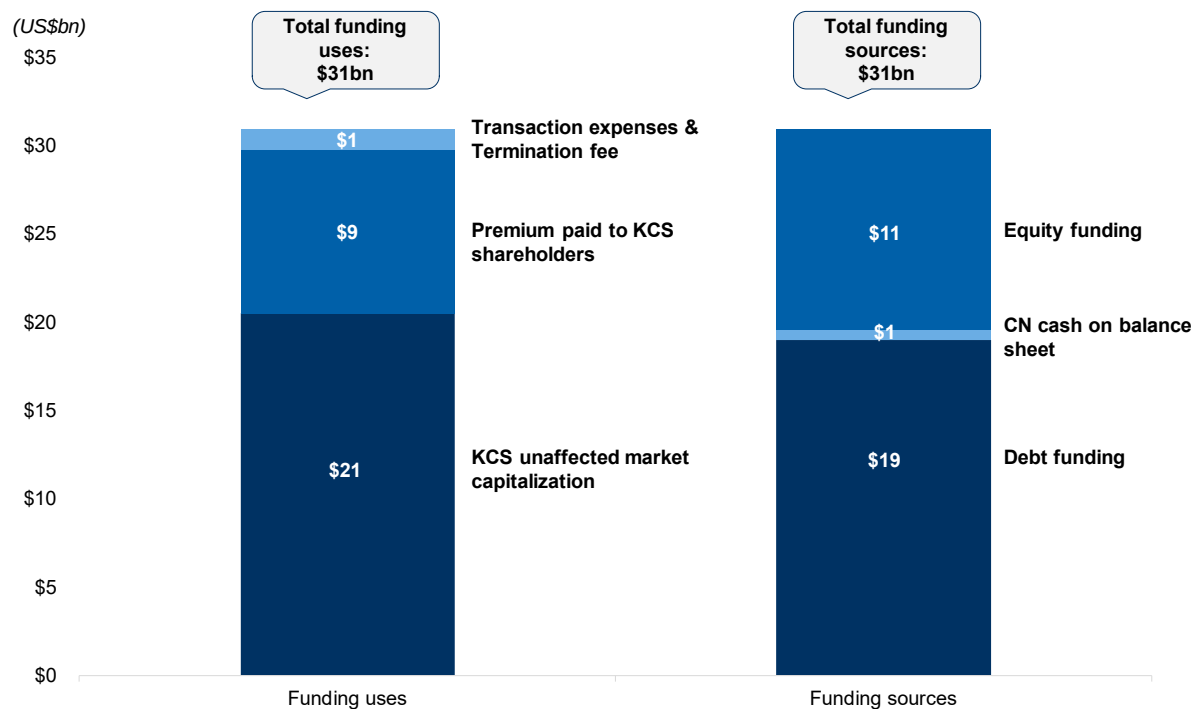
approximately US\$1 billion of CN's balance sheet cash and approximately US\$11 billion in CN equity. Combined with existing obligations, that will mean that CN will have approximately US\$30 billion in outstanding debt at closing into a voting trust (excluding debt of KCS). Funding significant and strategic transactions through debt offerings is, of course, exceedingly common.⁶ Despite this additional debt, and as noted above, CN expects to retain its investment grade credit rating under the proposed capital structure, which has been validated by the two major credit rating agencies since announcement of the transaction.

Moreover, while the premium being paid by CN to acquire KCS is meaningful, a significant portion of the consideration being paid to KCS shareholders is in the form of CN stock. The US\$19 billion of transaction-related debt being raised by CN is actually less than KCS' unaffected market capitalization of US\$20.5 billion⁷, which implies that the premium being paid to KCS shareholders is being funded entirely by the issuance of CN equity.

⁶ For example, the Board approved CN acquisitions of the Elgin Joliet & Eastern Railway Company in 2008 and the Illinois Central Railroad Company in 1999 were both funded by new debt.

⁷ Based on KCS' unaffected stock price as of March 19, 2021, the last trading day prior to the announcement of CP's agreement to acquire KCS.

Summary Transaction Sources and Uses



Note: KCS unaffected share price of US\$224.16 as of March 19, 2021; CN equity consideration based on 1.129x exchange ratio per CN's May 13, 2021 offer and KCS diluted shares receiving equity consideration based on the definitive merger agreement provided by CN to KCS on May 13, 2021.

IV. With its Strong Free Cash Flow, CN Can Easily Manage The Increased Debt Load.

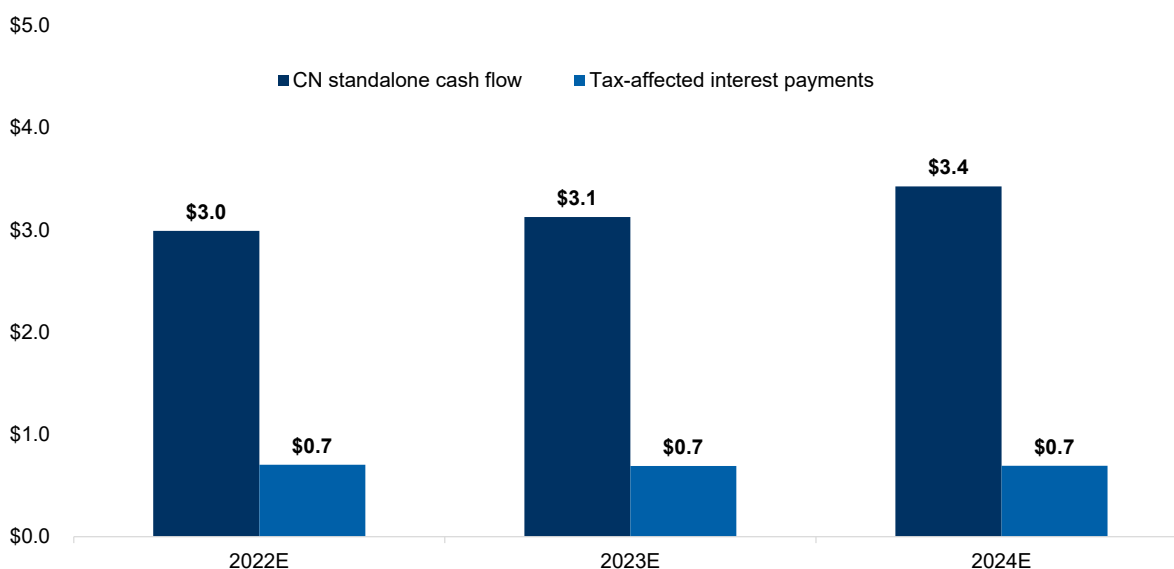
CN's projected level of debt is manageable for a company of CN's size, scope, and overall financial health and will not harm its ability to continue investing in the railroad and provide quality service to the shipping public. To be sure, CN does not intend to reduce its own capital expenditure plans during the pendency of the voting trust, nor would we reduce our own capital expenditure plans even if we were required to divest KCS out of trust.

After fully accounting for CN's capital investment plan, which is entirely consistent with historical rates of capital expenditure, we expect to have more than enough cash flow to service both CN's existing debt and the new transaction-related debt on a standalone basis, even without the benefit of access to KCS cash flows.

As illustrated in the chart below, we anticipate CN's standalone cash flow (calculated as cash from operations, less capital expenditures and investing activities, plus tax-affected interest payments) will be over four times greater than standalone and transaction-related tax-affected interest payments. Specifically, after fully accounting for CN's projected capital investment plan, which includes more than US\$2.5 billion of investment annually from 2022 to 2024, we forecast cash flow before tax-affected interest payments of US\$3 billion or more, compared to US\$0.7 billion of tax-affected interest payments, leaving CN with more than US\$2 billion of excess cash flow above our capital investment and debt service obligations.

Projected CN Cash Flow Before Tax-Affected Interest Payments vs. Tax-Affected Interest Payments

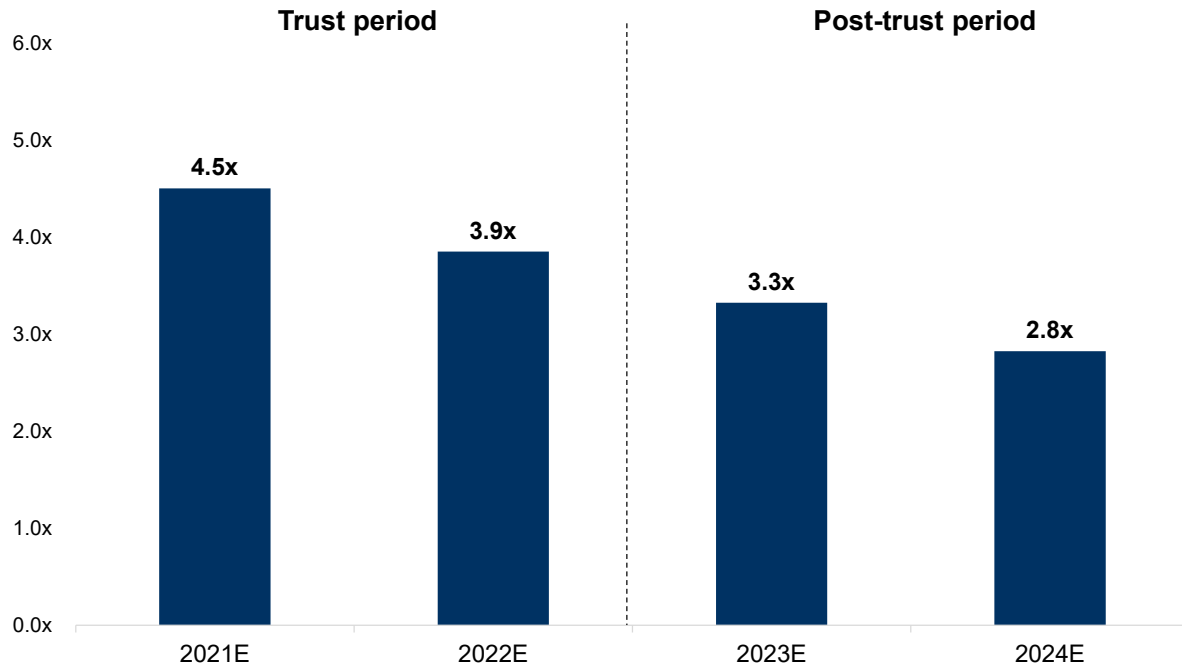
(all figures in US\$bn)



Note: CN standalone cash flow calculated as cash from operations, less capital expenditures and investing activities, plus tax-affected interest payments; includes tax-affected interest payments on CN standalone debt and acquisition debt.

Longer term, should the Board approve the transaction, CN will be in an even stronger position to more rapidly reduce debt through the strong cash flow generation of the combined company with our Leverage Ratio expected to decline to 3.3x at the end of 2023 and 2.8x by the end of 2024. Based on its analysis, CN expects de-leveraging to be supported by significant revenue growth as the combined railroads attract more traffic from competing modes such as trucking because of improved and expanded railroad service options throughout the entire continent.

CN Projected Pro Forma Leverage Ratio



Note: Assumes integration following voting trust beginning 12/31/2022; both trust period and post-trust period reflect pro forma leverage including KCS standalone Debt and EBITDA; CN standalone leverage during the trust period excluding KCS standalone Debt and EBITDA is 5.1x 2021E and 4.4x 2022E.

V. There Will Be No Harm to KCS While In Trust.

Following closing into trust, KCS would remain an independent company, with no change in its financial or operational management. KCS would continue to be the well-managed, well-capitalized and growing business it is today.

As an independently managed company, KCS would continue to generate significant cash flow while in trust enabling it to continue investing in its business in accordance with its pre-existing capital allocation policy. Per that policy, KCS would use up to 40% to 50% of available cash on a rolling four-quarter basis for capital projects and strategic investments. Only after those investments have been

made would the remaining cash be available to be distributed as dividends to CN, in accordance with CN's proposed voting trust agreement. This is an identical arrangement to Canadian Pacific Railway's approved voting trust.

VI. CN Would Not Face Financial Peril If Required To Divest KCS.

CN is confident that a KCS-CN combination is in the public interest and ultimately will be approved. That said, we have taken into account the scenario where a KCS-CN combination is not approved and KCS has to be sold out of trust. Under this scenario, CN is confident that it would be more than able to support the higher debt load as a standalone company.

First, at the end of 2024 (the approximate date by which CN would be required to divest KCS), we estimate our debt balance, including CN's existing debt and the new transaction debt, to be US\$27 billion, prior to accounting for any potential proceeds from a sale of KCS. Based on our standalone CN projections, this would represent a Leverage Ratio of 3.7x, before accounting for divestiture proceeds, a leverage profile consistent with an investment grade rating. So even if we generated no proceeds from a disposal of KCS, we would continue to have a strong balance sheet.

Second, we would expect a potential sale of KCS to attract strong interest and we do not think it would be challenging to find a suitable buyer, whether it be another railroad, a private equity firm or an infrastructure fund. Alternatively, KCS could be divested through a public offering to make it an independent railroad,

as it is today. Any of these options would generate a significant cash payment to CN as voting trust beneficiary, which could be used to offset any remaining debt.

As an illustration, we have analyzed multiple potential scenarios:

Scenario 1: KCS is sold with a valuation equal to its unaffected market price of US\$20.5 billion, or **US\$224 per share** (ignoring the potential growth in value of KCS during the trust period). A sale at this price at the end of 2024 would result in a **Leverage Ratio of 1.0x**.

Scenario 2: KCS is sold at a valuation that generates enough proceeds for CN to reduce its Leverage Ratio to 2.8x, which is consistent with the median current leverage level of Class I rail carriers. To achieve a **2.8x Leverage Ratio**, CN would need to generate proceeds of only US\$6.6 billion, or **US\$73 per KCS share**, which represents a 67% reduction in the value of KCS vs. its unaffected market price.

Scenario 3: KCS is sold at a valuation that generates enough proceeds for CN to reduce its Leverage Ratio to 1.9x, which is consistent with CN's projected standalone Leverage Ratio at the end of 2021 (excluding acquisition debt). To achieve a **1.9x Leverage Ratio**, CN would need to generate proceeds of US\$13.4 billion, or **US\$148 per share**, which represents a 34% reduction in the value of KCS vs. its unaffected market price.

Scenario 4: KCS is sold at a valuation that generates enough proceeds for CN to fully repay the debt being raised to fund the acquisition of KCS (US\$19 billion). To generate proceeds of US\$19 billion, CN would need to sell KCS for

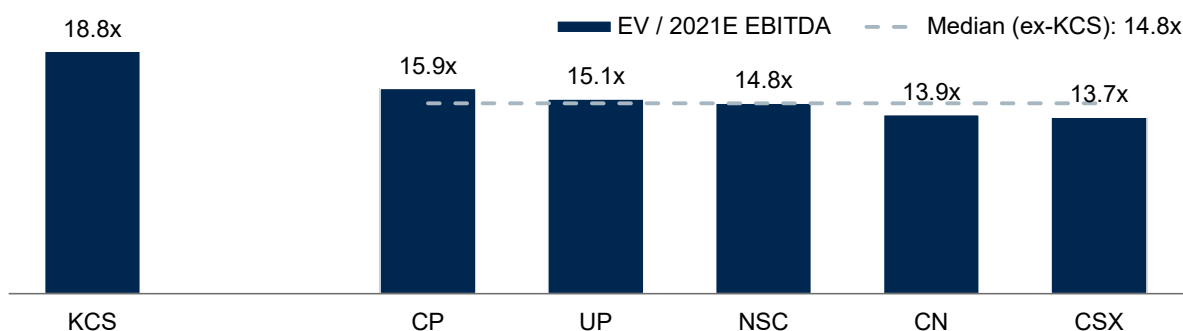
US\$209 per share, which represents a discount of 7% vs. its unaffected price. CN's resulting **Leverage Ratio would be 1.2x**.

US\$ except multiples	Scenario 1	Scenario 2	Scenario 3	Scenario 4
Gross Sale Proceeds	\$20.5 billion	\$6.6 billion	\$13.4 billion	\$19 billion
Gross Proceeds per KCS share	\$224	\$73	\$148	\$209
Discount to unaffected KCS share price	-	67%	34%	7%
Implied KCS EV / 2024E EBITDA multiple ⁽¹⁾	10.2x	3.8x	7.0x	9.5x
CN Leverage Ratio post sale	1.0x	2.8x	1.9x	1.2x

(1) Represents Enterprise value implied by gross sale proceeds after adjusting for projected debt balance

Under each scenario, the required sale price represents a significant discount to current trading multiples of the Class I rail peers, without taking into account any takeover premium to the trading multiples. As shown below, the median valuation multiple based on Enterprise Value to 2021E consensus EBITDA estimates is 14.8x, excluding KCS.

Current Class I Rail EV / 2021E EBITDA Valuation Multiple



Note: Represents multiple of Enterprise Value to 2021 EBITDA. Market data and 2021 EBITDA estimate is based on Wall Street research consensus estimates as of May 17, 2021.

VII. Conclusion.

For the reasons explained above, based on my experience and knowledge of CN, it is my view that CN's overall financial condition is healthy, and is expected to continue to be, with the additional debt required to finance this significant and beneficial transaction. Our combined strong cash flows, as well as our public commitment to paying down the debt and pausing of stock repurchases, should quickly restore our debt leverage to conservative levels. And in the event the merger is not approved, where CN has to sell the asset out of trust, the sale will almost certainly generate sufficient cash to immediately pay off debt to restore CN's credit rating and leverage metrics to where they are today.

VERIFICATION

I, Ghislain Houle, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 25th day of May, 2021.



Ghislain Houle
Executive Vice President and Chief Financial Officer
of Canadian National Railway Company

Exhibit 4

Verified Statement of William J.
Rennicke

STB Finance Docket No. 36514

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 36514

**CANADIAN NATIONAL RAILWAY COMPANY, GRAND TRUNK CORPORATION,
AND CN'S RAIL OPERATING SUBSIDIARIES – CONTROL – KANSAS CITY
SOUTHERN, THE KANSAS CITY SOUTHERN RAILWAY COMPANY, GATEWAY
EASTERN RAILWAY COMPANY, AND THE TEXAS MEXICAN RAILWAY
COMPANY**

RENEWED MOTION FOR APPROVAL OF VOTING TRUST AGREEMENT

Verified Statement of William J. Rennie

May 24, 2021

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1. Qualifications

My name is William J. Rennie. I am a Partner with Oliver Wyman, a global general management consulting firm with 60+ offices in 31 countries. My office address is at 99 High Street, 32nd Floor, Boston, Massachusetts.

I have been a transportation executive and a consultant to railroads and motor carriers for more than 40 years. I have worked extensively with freight railroads in the United States, Canada, and worldwide. I specialize in transportation competition, as well as strategic planning, cost and revenue management, and operations. I have particular expertise in transportation economics, restructuring, organizational design, and transactions to improve the performance of rail operators, major rail equipment suppliers, and the users of transportation services.

I have worked with senior executives at all the major North American railroads – including both CN and CP – as well as with senior officials at government-owned railroads worldwide. I have testified before the United States Congress and the Canadian Parliament; provided testimony and expert witness reports to federal and state regulatory agencies regarding, among other topics, railroad competition and regulation, rate policy, and access issues; and along with the Oliver Wyman team, I have assisted parties in most of the significant rail mergers that have occurred since the 1980s. I also have participated in the development of rail regulatory regimes and competition policies for privatized railroads around the world and was the primary advisor to the Mexican government on the concessioning of Mexico's national railroad.

Before joining Oliver Wyman, I was a vice president of the Boston & Maine Railroad and a director of a truckload motor carrier. I also have held operating positions with the Southern Pacific (now Union Pacific) and New Haven (now CSX) railroads and was a transportation consultant with Deloitte Haskins & Sells (the predecessor of Deloitte & Touche).

I have a BSBA in accounting from the School of Business Administration at Georgetown University and an MBA with a concentration in transportation and logistics from the University of Minnesota. I also am a member of the Council of Supply Chain Management Professionals. A copy of my resume is attached as Appendix A.

2. Assignment and Summary of Findings

I have been asked to evaluate the Comments of the United States Department of Justice in this proceeding, in particular the Department's assertion that the proposed merger between the Canadian National Railway Company (CN) and The Kansas City Southern Railway Company (KCS) raises "competitive concerns," because of the instance in which they have "parallel" routes in Louisiana and the potential for a future buildout in Mississippi.¹ As explained below, I find the concerns raised by the Department of Justice to be significantly overstated. More specifically, I conclude:

- CN and KCS operate in Mid-America, which is one of the most competitive transportation regions in North America. They face extensive competition from other railroads, motor carriers, and barge operators. They also will now face additional rail-truck transload competition from Class I railroad CSX, which recently announced that it has agreed to buy and integrate the largest liquid bulk trucking company in North America.
- Contrary to the claims of the Department of Justice, the proposed merger is an end-to-end merger. CN and KCS overlap in a single area that is only approximately 70 miles in length. Within this area, the two companies operate a combined 178.6 route-miles of track, which constitute less than 0.7 percent of the approximately 27,000 route-miles they operate.
- In assessing the potential loss of competition at specific origins and destinations, (*i.e.*, "point competition"), I found only nine narrowly defined locations where the transaction would leave shippers without an alternative rail option. All of these can be

¹ Finance Docket No. 36514, Canadian National Railway Company, et. al. – Control – Kansas City Southern Railway Company, et. al., Comment of the United States Department of Justice, Before the Surface Transportation Board, May 14, 2021.

addressed by remedies commonly prescribed by the Board. Indeed, I understand that CN has committed to a divestiture that would ensure that shippers in the New Orleans-Baton Rouge area would enjoy the same number of options that they do today.

- The suggestion by the Department of Justice that the merger may reduce competition in Mississippi is flawed. CN and KCS are not competitors in Mississippi today. They do not serve a single customer in common. As I will demonstrate in more detail, their north-south lines are not competitive. And the Department fails to account for the Grenada Railroad, which operates a line parallel to the CN line from Memphis to near Jackson, as well as effective competition from motor carriers and barge operators.
- Further, the arguments of the Department of Justice concerning a potential loss of “buildout options” are overstated. In modern times, few if any significant buildouts have occurred in the railroad industry. The Board has addressed this issue and, where appropriate, has prescribed limited and appropriate remedies.² And to the extent there could be future buildouts, the merger of CN and KCS does not foreclose them. In addition, there are other nearby railroads to which a customer could build out that are ignored by the Department of Justice.
- Compared to these few competitive issues, I find that the combination of the routes and resources of CN and KCS will significantly enhance competition with other railroads and with the railroads’ primary competitor, the trucking industry, by creating new single-line services, such as for the agricultural and automotive sectors between Detroit, MI/Eastern Canada and Laredo, TX. In so doing, CN-KCS will provide faster, more reliable service to shippers and reduce trucking pressure on congested highways.
- Approval of the CN Voting Trust would be pro-competitive. Competition between CN and other carriers to acquire KCS is in itself an important form of competition that can deliver powerful public benefits to shippers and communities.

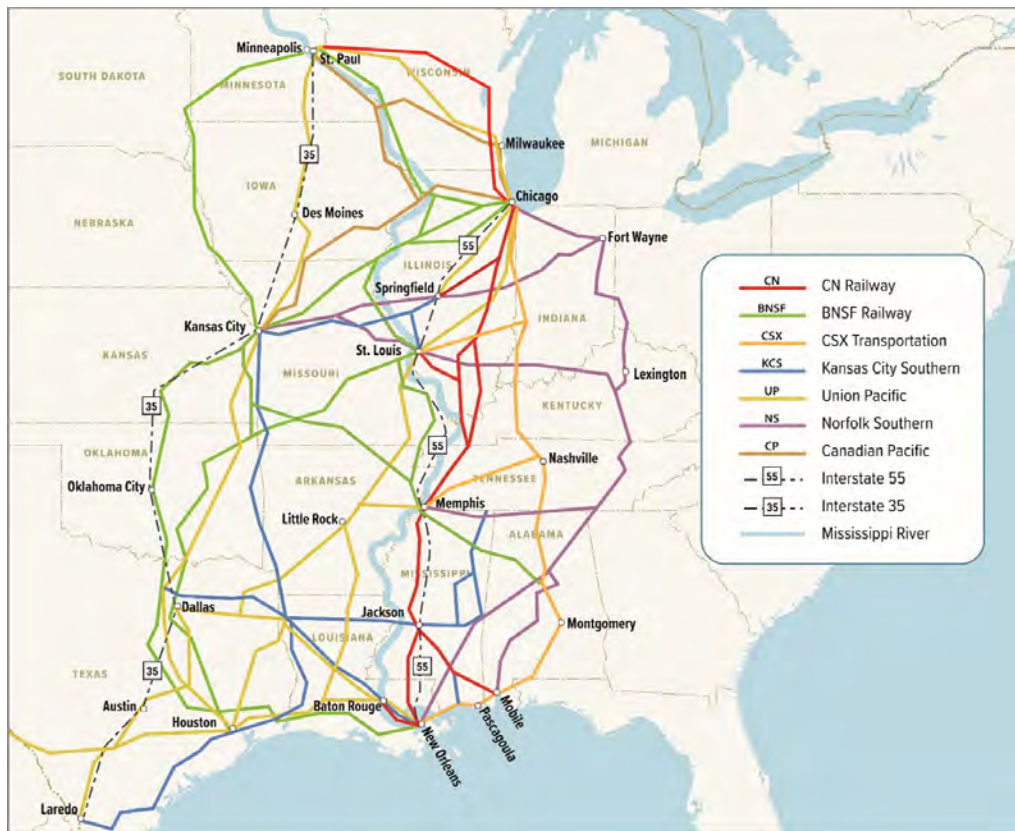
3. Competitive Landscape

CN and KCS operate in Mid-America, which is perhaps the most competitive transportation region in North America. As shown in Exhibit 1, CN and KCS face robust competition not only from five Class I railroads, but also from motor carriers operating on interstate highways that parallel railroad routes; and from barge operators on the Mississippi

² See, e.g., Finance Docket 35873, Norfolk Southern Railway Company – Acquisition and Operation – Certain Rail Lines of the Delaware and Hudson Railway Company, Inc., Surface Transportation Board Decision No. 6, May 15, 2015, p. 35.

River, its tributaries, and the Tennessee-Tombigbee Waterway. I will discuss competition between railroads (intramodal competition) and competition between railroads and other modes of transportation (intermodal competition) in turn.

Exhibit 1: North-South Modal Transportation Competition in Mid-America³



3.1. Intramodal Competition

Competition among railroads in the markets served by CN and KCS is generally pervasive. All the major markets – including Chicago, St. Louis, Kansas City, Council Bluffs/Omaha, and particularly New Orleans – are served by terminal railroad companies or through reciprocal switching arrangements that provide shippers access to at least six Class I railroads. Union Pacific (UP) and BNSF run parallel to KCS between Kansas City and New

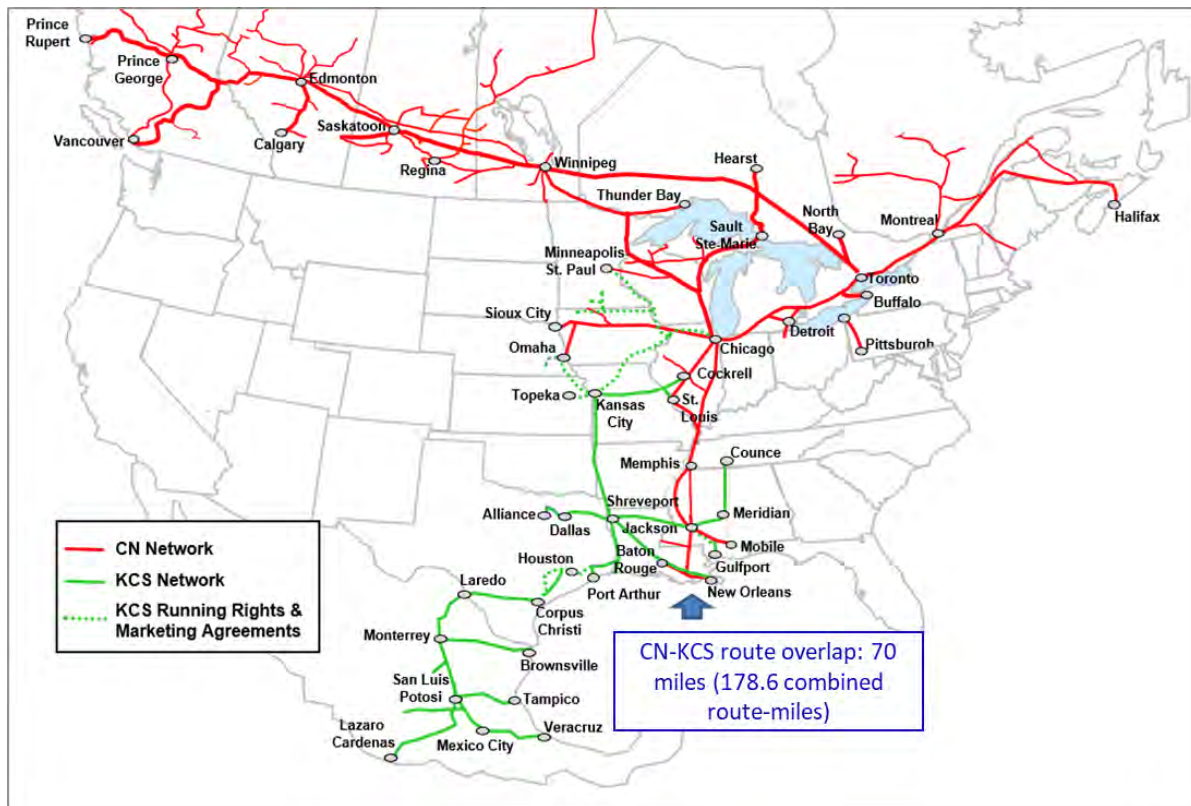
³ CN, Oliver Wyman analysis.

Orleans; and CSX, UP, and Norfolk Southern (NS) run parallel to CN between Chicago and New Orleans. BNSF and UP both provide competitive service from Minneapolis/St. Paul and the Upper Midwest to New Orleans. In addition, UP owns 26 percent of Ferrocarril Mexicano (Ferromex), the primary railroad competitor to Kansas City Southern de Mexico (KCSM), and both UP and BNSF interchange with Ferromex, providing highly competitive service to and within Mexico.

While CN and KCS each compete with all the other Class I railroads in North America, there is very little overlap between the CN and KCS systems, and thus they do not compete significantly with one another. As shown in Exhibit 2, the only area in which CN and KCS operate parallel, competing routes is an approximately 70-mile overlap between Baton Rouge and New Orleans (equal to a combined 178.6 route-miles operated by both railroads, or 0.7 percent of the approximately 27,000 route-miles in their combined system).⁴

⁴ The Department of Justice contends that CN and KCS operate parallel, competitive routes in Mississippi. As I explain below, this is not the case, and the assumed competitive issues do not exist.

Exhibit 2: The CN and KCS Systems Have Virtually No Overlap⁵



Potential Impacts on Customers Served

While the very small overlap between the CN and KCS systems strongly suggests that there will be little effect on the railroads' customers, I analyzed the customers served by both railroads to determine whether this is the case. My analysis identified 342 customers at all locations that are either served by both CN or KCS or open to service by both through reciprocal switching or terminal companies. However, my analysis determined that **only nine** of these customers, all located in the Baton Rouge-New Orleans area, would experience a loss of one of two competing railroads – known as a “2-to-1” situation. Given that CN and KCS serve approximately 4,800 unique customers in the United States (excluding double counting of customers served by both railroads), the number of customers that would see their competitive

⁵ CN-provided map, Oliver Wyman route overlap calculation using PC*Miler|Rail.

options reduced from two to one is approximately 0.2 percent of the railroads' customers.⁶ Based on my review of the shippers who will be involved in 2-to-1 situations, all are in industries that have transloading and trucking alternatives. Moreover, the divestiture of either the CN or KCS line serving these shippers will resolve this situation and assure that all nine customers continue to enjoy service by two railroads,

I understand the Board focuses on 2-to-1, rather than 3-to-2 situations.⁷ The Department of Transportation has concurred in this approach, noting that two-railroad markets generally result in rivalry rather than collusion, and that arguments to the contrary by the Department of Justice and others are incorrect.⁸ This makes good sense given the dynamics of freight competition. The presence of a single rail alternative can provide effective competition because of the characteristics of rail competition. It is well known that rail freight service is characterized by large fixed and sunk costs. Even in "duopoly" markets, where costs are sunk, two competing railroads will have incentive to compete by reducing prices toward the relatively low incremental cost of providing service. At the same time, shippers frequently can negotiate in private and play competing railroads off against each other. Source/geographic competition also can be a significant factor in constraining a railroad's rates. Finally, as I explain in detail below, a merged

⁶ Railinc Serving Carrier/Reciprocal Switching (SCRS) database; Oliver Wyman analysis. Certain customers that appear as jointly served in Chicago are excluded from the calculation, as they are geographically distant from KCS track; further, these customers would be served by all other Class I railroads.

⁷ See, e.g., Finance Docket No. 32760, Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company – Control and Merger – Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCLC Corp., and the Denver and Rio Grande Western Railroad Company, Surface Transportation Board Decision No. 44, August 6, 1996, p. 119.

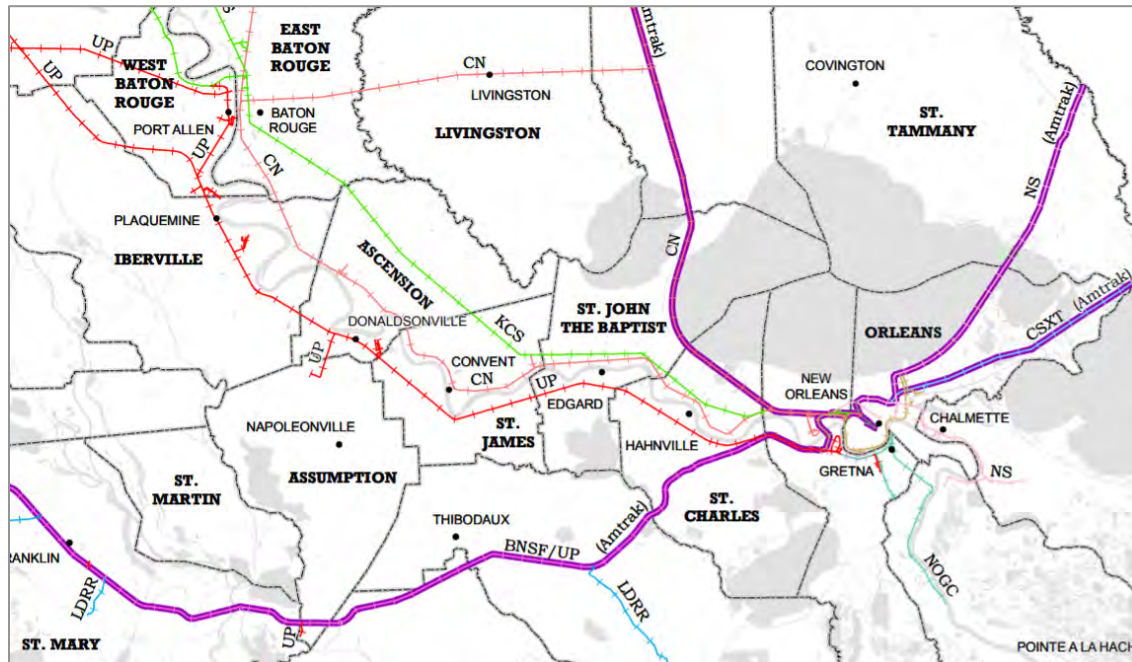
⁸ *Id.* at 118.

CN-KCS would continue to face extensive intermodal competition from motor carriers and barges.

While the Board focuses its analysis on “2-to-1” situations, to be conservative I also examined “3-to-2” situations. My analysis identified only 30 customers located in the Baton Rouge area that could face a “3-to-2” situation. These 30 customers constitute approximately 0.6 percent of the railroads’ customers. Overall, the number of 2-to-1 and 3-to-2 situations is extraordinarily small for a merger of two Class I railroads, underscoring that the proposed CN-KCS transaction would be an end-to-end vertical merger

Moreover, the limited overlap is geographically concentrated in one specific area – the Baton Rouge to New Orleans corridor. I understand that CN has committed to divestiture of a rail line in this corridor to address this limited competitive concern. Notably, as shown in Exhibit 3, the area is served by six Class I railroads, which should facilitate the sale of the divested line and ensure customers in this corridor have the same competitive options that they do today.

Exhibit 3: Baton Rouge to New Orleans Corridor⁹



The remaining 303 customers identified as served by both CN and KCS are all located in urban areas where terminal companies or reciprocal switching agreements provide customers with multiple rail choices:

- 83 are in the St. Louis, MO area; the majority of these are served by the Terminal Railroad Association of St. Louis (TRRA), which provides neutral access to UP, BNSF, CSX, and NS, in addition to CN and KCS. Others are served by BNSF, UP, and/or NS, and are open to multiple Class I railroads in addition to CN and KCS. In no cases would customers be served by fewer than four railroads.
- 76 are located in Illinois, primarily in East St. Louis. This area is served by TRRA and the Alton & Southern Railroad, both of which provide neutral access to five Class I railroads. An additional three customers are located in Springfield, IL and are served by the Illinois & Midland Railroad (IMRR), with connections to four Class I carriers.
- 68 are located in the New Orleans, LA area; 49 of these are served by the New Orleans Public Belt Railroad (NOPB), which provides connections to six Class I railroads. The remaining shippers are served by NS and KCS (connecting with five Class I railroads), UP (connecting with four Class I railroads), or the New Orleans & Gulf Coast Railroad (NOGC) offering connections with five Class I railroads.

⁹ Louisiana Department of Transportation and Development.

- 54 are located in Mobile, AL, where they are served by the Terminal Railroad Alabama State Docks of the Alabama State Port Authority (TASD), a neutral switching carrier connecting with five Class I railroads.
- The remaining 22 customers are in the Omaha, NE to Council Bluffs, IA region; 17 of these are physically served by UP, with connections to three other Class I railroads and the Iowa Interstate Railroad (IAIS); and the remaining five are physically served by BNSF, with connections to three other Class I railroads.

As Exhibit 4 shows, none of the customers served by CN and KCS that are located in terminal areas would be served by fewer than three railroads following a merger of the two railroads, and the majority would be served by four or five railroads.

Exhibit 4: Post-Merger Competitive Options in Terminal Areas¹⁰

Terminal Area	Served by Terminal Railroad?	Physically Serving Carriers	3 Class I Connections After Merger	4 Class I Connections After Merger	5 Class I Connections After Merger
St. Louis, MO-IL	✓	TRRA, UP, NS, BNSF, ALS		✓	✓
New Orleans, LA	✓	NOGC, NOPB, NS, KCS, UP		✓	✓
Mobile, AL	✓	TASD		✓	
Springfield, IL		IMRR	✓	4 connections if IAIS is included (service to Chicago and connecting to all Class I carriers)	
Council Bluffs/ Omaha, IA-NE		BNSF, UP, CN	✓		

Mississippi Service Impacts

The Department of Justice also references a perceived loss of potential competition in Mississippi, because CN and KCS operate parallel routes in the state.¹¹ This concern is misplaced. For a start, CN and KCS are not the only railroads in the state – Mississippi is served

¹⁰ Railline data, Oliver Wyman analysis. Iowa Interstate Railroad (IAIS) is a Class II railroad connecting Council Bluffs/Omaha with Chicago. IAIS connects with all Class I railroads except KCS at Chicago.

¹¹ Finance Docket No. 36514, op. cit., p. 2.

by five Class I railroads that operate a total of 1,644 miles of track within the state and 24 Class III railroads that operate another 898 miles.¹²

While a superficial analysis might indicate that CN and KCS operate parallel north-south mainlines in Mississippi, in fact the KCS line is a branch line acquired by KCS in the course of its purchase of MidSouth Rail Corporation in 1994. Unlike the CN line, the KCS line is not a through route, but rather terminates just north of the Tennessee border. And unlike the high-density CN mainline, which has a speed limit of 60 mph for freight trains and 79 mph for passenger trains, the KCS line is a dead-end branch line that has no signals, meaning that under Federal Railroad Administration regulations, it has a speed limit of 49 mph. Moreover, more than half of the KCS line is limited to speeds of 25 mph or less. Given these restrictions, the KCS line cannot be viewed as competitive with CN's north-south mainline through Mississippi.¹³

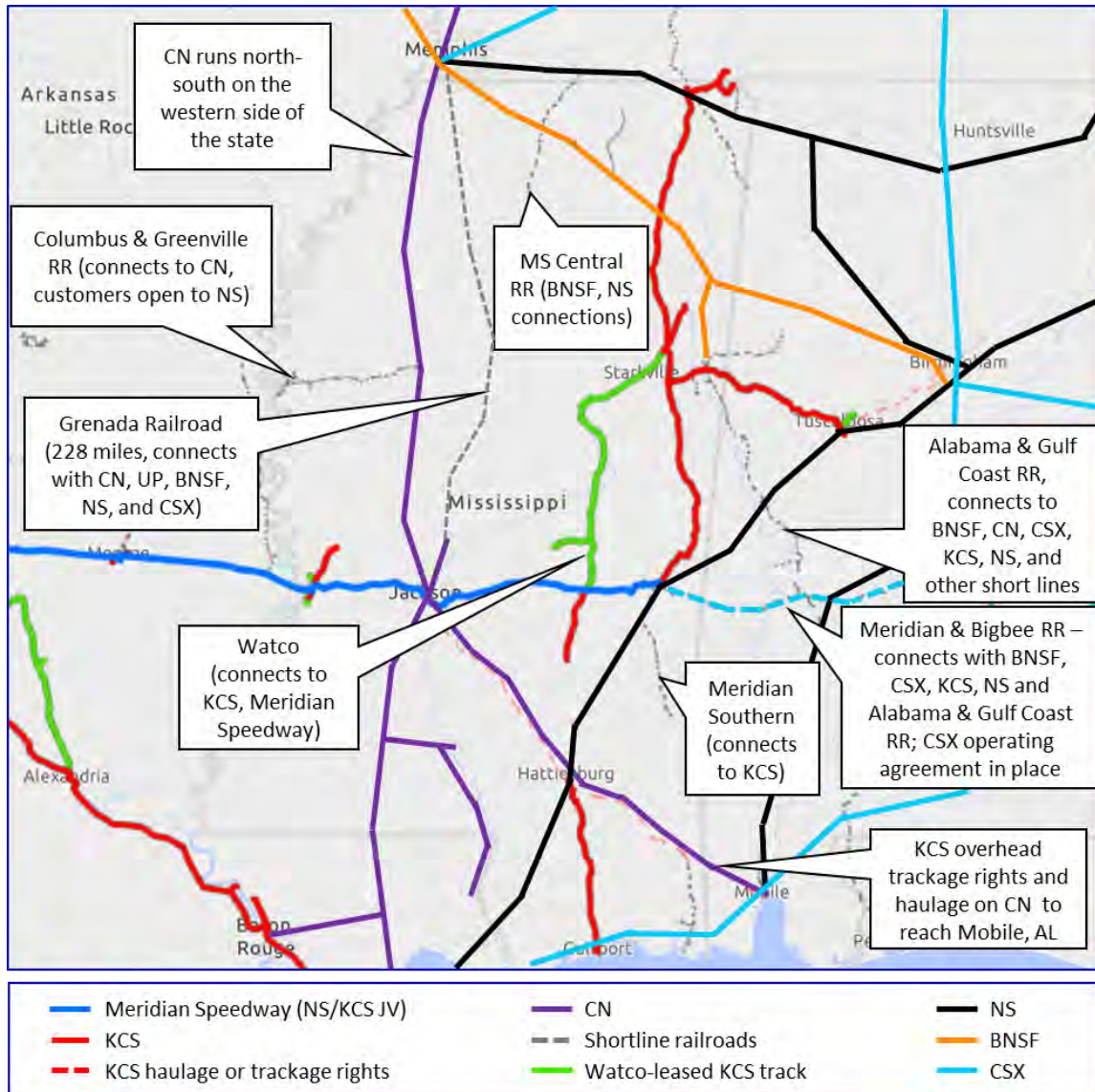
In addition, the CN and KCS lines generally are many miles apart and intersect only at Jackson and Hattiesburg, so it is not surprising that my analysis found that CN and KCS do not serve a single customer in common in Mississippi.

The Department of Justice also appears to have overlooked another north-south line in Mississippi. As shown in Exhibit 5, the Grenada Railroad parallels CN's mainline from Memphis, where it interchanges with every Class I railroad (except CP) to near Jackson. As such, it provides an alternative north-south route.

¹² Mississippi Department of Transportation, Official Railroad Map of Mississippi.

¹³ One other north-south line owned by KCS in Mississippi runs from Bay Springs, MS to Ackerman, MS. This line has been leased since 2005 to the Mississippi Southern Railroad, a subsidiary of Watco. Like most Class III railroads, the Mississippi Southern operates on the line at low speeds. The Mississippi Southern would not be a potential buildout partner for customers on the merged CN and KCS, because it interchanges solely with KCS.

Exhibit 5: Rail Service for the Jackson, MS Area¹⁴



In Mississippi, as elsewhere, CN and KCS face significant competition from motor carriers. For example, considering only metallic ores, coal, crude oil and natural gas, and non-metallic minerals – all bulk commodities that are important sources of traffic for railroads – the 2019 Mississippi State Freight Plan shows that trucks carried 94.2 percent of these commodities

¹⁴ Mississippi Department of Transportation, Official Railroad Map of Mississippi; Kansas City Southern Network Map; Oliver Wyman analysis.

(in tons) that originated in the state. Railroads carried 3.5 percent and barges carried the remaining 2.3 percent of tonnage.¹⁵

Finally, the Department of Justice hypothesizes there will be a loss of competition due to the merger because shippers on one railroad that might have built a line to reach a competing railroad will not be able to do so. This claim is implausible.

First, to be feasible, a build-in/build-out project requires that the lines of two railroads be located close together. In Mississippi, this occurs only in Jackson, where the lines of CN and KCS cross; and in Hattiesburg, where a non-contiguous KCS branch line and a CN line connect.¹⁶ As discussed in detail in the case of a proposed build-out in Geismar, LA, parties wishing to build a line of railroad to connect to a competing railroad are subject to the requirements of 49 U.S.C. §10901, which entails, among other requirements, successful completion of an environmental review. The parties building the line must either acquire land or proceed under the requirements of eminent domain and also must bear the expense of building and maintaining the line. Outside of the meet points at Jackson/Hattiesburg, CN and KCS lines are many miles apart, and it is simply not conceivable that a shipper on one side of Mississippi would incur the construction and maintenance expense and deal with the environmental issues involved to build out across the state to reach the other railroad. This is especially true since the Grenada Railroad, which runs north-south between the CN and KCS lines, will remain available after the merger. For all of these reasons, it would not be reasonable to conclude that a merger of CN and KCS would have any real effect on the buildout options available to shippers located on their lines in Mississippi.

¹⁵ [2019 Mississippi State Freight Plan](#). I also examined “3-to-2” situations.

¹⁶ It is my understanding that there are no joint customers in Hattiesburg. CN has one customer that is located near to the KCS line but not served by KCS.

Second, lengthy buildouts are a mythical concept in today's economic and regulatory environment. The economic costs and regulatory burdens associated with buildouts also mean that even a buildout in Jackson or Hattiesburg is unlikely. In fact, the potential for customers in Jackson or Hattiesburg served by either CN or KCS to build lines connecting to the other railroad has existed for years. In 1986, investors purchased 373 miles of Illinois Central Gulf (ICG, now CN) rail lines that crossed the ICG north-south main line at Jackson and extended to Gulfport from the ICG Jackson-Mobile line at Hattiesburg to create the MidSouth Rail Corporation. In 1994, KCS purchased the lines from MidSouth. During that time, **no shipper** has undertaken a build-out project in Jackson or Hattiesburg. In fact, I am not aware of any significant build-out projects undertaken anywhere in the United States in the past several decades.

Moreover, even if buildouts were feasible, a merger of CN and KCS need not foreclose the possibility of future buildouts. The Board has addressed this issue in the past by imposing a condition that grants trackage rights to connect a competing railroad to a viable build-out project, should the project be constructed. Such a commercial arrangement could be applied to the benefit of a shipper on a CN or KCS line in Mississippi, if an individual customer could make a convincing case that it would lose a genuine competitive option.

3.2. Intermodal Competition

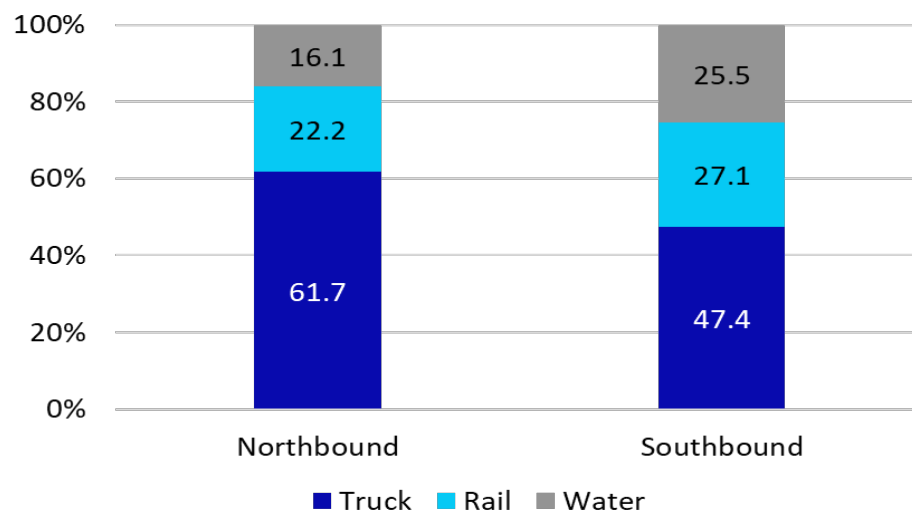
Above, I have demonstrated that the Department of Justice' concerns are overstated even if one only looks at how a CN-KCS merger would affect shippers' rail options in Louisiana and Mississippi. But rail is only one of multiple transportation modes used by shippers in the central United States region to move freight, and it is not even the predominant mode of transport. CN and KCS face pervasive and effective intermodal competition from motor carriers and barge

operators competing for freight in the Mid-America region between the Upper Midwest and the Gulf Coast.

Motor carriers dominate the market for higher value, time-sensitive freight, and barge operators compete with railroads for agricultural commodities and other bulk traffic. Interstate 55 parallels the CN mainline from Chicago to Louisiana, where it connects with Interstate 10 into New Orleans. The Mississippi River system – including the Arkansas, Missouri, Ohio, and Illinois Rivers – runs parallel to the CN and KCS systems. As Exhibit 6 clearly shows, railroads account for less than 30 percent of freight tonnage moving northbound or southbound between the Upper Midwest and Gulf Coast.

Exhibit 6: Trucks and Barges Dominate Transport for the Upper Midwest and Gulf Coast¹⁷

Percentage share of tons by mode

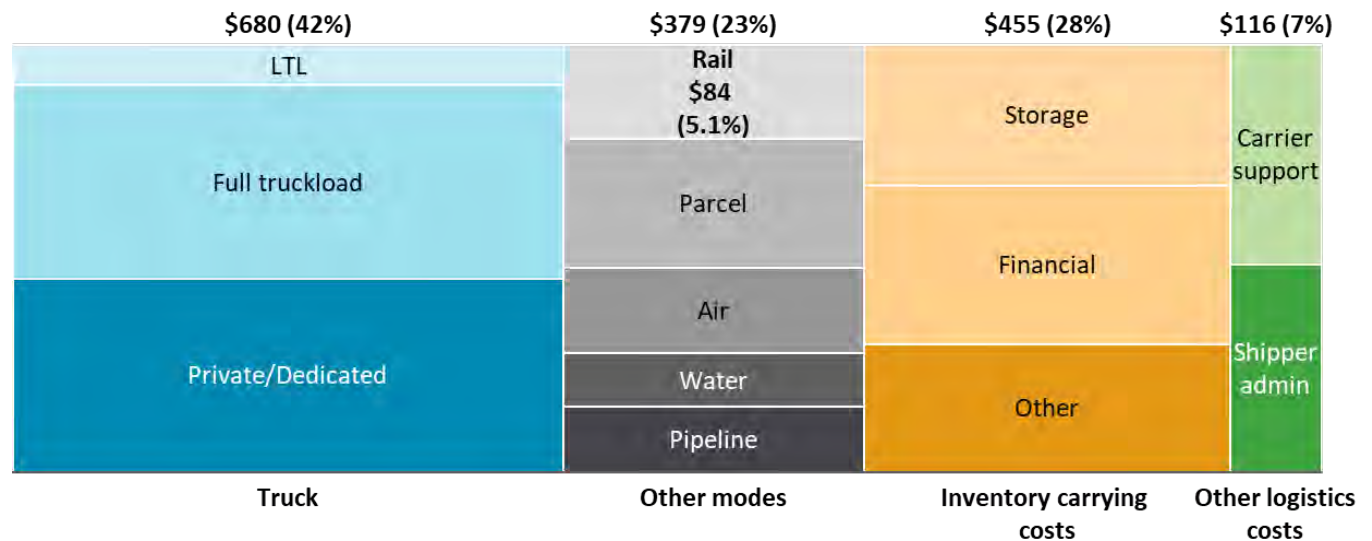


Another way to analyze intermodal competition is in terms of total logistics costs. As Exhibit 7 illustrates, railroads account for only about five percent of total logistics spend in the United States, while trucks account for 42 percent.

¹⁷ IHS, Transearch Data 2019. Northern states include ND, SD, NE, KS, MN, IA, MO, WI, IL, IN, MI, OH. Southern states include TX, OK, AR, LA, MS, AL, TN, KY.

Exhibit 7: US Business Logistics Costs¹⁸

\$US billions (percent of total)



As these exhibits show, motor carriers are effective competitors to railroads for many products shipped by KCS and CN. They can provide single-line service for freight from any shipper in the region to any consignee in the region. At distances of under 1,000 miles between Chicago and New Orleans, a truck can complete the trip in two days, while rail can take three to four days, especially if traffic must be interchanged between railroads. In addition, the Mississippi River system provides a unique navigable water corridor linking ports throughout the Midwest with the deep-water Port of New Orleans. Trucks can move grain and other cargoes from ports on the river to poultry feedlots and to other consumers throughout the Southeast.

Given the pervasive intramodal competition among railroads in the Mid-America region served by CN and KCS, and the ubiquitous intermodal competition with trucks and barges in the

¹⁸ “Annual State of Logistics Report 2020,” Council of Supply Chain Management Professionals; Oliver Wyman analysis.

north-south market, the merger of KCS and CN would not have any appreciable adverse effects on competition.

4. Benefits of the Merger

As discussed, CN and KCS operate in an intensely competitive environment in the Mid-America region, and the proposed merger is in part a response to that environment. But the Department of Justice also disregards the competitive benefits of the merger, benefits that may be lost if the Board does not approve a Voting Trust for the CN-KCS transaction. Competition between CN and other carriers to acquire KCS is in itself an important form of competition that can deliver powerful public benefits to customers and communities.

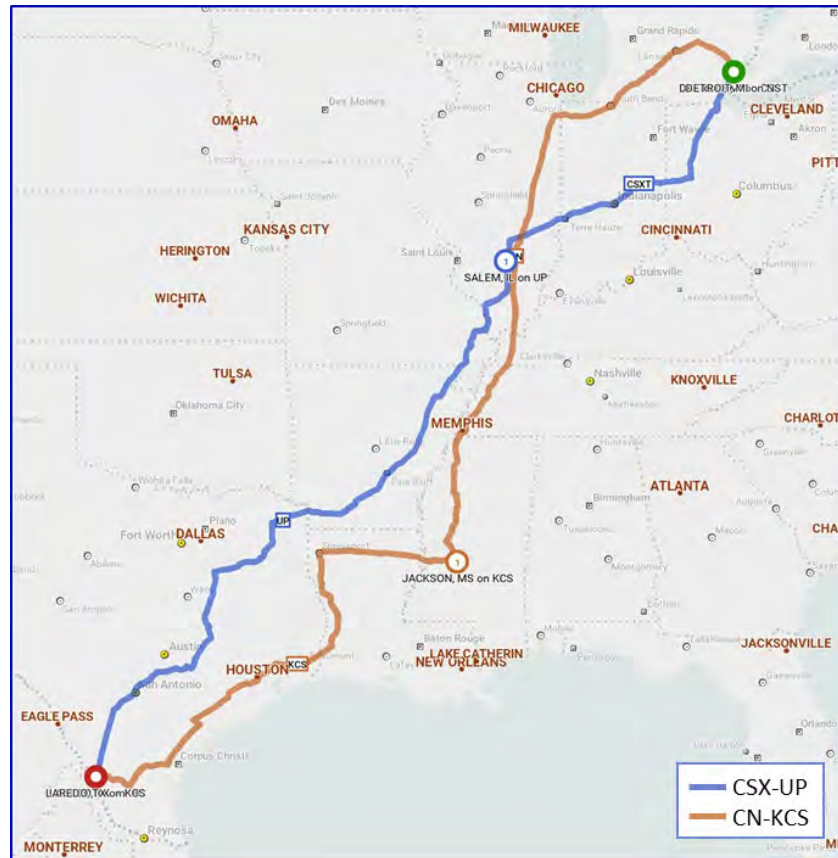
Over the past 20 years, railroad managers have focused increasingly on tightly managing the utilization of assets such as freight cars, locomotives, track, and crews. Focusing on asset utilization allows railroads to more tightly control operations and reduce costs, which makes them more competitive with motor carriers – their primary competitors.

One of the key tenets of modern railroad management is to minimize equipment dwell time, both in classification yards and at customer locations. Each time a freight car enters a classification yard, it stays 24 hours on average, and time at customer locations can range from one day if well managed to weeks if not. The CN-KCS merger would, of course, eliminate one day of yard time each time a car would otherwise have been interchanged between CN and KCS, but it would do much more as well: It would allow the merged railroad to build and manage blocks of cars moving over long distances without the need to stop en route in classification yards. It also would allow the combined railroad to better manage its cars, since they would remain under one management much more of the time.

The objective of the merger is to provide a rail-based offering that can compete with trucks in terms of service and price by providing single-line service as much as possible from origins to destinations. As illustrated by the following examples, the merger would create new single-line options for current railroad customers, such as between Canadian and Midwestern grain producers and Mexican consumers.

Example 1: Eastern Canada and Detroit to Laredo and Mexico. The merger of CN and KCS would create new single-line service where none exists today, enhancing competition between motor carriers and railroads as well as among railroads. For example, as shown in Exhibit 8, customers in the market linking Eastern Canada and Detroit with Laredo, TX currently do not have a single-line service option. After the merger of CN and KCS, the route could be served by an additional single-line service using CN-KCS, with a seamless, same-system connection to KCSM to reach points throughout Mexico. This new route would compete with a truck dray from Eastern Canada to Detroit with rail movement to Laredo via CSX-UP and an interline connection to FXE or KCSM at Laredo. A merger of CN and KCS would create a new competitive single-line option for customers in this market that bypasses Chicago and would allow CN and KCS to compete more effectively with trucks and with CSX-UP.

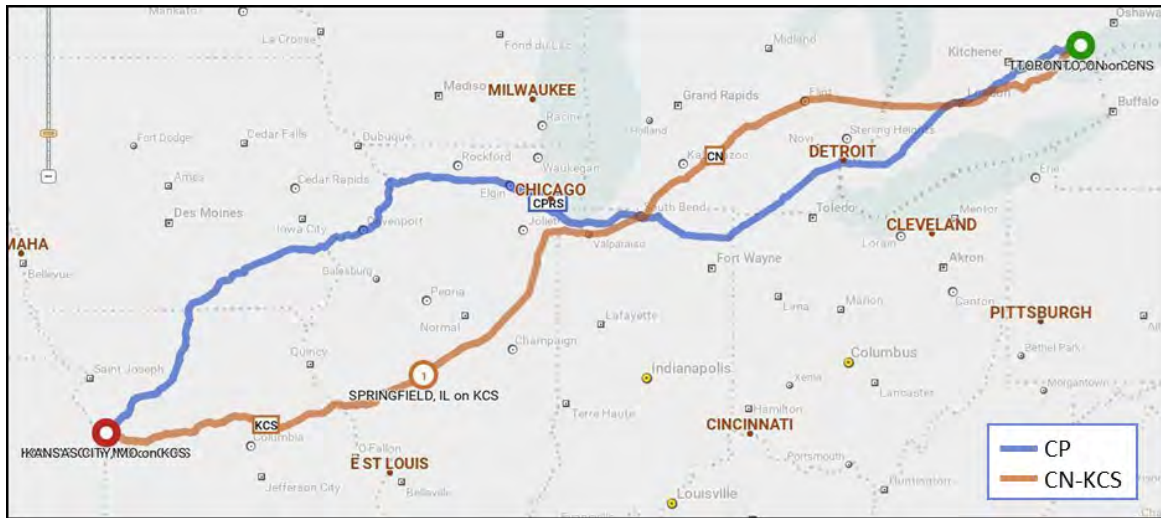
Exhibit 8: Eastern Canada and Detroit to Laredo, Bypassing Chicago¹⁹



Example 2: Toronto/Detroit to Kansas City. A merger of KCS and CN also would provide additional single-line competitive options. For example, ports and manufacturers in Eastern Canada shipping via Toronto to the Midwest and Southwest currently have one single-line option to Kansas City, operated by CP (using rights over NS's tracks between Detroit and Chicago). A merger of CN and KCS would create a competitive single-line option (Exhibit 9). Eliminating the costs and delays involved in their current joint-line service would allow CN and KCS to better compete with the CP route.

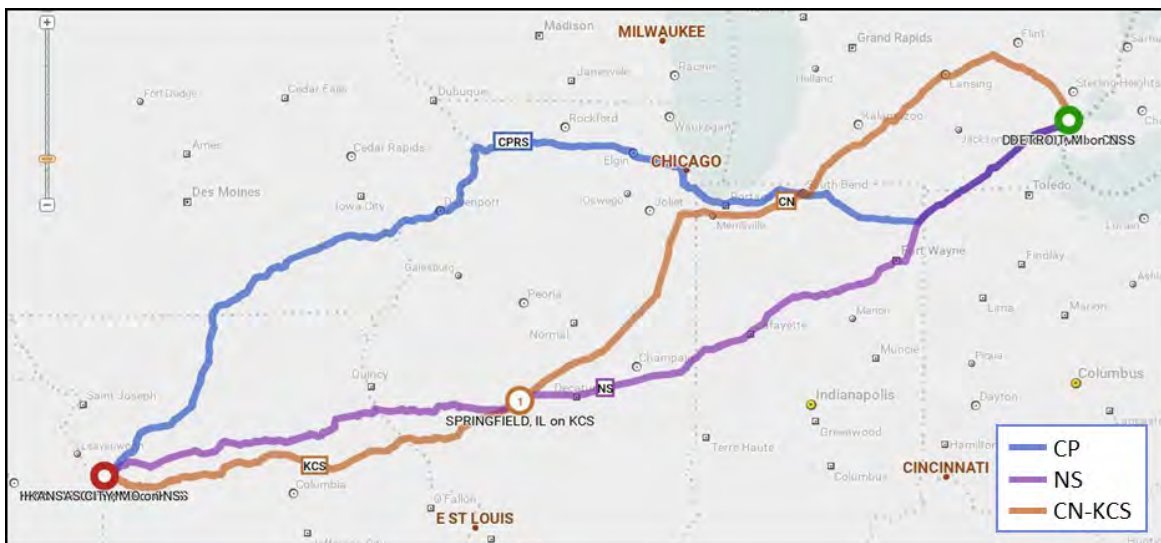
¹⁹ Created by Oliver Wyman using PC*Miler|Rail.

Exhibit 9: Toronto to Kansas City via the “Springfield Speedway”²⁰



Between Detroit and Kansas City, shippers currently have single-line service via NS or CP (using rights over NS's tracks between Detroit and Chicago). The CN merger with KCS would create an additional single-line competitor to enhance competition with both trucks and competing railroads in this key corridor (Exhibit 10).

Exhibit 10: Detroit to Kansas City via the “Springfield Speedway”²¹



²⁰ Created by Oliver Wyman using PC*Miler|Rail.

²¹ Created by Oliver Wyman using PC*Miler|Rail.

Clearly, a merger strategy that improves service and reduces costs to allow the merging railroads to compete more effectively with motor carriers and other railroads is in the interest of the railroads, their customers, and the general public. The combination of the routes and resources of CN and KCS would significantly enhance competition with other railroads and with the railroads' primary competitor, the trucking industry, by creating new single-line services.

* * * * *

The focus of this proceeding is a request by CN to approve the Voting Trust it has proposed for KCS stock during the pendency of a merger proceeding. As I understand it, the Voting Trust proposed by CP, which the Board has approved, is identical to the Voting Trust proposed by CN. I understand that the Department of Justice has opposed CN's use of a voting trust on the grounds that, unlike the CP and KCS, the CN and KCS merger is a horizontal merger that presents additional competitive issues. As I have demonstrated, the CN merger with KCS is in all material respects a vertical merger. The overlap between the CN and KCS systems is *de minimis* and geographically concentrated in a single corridor. As such, this overlap is easily remedied, and I understand that CN has committed to a post-merger divestiture that would fully address this limited concern.

In short, contrary to the position taken by the Department of Justice, a merger of CN and KCS would be a vertical merger that presents very few competitive issues and is, from a regulatory perspective, not materially different than the proposed CP merger with KCS.

On the other side of the slate, the benefits that would be achieved through the merger – and which stand to be lost if the merger is delayed or lost – are significant. As I have documented, the primary competition in the transportation industry is not between railroads, but between motor carriers and railroads. Trucking has a significant advantage in terms of providing

single-carrier, reliable service. The merger of CN and KCS would create opportunities to develop new single-line services to enhance competition with the trucking industry. The merger also would enhance competition among railroads, to the benefit of shippers. I have provided examples of situations in which a CN merger with KCS would allow for single-line options for shippers where none exist today or for additional single-line services to enhance competition among railroads.

In summary, my findings are that a merger of CN with KCS will present minimal, and easily remedied, competitive issues that are more than offset by the enhancements to competition that the merger would create between railroads and motor carriers, as well as among railroads. Unfortunately, these benefits could be lost if the Voting Trust is not approved.

VERIFICATION

I, William J. Rennie, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 24th day of May, 2021.

A handwritten signature in black ink, appearing to read "William J. Rennie", is positioned above a horizontal line.

William J. Rennie

Appendix A. William J. Rennie Resume

William J. Rennie, a Partner in Oliver Wyman's Transportation & Services practice, specializes in transportation strategic planning, management, marketing, economics, and operations. He has particular expertise in restructuring, organizational redesign, and transactions to improve financial and operating performance of transport operators around the world.

Mr. Rennie's career in the transportation industry spans over four decades, including senior management and operating positions at Class I railroads. He has been in the forefront of restructuring and transaction-related activities for both private and government-owned transport operators. He has also managed the development of strategic and financial planning, simulation, and control models for transportation companies. Mr. Rennie has worked closely with service providers and operating companies; commercial and investment banks; large investors and investment fund firms; operators; equipment manufacturers and leasing companies; construction and engineering companies; and government transportation entities in many countries.

Drawing on his extensive experience, Mr. Rennie has served as an expert witness in litigation, regulatory and arbitration cases, and he has provided expert testimony before the Canadian and US legislatures. His experience includes the following:

Testimony on Behalf of or Before	Subject	Year
US District Court for the District of Columbia	Civil Action No. 2016-1534 (confidential client)	2020
<i>Provided expert witness report on the availability of rail tank cars to haul crude oil volume in lieu of an existing pipeline, and the impact of additional crude oil traffic on rail congestion in the US Northern Tier</i>		
Comisión Federal de Competencia Económica (COFECE)	Effective Rail Market Competition Assessment	2020
<i>Provided expert rebuttal report, as an input to a writ of amparo (amicus curiae), analyzing COFECE findings on the lack of effective rail competition for certain commodity/route pairs</i>		
Confidential North American client	Crude-by-Rail Volume Movement Analysis	2016-2020
<i>Provided expert witness reports analyzing failure of a crude-by-rail shipper to provide sufficient trains and capacity to deliver minimum monthly volume commitments to a terminal operator</i>		
Confidential arbitrator	Car Cycle Process Improvement Programs	2020
<i>Provided an expert witness report on the use of car cycle process improvement programs by North American Class I railroads</i>		
Confidential litigation	Infrastructure Component Reliability Assessment	2019
<i>Provided expert witness testimony on the installation, operation, maintenance, and reliability of a key rail infrastructure component</i>		

Testimony on Behalf of or Before	Subject	Year
Comisión Federal de Competencia Económica (COFECE)	Concession Design and Railroad Pricing	2019
<i>Provided an expert witness report that outlined concession design and railroad pricing concepts, and analyzed rates for specific route/commodity pairs subject to review</i>		
Confidential Competition Bureau	Analysis of the Competitive Impacts of a Proposed Acquisition of a Trucking Company by a Railroad	2018
<i>Provided an expert witness report detailing the range of effective sources of competition for a country's trucking and intermodal industries</i>		
Confidential arbitrator	Asset Management and Capital Planning – Transit	2018
<i>Provided an expert witness report on a US transit agency's adoption of and compliance with both mandated and best practice transit industry approaches to asset management and capital planning, as an</i>		
Comisión Federal de Competencia Económica (COFECE)	Hearing on Effective Competition in the Provision of Rail Services	2018
<i>Provided expert witness testimony on the state of rail competition and the impacts of concessioning in Mexico</i>		
Federal Transit Administration, Northern Indiana Commuter Transit District	Assessment of Double-Tracking Options and Impact on Freight Operations	2017
<i>Provided an expert report assessing FTA/NICTD double-tracking options for a shared-used main line and the impact on freight operations for a local yard</i>		
International Court of Arbitration	Rail and Port Capacity, Operations, Investment	2017
<i>Provided several expert witness reports on rail and port capacity, operations, and investment for an arbitration between a bulk mine-port owner and a state-owned railroad</i>		
Confidential North American client	Federal Economic Competition Commission, Investigative Authority, Preliminary Opinion, DC 002-2016	2017
<i>Provided an expert witness statement on the state of rail competition in Mexico and the potential impacts of mandated trackage rights</i>		
Minnesota Public Utilities Commission	Applications of Enbridge Energy for a Certificate of Need for the Line 3 Replacement Project in Minnesota (PL-9/CN-14-916 & PL-9/PPL-15-137)	2017
<i>Provided an expert witness report on likely crude-by-rail transportation routes in the event of non-approval of the project, and the potential impact on other freight and passenger traffic on these routes of additional crude-by-rail traffic</i>		
US Surface Transportation Board	Ex Parte No. 711 (Sub-No. 1), Reciprocal Switching: Opening Comments	2016
<i>Provided an expert witness report on the potential impact on US railroad operating performance of mandated switching</i>		

Testimony on Behalf of or Before	Subject	Year
Federal Railway Administration	Notice of Proposed Rulemaking: Train Crew Staffing (FRA-2014-0033)	2016
<i>Provided an expert witness report on the comparative characteristics of US and European railroads and an analysis of European one-person and two-person train crew safety data</i>		
Pipeline and Hazardous Materials Safety Administration/ Federal Railway Administration	Assessment of the Enhanced Braking Requirements in the Hazardous Materials: Enhanced Tank Car Standards and Operational Controls for High-Hazard Flammable Trains: Final Rule	2015
<i>Provided an expert witness report comparing PHMSA's data to the actual results of electronically controlled pneumatic (ECP) brake testing and the costs of ECP brake implementation for the US freight rail industry</i>		
Minnesota Public Utilities Commission	Application of the North Dakota Pipeline Company for a Certificate of Need for the Sandpiper Expansion and Extension Project (PL-6668/CN-13-473)	2014
<i>Provided an expert witness report on likely crude-by-rail transportation routes in the event of non-approval of the project, and the potential impact on other freight and passenger traffic on these routes of additional crude-by-rail traffic</i>		
US State Department	Review of Enbridge Energy's Application for Amendment of the August 2009 Presidential Permit for Line 67, Supplemental Environmental Report on "No Action" Alternatives	2014
<i>Provided an expert report identifying "no action" transportation options (i.e., if permit amendment were denied). This assessment included detailed route descriptions, capacity constraints, and capital investment requirements for the most feasible "no action" options</i>		
Federal Energy Regulatory Commission	Petition for Declaratory Order, North Dakota Pipeline Company LLC (OR14-21-00)	2014
<i>Provided an expert witness statement on the nature of railroad-shipper contracts, the characteristics of rail network capacity, and the multi-commodity nature of rail operations</i>		
Minnesota Public Utilities Commission	Application of Enbridge Energy for a Certificate of Need for the Line 67 Station Upgrade Project, Phase 2 (PI-9/Cn 13-153)	2014
<i>Provided expert witness testimony on the potential impact of the "no action" alternative (i.e., non-approval of the upgrade project) on freight and passenger rail capacity and services in the State of Minnesota</i>		
US Surface Transportation Board	Ex Parte No. 711, Petition for Rulemaking to Adopt Revised Competitive Switching Rules	2014
<i>Provided expert witness testimony concerning the operation of railroad interchanges and the potential service and cost impacts of a proposed change to switching rules</i>		

Testimony on Behalf of or Before	Subject	Year
US Surface Transportation Board	Finance Docket No. 27590/4, TTX Company Application for Approval of Pooling of Car Service with Respect to Flatcars	2014
<i>Provided an expert report assessing the benefits provided by TTX's flatcar pooling activities and the potential consequences for the railroad industry if TTX were no longer authorized to engage in pooling</i>		
US District Court for the District of Columbia	Civil Action MDL No. 1869 (confidential client)	2013
<i>Provided expert witness testimony on surface freight modal competition and rail freight network operations</i>		
US Surface Transportation Board	Genesee & Wyoming Application for Control of RailAmerica, FD 35654	2012
<i>Provided an expert report on the impact of G&W's acquisition of RailAmerica on competition in the North American rail industry</i>		
Department of Commerce and Consumer Affairs, State of Hawaii	Evidentiary Hearing in the Matter of Sumitomo Corporation of America vs. City and County of Honolulu and Ansaldo Honolulu JV (PCX-2011-5)	2011
<i>Provided expert witness testimony on price realism and past performance as a criterion in bid evaluations</i>		
US Surface Transportation Board	Ex Parte No. 705, Competition in the Railroad Industry	2011
<i>Provided expert witness testimony concerning the current state of competition in the freight railroad industry and proposals to change the current regulatory structure</i>		
Confidential North American client	Confidential arbitration proceeding	2010
<i>Provided expert witness testimony on rail costs and rates for an arbitration between a company-owned bulk railroad and a major shipper</i>		
Confidential North American client	Confidential arbitration proceeding	2010
<i>Advised on approaches and analytic techniques to more accurately attribute variable and fixed costs in a volatile volume environment. Built a dynamic tool that captured all direct cost for a commodity's movement to calculate the true cost to serve at various volume levels</i>		
US Surface Transportation Board	Standalone rate case, NOR 42110 (confidential client)	2010
<i>Provided expert witness testimony on railroad general and administrative costs in a standalone rate case between a North American Class I railroad and a major shipper</i>		
US District Court for the California Eastern District	Civil Action No. 08-CV-1086-AWI (confidential client)	2009
<i>Provided expert witness testimony with regard to the appropriate rate divisions and escalation of revenue shared between two railroads, and estimated damages for the client</i>		
US House of Representatives Committee on Transportation & Infrastructure	Hearing on Rail Competition and Service	2007
<i>Provided expert witness testimony evaluating the current performance of the US freight rail industry, the challenges it will face, and the potential for differential pricing to support a sound US rail network</i>		
US House of Representatives Committee on Transportation & Infrastructure	Congressional Forum on High-Speed Rail	2007

Testimony on Behalf of or Before	Subject	Year
<i>Provided a perspective on the role high-speed rail could play in the United States, potential high-speed rail markets, structural reform options, and options for public-private development of high-speed rail</i>		
US Bankruptcy Court, Southern District of Texas	Confidential bankruptcy proceeding	2007
<i>Provided expert witness testimony that a copper refining mill satisfied the criteria to be considered a going concern and the appropriate methods for valuing such an operation</i>		
Confidential North American client	Confidential arbitration proceeding	2006
<i>Provided expert witness testimony on 1) trends in the North American surface transportation and logistics market, with a focus on motor carriers, and 2) third-party logistics contracting processes and risk mitigation strategies for an arbitration between a major consumer products company and a third-party logistics provider</i>		
Confidential Canadian client	Confidential arbitration proceeding	2006
<i>Provided expert witness testimony on the North American rail wheel market and rail wheel supply and demand for an arbitration between a railroad equipment distributor and a European manufacturer</i>		
US District Court of New Jersey	Civil Action No. 05-4010 (confidential client)	2005
<i>Provided expert witness testimony on the interface between rail and intermodal facilities for litigation involving a Class II railroad and state environmental agency</i>		
Confidential Canadian client	Confidential arbitration proceeding	2005
<i>Provided expert witness testimony on rail costs and rates for an arbitration between a company-owned bulk railroad and a major shipper</i>		
Confidential Canadian client	Confidential arbitration proceeding	2005
<i>Provided expert witness testimony on rail costs and rates for an arbitration between a company-owned bulk railroad and a major shipper</i>		
Confidential Canadian client	Confidential arbitration proceeding	2005
<i>Provided expert witness testimony on rail costs and rates for an arbitration between a company-owned bulk railroad and a major shipper</i>		
US Surface Transportation Board	Standalone rate case, NOR 41191 (confidential client)	2004
<i>Provided expert witness testimony analyzing the construction schedule and cost estimates for a standalone railroad in a dispute between a utility and railroad over common carrier rates</i>		
Confidential Canadian client	Confidential arbitration proceeding	2004
<i>Provided expert witness testimony on rail costs and rates for an arbitration between a company-owned bulk railroad and a major shipper</i>		
US Surface Transportation Board	Ex Parte No. 646, Rail Rate Challenges in Small Cases	2004
<i>Submitted a statement that identified key issues and challenges facing the rail industry (in particular long-term capital funding needs) and explained how the risk of increasing the regulatory exposure of significant portions of railroad revenue would adversely affect the financial condition of the industry and its ability to meet the challenges it faces.</i>		
US House of Representatives Committee on Transportation and Infrastructure, Subcommittee on Railroads	Hearing on the Status of the Surface Transportation Board and Railroad Economic Regulation	2004

Testimony on Behalf of or Before	Subject	Year
<i>Testified regarding Oliver Wyman's perspective on the state of the railroad industry, including its current financial conditions and transformation since enactment of the Staggers Rail Act of 1980</i>		
US Surface Transportation Board	Arbitration (confidential client)	2003
<i>Submitted a statement analyzing the economic and business conditions faced by the railroad industry and by a Class I railroad preceding its decision to furlough certain MOE and MOW employees</i>		
US House of Representatives Committee on Transportation and Infrastructure, Subcommittee on Railroads	Hearing on Passenger Rail Service in America	2002
<i>Testified regarding worldwide trends in private sector involvement in passenger railroad restructuring and privatization, and potential public policy changes and restructuring options for the US passenger rail system</i>		
US Senate Commerce Committee	Hearing on S. 1991, the National Defense Rail Act	2002
<i>Testified as to worldwide trends toward private sector involvement in passenger railroad restructuring and privatization over the past 10 years</i>		
Canadian Transportation Agency	In the matter of an application by the Ferroequeus Railway Co. Ltd. pursuant to sections 93 and 138 of the <i>Canada Transportation Act</i> , seeking third-party running rights over CN infrastructure	2002
<i>Testified as to the adverse impacts on CN and the Canadian rail system of granting FE, a "virtual railroad," forced access to CN's privately owned infrastructure</i>		
Canadian Transportation Agency	In the matter of complaints filed by Naber Seed and Grain Co. Ltd. pursuant to section 116 of the <i>Canada Transportation Act</i> , alleging CN's failure to fulfill its level of service obligations	2002
<i>Testified as to the adverse impacts on CN and the Canadian rail system of Naber's requested remedy of granting a third-party carrier access to CN's network</i>		
US District Court for the Northern District of Maryland	In the matter of Allfirst Bank vs. Progress Rail Services Corp. and Railcar Ltd.	2002
<i>Submitted a statement assessing the market demand for certain railcar equipment sold by PRSC and RL to Allfirst Bank</i>		
US District Court for the Eastern District of Virginia, Alexandria Division	Civil Action No. 00-1489-A (confidential client)	2001
<i>Expert witness in a major service dispute between one of the six North American Class I railroads and a major bulk shipper. Submitted a statement analyzing the actual service performance of the carriers and the underlying causes of transit time and reliability performance issues</i>		
US Senate Subcommittee on Surface Transportation and Merchant Marine	Hearing on the State of the Rail Industry	2001
<i>Testified as to the current financial conditions and transformation of the US rail industry since enactment of the Staggers Rail Act of 1980, infrastructure capacity and its impact on rail service, and long-term capital funding needs</i>		

Testimony on Behalf of or Before	Subject	Year
United States District Court for the District of Nebraska	Case No. 8:98CV 34 (confidential client)	2000
<i>Expert witness in a major service dispute between a North American Class I railroad and a major coal shipper. Analyzed the actual service performance of the carriers and the underlying causes of transit time and reliability performance issues as well as the impact of the logistics practices of the rail customer</i>		
Canada Transportation Act Review Panel	Review of the Canada Transportation Act	2000
<i>Submitted a statement regarding the state of the Canadian rail industry and the application of differential pricing and efficient component pricing theory relative to the industry's financial needs</i>		
US Surface Transportation Board	Ex Parte No. 582, Public Views on Major Rail Consolidations	2000
<i>Assisted in preparation of Oliver Wyman's testimony with respect to Oliver Wyman's views on major railroad consolidations and the future structure of the North American railroad industry</i>		
US Surface Transportation Board, on behalf of Assoc. of American Railroads	Ex Parte No. 575, Review of Rail Access and Competition Issues:	1998
<i>Testified as to why open access or forced access is not required for the US freight rail network and the likely impacts if it were instituted</i>		
US Senate Subcommittee on Surface Transportation and Merchant Marine	Hearing on the Financial Viability of Amtrak	1997
<i>Assisted in the preparation of Oliver Wyman's testimony on the financial viability of Amtrak (US intercity passenger rail)</i>		
Connecticut Department of Transportation	In the Matter of Arbitration Between the Connecticut Department of Transportation and the Metropolitan Transportation Authority (NY)	1996
<i>Testified regarding Oliver Wyman's assessment of the economics of the New Haven commuter rail line and the fair and equitable allocation of operating deficit and shared capital costs between the two states that share the line</i>		
Canadian National Railway	Before the Interstate Commerce Commission: FD 32640 – Contract to Operate Grand Trunk Western Railroad Inc. and Duluth, Winnipeg and Pacific Railway Co.	1994
<i>Testified before the ICC concerning a restructuring of the GTW and DWP to enhance operational efficiency and overall profitability</i>		
General Electric	For the Department of Justice and Federal Trade Commission: In the Matter of Chrysler Rail Transit	1993
<i>Statement to the DOJ and FTC concerning the level of competition relative to the ownership of rail boxcars and the impact of the proposed acquisition on competition</i>		
Consolidated Rail Corp.	President's Emergency Board No. 221: Dispute Between Consolidated Rail Corp. and Its Employees Represented by the Brotherhood of Maintenance of Way Employees	1992
<i>Testified regarding the outlook for Conrail in the context of the financial condition and prospects of the Class I railroad industry</i>		

Testimony on Behalf of or Before	Subject	Year
Wisconsin Central	Before the Interstate Commerce Commission: FD 32036 – Wisconsin Central Transportation Corp. et al. – Continuance in Control – Fox Valley & Western Ltd.	1992
<i>Testified before the ICC regarding the effect on competition of Wisconsin Central's proposed acquisition of the Fox Valley & Western Railroad</i>		
National Carriers Conference Committee	Before Presidential Emergency Board No. 219, Financial Condition and Prospects for the Class I Railroad Industry	1990
<i>Testified concerning the financial challenges facing the US freight rail industry, as part of the process of government intervention to resolve a labor dispute over wages and benefits</i>		
Citicorp	Before the Federal Bankruptcy Court re: Chicago and Missouri Western Railway	1988
<i>Testified on behalf of a major institutional creditor of the CM&W concerning the outlook for profitable operation of the railway</i>		
Santa Fe Southern Pacific Corporation	Before the Interstate Commerce Commission: Docket Nos. 30400, 30400 (Sub No. 1) et al. – Santa Fe Southern Pacific Corp. – Control – Southern Pacific Transportation Company	1984-85
<i>Testified on behalf of the Applicants regarding the effect on competition of the proposed merger of the Santa Fe and Southern Pacific railroads</i>		
Boston & Maine Railroad	Before a Federal Arbitration Panel re: Crew Consist Issues on the B&M	1980s
<i>Was a key witness for the B&M in the first crew consist arbitration case in the United States. Result was the creation of single brakeman and conductor only crews, ten years before the rest of the industry</i>		
Boston & Maine Railroad	Before the Federal Bankruptcy Court re: Boston & Maine Railroad	1980s
<i>Testified numerous times on a wide variety of subjects related to the future of the B&M and the validity of the reorganization plan</i>		

Before joining Oliver Wyman, Mr. Rennie was a director of a truckload motor carrier and vice president of the Boston & Maine Railroad. He also held operating positions with the Southern Pacific (now Union Pacific) and New Haven (now CSX) railroads and was a transportation consultant with Deloitte Haskins & Sells (the predecessor of Deloitte & Touche). He is a member of the Council of Supply Chain Management Professionals.

Mr. Rennie holds a BSBA in accounting from the School of Business Administration at Georgetown University and an MBA with a concentration in transportation and logistics from the University of Minnesota.

Exhibit 5

Verified Statement of Joshua D.
Wright

STB Finance Docket No. 36514

Joshua D. Wright

May 25, 2021

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Canadian National ("CN") has asked me to provide my opinion on the competitive implications, if any, arising from the use of voting trust agreements to preserve the independence of target assets during the Board's regulatory review period of a prospective merger. I have also been asked to provide my views on the appropriateness of a voting trust in the context of CN's offer to acquire Kansas City Southern ("KCS")—particularly in light of the Board's decision allowing CN's bidding rival, Canadian Pacific ("CP"), to use a voting trust if it acquires KCS. As I explain below, I believe it would be inappropriate to allow CP to use a voting trust but not also allow CN to use the identical voting trust. Doing so would, for no valid policy reasons, threaten the ability of KCS to sell itself to the entity that values KCS most highly—and would presumptively put KCS' assets to their socially optimal use.

My career has been nearly-exclusively dedicated to competition law and economics. I am currently the Executive Director of the Global Antitrust Institute at the Antonin Scalia Law School and I hold a courtesy appointment in the George Mason University Department of Economics. My scholarship is in antitrust law, economics,

intellectual property, and consumer protection; and I have published more than 100 articles and book chapters on the topics, including a leading antitrust casebook I co-author. Previously, I served as a Commissioner of the Federal Trade Commission, after being nominated by President Obama to that position. Before serving as Commissioner, I worked at the FTC on three previous occasions, serving the Commission in the Bureau of Competition, as its inaugural Scholar-in-Residence from 2007 to 2008—where I focused on enforcement matters and competition policy—and as an intern in both the Bureau of Economics and Bureau of Competition in 1997 and 1998, respectively. I hold both a J.D. and a PhD in economics from UCLA.

Voting trusts are a market response to the transaction costs and market distortions imposed by the merger review process. Those costs are amplified when a comprehensive public interest review requires a lengthy process, as occurs when the Board reviews mergers between Class I railroads. Voting trusts are similar to but often more efficient than the risk-shifting contractual arrangements that are routinely used in mergers—and are the tools private parties use to control for the exogenous risks created by a long regulatory review. For example, in the absence of a voting trust, the seller may demand a major premium for its shares and a sizable walk-away fee to cover the risk that regulators will ultimately cancel the deal. Because a voting trust ensures that the acquired company's shareholders obtain full compensation up front, it allows the deal to close without risk to the seller, which in turn allows the buyer to avoid paying that risk premium. In these respects, voting trusts increase overall transaction efficiency, to the benefit of both parties and, ultimately, their customers and the public.

The empirical evidence on the competitive significance of voting trusts or risk-shifting provisions in merger agreements does not substantiate anxieties that they create special competitive concerns, nor does the economic literature on horizontal shareholding and common ownership. Further, it is in the public's interest to have a competitive process where all potential bidders are at regulatory parity in terms of access to the market. Thus, especially given the finite lifespan of these arrangements, they pose no likelihood of any serious competitive harm, and CN's proposal should be approved—just as CP's was.

A. Voting trusts effectively allocate the risk associated with lengthy regulatory review.

In a perfect world, a reviewing agency would be able to take all the filings of a proposed merger and instantaneously return a verdict on its legality. The necessary deviation from that ideal that must occur during a real-world public interest review process, while understandable, nevertheless has serious consequences for how businesses consider potential acquisitions and how the market for corporate control functions.

Voting trusts are a rational response to this regulatory approval process—they arise as a means of minimizing the transaction costs associated with it. In the various forms that voting trusts and contractual provisions take, they work as risk-distributing tools that can promote efficiency in several ways. First, as discussed, they lower the price of transactions by eliminating the seller’s risk of regulatory disapproval. In the process, they increase the likelihood that procompetitive mergers will be undertaken in the first place.¹

Further, there are several reasons to doubt that voting trusts pose any serious anticompetitive risk. For one, these tools have a long history of routine use in the U.S. railroad industry.² Despite their long history of use, however, there is no historical pattern of serious competitive harm endemic to the use of risk-shifting provisions in merger agreements generally or voting trusts specifically. The economic evidence tells

¹ See *FTC v. Weyerhaeuser Co.*, 665 F.2d 1072, 1087 (D.C. Cir. 1981) (noting that a “preliminary injunction may kill, rather than suspend, a proposed transaction,” in the context of approving the District Court’s use of a hold separate order in a merger case); see also Russell Pittman, *The Strange Career of Independent Voting Trusts in U.S. Rail Mergers* (EAG 16-3, July 2016), <https://www.justice.gov/atr/file/879011/download> (“There are a number of reasons that merger proposals may fail, including ... delays, costs, and adverse decisions by antitrust or regulatory bodies.”).

² As the Board notes, voting trusts were used in each of the three most recent major transactions approved by the Board, as well as in a spate of recent significant and minor transactions. See *Canadian Pac. Ry. — Control — Kan. City S.* (Decision No. 5), Docket No. FD 36500, slip op. at 6 (“The use of independent voting trusts in connection with the review of control transactions before the agency is a long-standing agency practice that is subject to regulatory requirements as well as an established body of agency precedent.”).

a similar story, where the results have been ambiguous and inconclusive—pointing to these arrangements likely being completely competitively neutral.³

This conclusion is bolstered by the fact that these arrangements are inherently time-limited, existing coextensively with the agency review process—as an outgrowth of it. Voting trusts exist solely as intermediary artifacts of the merger review process, vaporizing when it concludes. Above and beyond those considerations, the literature on horizontal shareholding also offers no conclusive reason to condemn these arrangements, as I discuss below.

Voting trusts in the KCS auction also minimize the distortions caused by STB review relative to the HSR process for other classes of buyers. These trust arrangements mitigate the relative risk potential caused by differences in regulatory review regimes that different classes of prospective buyers may face, especially given the potentially lengthy STB process. Put another way, were voting trusts not approved in this case, the STB might be implicitly favoring private equity buyers over railway mergers.

B. Approving a voting trust for only one of two similarly situated potential acquirers—that is, CP but not CN—would distort the competitive process and is not in the public interest.

To grant a voting trust allowance to one party but not the other in this matter would effectively prejudge and short-circuit the entire regulatory review process—in turn adversely affecting the public interest by denying it the benefit of a competitive auction.

Voting trust agreements are often but-for preconditions for deals of this magnitude to be tendered in the railroad industry. Absent their risk-hedging and risk-arbitrating functions, market participants would face much steeper barriers to the threshold viability of otherwise completely beneficial economic transactions. Contrary to the DOJ's assertions, there are procompetitive reasons why railroads might prefer voting trusts to the insufficient protections of a patchwork of contractual provisions.

³ See Thomas A. Lambert, *Mere Common Ownership and the Antitrust Laws*, 61 B.C. L. Rev. 2913, 2957 (2020).

For railroads, voting trusts provide a superior risk-shifting mechanism compared with the contractual provisions frequently used in merger agreements (such as break-up fees, adverse change clauses, regulatory efforts clauses, etc.) because they allow the seller to be paid immediately without regulatory risk, thereby reducing the price the buyer must pay. Given these enormous benefits, the inability to use a voting trust is enough to potentially be fatal to the bid of a competitor who does not get approval when other companies do.

In contrast, ordinary risk-shifting provisions in merger agreements do not really address closing risk. They are merely a means of allocating that risk among the parties and can thus impose significant costs that are not incurred when voting trusts are used. CP's advocacy thus amounts to a naked attempt by the company to short circuit a competitor's bid for an asset—KCS in this case—through regulation.

What makes CP's argument all the more perplexing is that it is implicitly attacking its own voting trust arrangement, which the STB has already approved. As the Board itself found, CP's "Voting Trust Agreement would comply with the guidelines at 49 C.F.R. part 1013, comport with past agency policy and practice, and ensure that the day-to-day management and operation of KCS will not be controlled by Canadian Pacific or anyone affiliated with Canadian Pacific." *Canadian Pac. Ry.—Control—Kan. City S.* (Decision No. 5), Docket No. FD 36500, slip op. at 6. The Board also found that, "in the event divestiture were necessary, there is no significant risk that the financial strength or operational capabilities of Kansas City Southern and Canadian Pacific would be compromised." *Id.*

This logic should apply with equal force here, as CN has committed to using an identical voting trust arrangement, right down to even using the same trustee. A central public interest consideration in review of voting trusts is the potential harm arising out of unlawful sales.⁴ But those risks arise from the nature and structure of the voting trust arrangement itself. That risk of potential harm should be identical for both CN and CP—given the identical trust arrangements.

⁴ Major Rail Consolidation Procedures, 5 S.T.B. 539, 567 (2001).

And as the Board has already found, those risks are not present with this form of Voting Trust Agreement.⁵ As competitive concerns arise primarily out of the structure of such arrangements, there is no meaningful variation or reason as to why these two arrangements should be decided differently. But there is more than adequate reason why they should be decided the same: To do otherwise might well harm the competitive process. It would threaten the ability of KCS shareholders to obtain the benefits of a viable competing bid; would distort the market for corporate control; and might ultimately unduly favor a less efficient deal, thereby harming the public interest. All else equal, ensuring that goods are sold to the highest bidder *is* in the public interest, as it leads to tangible benefits for the public in the efficient allocation of resources.

C. The DOJ's horizontal shareholding-based concerns surrounding voting trusts do not warrant rejecting CN's application.

As with CP, the voting trust here is unlikely to be of competitive concern. The DOJ speculates that the minor areas of overlap present with CN's bid give rise to common ownership concerns beyond those it raised with CP's voting trust. But these issues should not be cause for serious concern, given the STB's repeated determinations that a voting trust structured as CN's is—that is, identically to CP's own, now-approved voting trust—is effective at keeping common ownership from threatening competitive harm. In all events, I understand that CN has committed to take prompt and effective steps to eliminate any competitive concerns that could arise, even in the absence of the trust mechanism—including committing to divest in the one area where it and KCS compete head-to-head with nearby, parallel rail lines.

To start, as an abstract question of competitive significance, in this case the voting trust arrangements that CP and CN have proposed are identical in every

⁵ See *Canadian Pac. Ry. — Control — Kan. City S.* (Decision No. 5), Docket No. FD 36500, slip op. at 6 (“The Voting Trust Agreement here is conventional and would preserve [KCS] intact to be managed by its existing management, with its own board of directors, and with a trustee who is a former chief executive officer of [KCS]; compensation programs would be in place to incentivize [KCS] management and employees to remain with the company and continue to achieve the independent business objectives [KCS] has set for itself and its affiliated railroads; and there is no basis to believe that any issues associated with divestiture, if such process were required with respect to the Transaction, would be problematic.”).

material way. Importantly, any concern generated by the limited overlap between CN and KCS will be addressed by CN's commitment to divest rail assets to ensure customers retain the same competitive options they do today. In light of this fact, the limited overlap between CN and KCS does not change the analysis meaningfully; the CN-KCS and CP-KCS deals are essentially vertical transactions, which are highly unlikely to be of competitive concern.

Whether the two parties address regulatory risks through a voting trust or traditional contractual mechanisms, there is always at least a theoretical risk of gun-jumping—*i.e.*, premature coordination between the acquired companies' employees and their counterparts (and prospective bosses) at the acquiring company. But compared to contractual mechanisms, voting trusts make such coordination *less* likely because they create an STB-approved structure for ensuring the acquired company's operational independence while regulatory review is pending. In all events, any theoretical risks posed by voting trusts are likely heavily outweighed by the real process and transactional efficiencies these arrangements are created to facilitate.

Economically, the literature concerning horizontal shareholding in the absence of operational control or influence also provides no basis from which to conclude the presence of a voting trust is adverse to the public interest.⁶ There is, to be clear, evidence that common ownership can weaken incentives to compete in certain circumstances, at least when it is active.⁷ Voting trusts, however, are passive, not active; and economic analysis also shows that horizontal shareholding can promote competition by enhancing innovation, particularly common ownership of vertically-

⁶ Indeed, in a submission less than four years ago to the OECD, the antitrust agencies characterized the state of the empirical literature on common ownership as "nascent." See Dep't of Justice & Fed. Trade Comm'n, Common Ownership by Institutional Investors and its Impact on Competition ¶14 (Nov. 2017).

⁷ *E.g.*, José Azar, Martin C. Schmalz & Isabel Tecu, *Anticompetitive Effects of Common Ownership*, 73 J. Fin. 1 (2018); *but see* Patrick Dennis, Kristopher Gerardi & Carola Schenone, *Common Ownership Does Not Have Anti-Competitive Effects in the Airline Industry* (Feb. 5, 2018), <https://ssrn.com/abstract=3063465> ("empirically analyze[d] the relationship between ticket prices and common ownership in the airline industry").

related assets—such as those at issue in this proposed transaction.⁸ For example, in the presence of technological spillovers, an innovative firm benefits itself, but also technologically related firms, leading to “inefficiently low ex-ante incentives to innovate”; however, common ownership mitigates this problem and can even “render innovative activity profitable that would be unprofitable if it only benefited the innovating firm itself.”⁹ Altogether, neither economic theory nor empirical evidence provides a basis to conclude that temporary common ownership of almost entirely vertically related assets raises unique competitive concerns or is adverse to the public interest.¹⁰ As a current Federal Trade Commissioner has warned, more research is needed before adjusting competition policy on these issues.¹¹

The lack of historical evidence of harm surrounding such arrangements further cuts against the DOJ’s arguments. It stands to reason that if these agreements were as competitively concerning as the DOJ argues they are, we would see more evidence of that fact. Were the DOJ’s concerns well-founded, with all the data that exists, even a faint signal should be noticeable: you would expect to see the resulting price increases from merging parties with trust-based and contractual risk shifting provisions pending a merger. The lack of such evidence means the DOJ’s concerns are likely theoretical and academic. Certainly, DOJ points to nothing suggesting that there have been problems in STB mergers, where the voting trust insulates the acquired company from being controlled by the acquiring company and where the Board has extensive regulatory authority over the conduct of the railroads.

⁸ Miguel Antón, Florian Ederer, Mireia Giné & Martin Schmalz, *Innovation: The Bright Side of Common Ownership?* (Manuscript, May 19, 2021), https://florianederer.github.io/co_innovation.pdf.

⁹ *Id.*

¹⁰ See Thomas A. Lambert, *Mere Common Ownership and the Antitrust Laws*, 61 B.C. L. Rev. 2913, 2957 (2020).

¹¹ See Noah J. Phillips, Commissioner, Federal Trade Commission, *Taking Stock: Assessing Common Ownership*, Speech at Concurrences Review and NYU Stern: The Global Antitrust Economics Conference (June 1, 2018), https://www.ftc.gov/system/files/documents/public_statements/1382461/phillips_-_taking_stock_6-1-18_0.pdf.

Conclusion

Voting trusts have a long history of successful use in the U.S. railroad industry — with little to no evidence that they raise competitive risks generally, nor in the specific circumstances here — where approval has already been granted to a competing railroad. Granting both applications is in the public interest where, as is the case here, an extended review is likely, especially given that the agreements are identical and even would use the same trustee.

To approve one and deny the other in these circumstances, however, would likely work an injustice by effectively prejudging the review process, if not ending the viability of one party's bid outright. Such a decision would deprive the public of a competitive auction and in so doing likely harm the public interest.

VERIFICATION

I, Joshua Wright, declare under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this statement.

Executed on this 25th day of May, 2021.

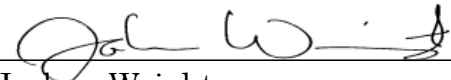

Joshua Wright

Exhibit 6

Opinion Letter of Lawson
Hunter

STB Finance Docket No. 36514

Lawson A.W. Hunter, QC
Direct: (613) 566-0527
lhunter@stikeman.com

May 25, 2021

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

I have been asked to provide my perspective on the use of voting trust structures in Canada (*i.e.*, permitting a transaction to be completed while a regulatory process is pending, subject to a trust intended to preserve the independence of the target business until the regulatory process is completed and any necessary remedies can be determined). I have also been asked to provide a Canadian legal perspective on the appropriateness of such a voting trust structure in connection with CN's offer to acquire KCS.

A principal focus of my career, whether as Head of the Canadian Competition Bureau, practicing antitrust lawyer or business executive at Bell Canada, has been on the regulatory review processes related to mergers and acquisitions. I have advised many businesses, domestic and foreign, including CN, with respect to Canadian merger laws, including in connection with foreign investment reviews. Also, as Head of Regulatory Affairs at Bell Canada, Canada's largest telecom and media business, I have direct knowledge of the policies and procedures used by the CRTC, Canada's broadcast and telecom regulator. Through these experiences, I have knowledge of how voting trusts have been used in Canadian regulatory reviews. A more detailed resume of my background can be found at the following link: [Lawson A.W. Hunter Profile](#).

Voting trusts (and so-called "hold-separate agreements," which serve a similar function) have been adopted and accepted in Canada – in the context of both public interest regulatory reviews and antitrust reviews – to balance the need for lengthy regulatory scrutiny against the importance of facilitating and enabling beneficial transactions. Refusing to allow voting trusts would provide institutional investors with a significant advantage over a regulated business in proposing transactions, even where the regulated entity's proposal offers substantially greater efficiencies, due to the extended time periods that the regulatory review process entails. Many companies are unwilling to lock themselves up for a lengthy regulatory review which can extend well over one year.

In my view, for the U.S. Surface Transportation Board (the "STB") to preclude a voting trust for CN in this case would lead to significant prejudice for KCS shareholders and for the North American public. First, it would interfere with the market for corporate control and preclude the benefits of a public interest-enhancing transaction before any serious review had been undertaken. Second, it would prejudice a

competitive bidding process without the involvement of KCS and its shareholders and without full consideration of the different public interest implications of each bid.

I note that the perspective provided herein is limited to Canadian law.

A. Voting Trust (and Hold-Separate) Structures in Canada

Trust structures are routinely used in the context of Canadian regulatory processes to balance the need for comprehensive regulatory reviews of regulated transactions against the need to facilitate public interest-enhancing transactions. In Canada, trusts and hold-separate structures are used and accepted in: (i) reviews by the Canadian Radio-television and Telecommunications Commission (the “**CRTC**”) that involve a change of ownership or control of broadcasting undertakings; and, (ii) antitrust reviews conducted by the Competition Bureau of Canada.

i. CRTC Broadcasting Reviews Involving Change of Ownership or Control

Temporary voting trust arrangements are routinely used with respect to proceedings before the CRTC to approve transfers of control of licensed broadcasting undertakings. Pursuant to regulations enacted under the *Broadcasting Act*, prior approval of the CRTC is required with respect to any transactions that would result in a change of ownership or control of a licensee. In many cases, such approval is granted only after a lengthy public process, meaning a decision on an application for approval of a transfer of ownership or control may be issued 9 months to a year after the application is filed – or longer.

Temporary trust arrangements are generally sought for share acquisitions of publicly-traded companies that will result in a transfer of ownership or control of broadcasting undertakings. Approval of a trust arrangement is typically sought coincident with the filing of an application for a permanent transfer of control to the presumptive buyer. Where the CRTC approves a temporary trust arrangement (which it does through a short *ex parte* administrative process), the transaction closes into a voting trust, pending the Commission's approval of the transfer of control to the buyer. The CRTC typically approves a voting trust arrangement for a fixed period of time: often 6 months, extendable on further approval by the CRTC. Extensions are not uncommon. The voting trust arrangement usually commences on the effective date of a transfer process conducted under securities law, such as the completion of a plan of arrangement.

The CRTC published its current policy on the use of trust arrangements in 1999, in [Public Notice CRTC 1999-196](#). While it is open to licensees/vendors to request the use of trust arrangements on other compelling grounds, since 1999 all requests for approval of temporary transfers of control to a voting trust have been made in order to accommodate securities law processes and the CRTC's own approval process. Neither the merits of allowing the transfer to a particular buyer nor broader public interest considerations have been considered at the time of approving any temporary trust arrangements since at least 1999.

Significantly here, where requested, the use of trust arrangements in the context of applications for approval of changes of control of publicly-traded broadcast licensees has been routinely approved, including in a number of large, high-profile transactions. For example, the shares of CHUM Limited were held in a voting trust for 12 months prior to the CRTC's conditional approval of the \$1.365 billion acquisition of CHUM Limited by CTVglobemedia Inc. (Broadcasting Decision [CRTC 2007-165](#)). Similarly, the shares of Alliance Atlantis Broadcasting Inc. were held in a voting trust for 9 months pending CRTC approval of the \$1.427 billion acquisition of that company by CanWest MediaWorks Inc. (Broadcasting Decision [CRTC 2007-429](#)).

ii. Antitrust Reviews by the Competition Bureau

In Canadian antitrust reviews, trust structures are routinely used in remedial contexts where the Competition Tribunal determines (or the merging parties and the Commissioner of Competition reach a

mutual settlement) that a divestiture is required to ensure that a transaction does not result in a substantial prevention or lessening of competition.

In such circumstances, the purchaser is ordered (or agrees) to divest certain assets whose acquisition may otherwise raise antitrust concerns. A “hold-separate” provision in the remedy typically requires the purchaser to preserve and operate the divestiture assets separately and independently from the remaining acquired assets upon closing, in order to ultimately facilitate a sale of the divestiture assets within a prescribed time period. Where the purchaser fails to divest the assets within the specified period, a divestiture trustee is appointed to hold (and market) the divestiture assets in order to facilitate their sale. While the context differs from the example above with the use of trust structures during CRTC broadcasting review of change of ownership or control, the underlying purpose of the trust structure – namely, to maintain, preserve and protect the independence of a business in order to facilitate the implementation of competition law remedies – is exactly the same.

Trust structures have also been used in protracted antitrust reviews involving disagreements between the Commissioner of Competition and the merging parties about the scope of potential antitrust issues. As an example, when Parkland Fuel Corporation sought to purchase the competing gas station assets of Pioneer Energy LP, the Canadian Competition Tribunal permitted the transaction to close, subject to a hold-separate order that required Parkland to preserve and independently operate the assets located in six markets of potential concern until the Tribunal concluded its final decision (*Commissioner of Competition v Parkland Industries Ltd.*, [2015 Comp Trib 4](#)).

B. Appropriateness of Voting Trusts for Extended Merger Reviews

Voting trust structures are appropriate in extended merger reviews, particularly when transactions involve public interest considerations. There is a fundamental public interest in encouraging procompetitive and efficiency-enhancing transactions and ensuring that merger and acquisition activity can be responsive to the needs of the public markets. Strategic mergers often serve the public interest by allowing the public to benefit from reduced costs, increased innovation, enhanced competition and improved service, while also ensuring that shareholders are able to benefit from the maximum value of their interest in a company. Mergers also promote the efficient operation of capital markets by ensuring that firms are run efficiently. The regulatory regime should not discourage (or operate to preemptively prohibit) transactions that serve the public interest.

At the same time, where a transaction may raise competition or public interest concerns, and may require remedies to address such concerns, there is a legitimate need to protect the target business and to maintain its independence while such concerns are assessed. Voting trust structures ensure that the target business continues to operate independently and separately while a regulatory review is completed and any concerns that arise in the course of the review are addressed.

For most reviews, a voting trust structure is not necessary as the review is completed in a relatively short timeframe. In such circumstances, the target business is able to continue to operate in the ordinary course while regulatory concerns are assessed and resolved. However, for extended reviews involving public interest considerations, a trust structure is a reasonable, tested and accepted compromise to facilitate the regulatory review process without miring the target shareholders in an extended period of uncertainty (and thereby compromising the incentives to pursue complex, public interest-enhancing transactions in the first place).

We acknowledge the commentary (including from the United States Department of Justice) that has criticized voting trusts on a number of grounds. Such commentary, which typically comes from enforcement authorities with a limited mandate, suffers from certain key flaws.

First, it does not acknowledge that precluding voting trusts would interfere with the market for corporate control and would effectively prohibit procompetitive transactions altogether. Generally, as noted, most

businesses will not lock themselves up for the months that regulatory review processes can take—18-24 months, for example, for STB review of a major rail merger. And, a voting trust allows a company to continue moving forward in its business while awaiting regulatory review, instead of freezing the status quo for an extended period. Further, in the present case, permitting Canadian Pacific Railway to complete its acquisition of KCS (subject to a voting trust) while precluding CN from doing the same would effectively dictate control of KCS *ab initio*, and eliminate a valuable option for KCS and its shareholders (and the North American public) without any thorough analysis.

Second, commentary often considers voting trusts in the abstract, without comparing them to another alternative: a contractual interim period during which the target business continues to operate. In such cases, merger agreements typically include “ordinary course” covenants that require the target entity to operate within specified parameters, and often to seek the prospective purchaser’s consent for material actions. The target is also motivated and covenanted to take all steps to complete the transaction and may be less likely to take actions that would frustrate or delay closing by prolonging regulatory reviews (e.g., decisions to compete aggressively against the prospective purchaser). Voting trusts, by contrast, ensure that the target business is able to continue to operate independently in a competitive manner until the transaction is permitted to close. In light of the usual regulatory risk provisions in merger agreements, voting trusts no more inhibit competitive behavior than the normal regulatory covenants in merger agreements. In many, if not most, cases a voting trust will better protect the competitive process pending regulatory review.

C. Conclusion

For complex public interest reviews, which require careful analysis to assess public interest benefits against potential competition (and other) concerns, voting trusts are routine and accomplish two goals: (a) encouraging and facilitating transactions that maximize public interest and allow for a free market for corporate control; while also (b) ensuring that target businesses are preserved and operated independently during the lengthy review processes. In the Canadian context, such trust structures have been successfully used in both public interest and antitrust contexts to serve these objectives and are well-accepted mechanisms where a protracted merger review is anticipated.



Lawson A.W. Hunter, QC

Exhibit 7

Selected Support Statements

STB Finance Docket No. 36514



P.O. Box 66 / 5621 S US Hwy 35 / Kingsbury IN 46345
Phone: (219) 393-5581 / Fax: (219) 393-5475

April 28, 2021

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
Washington, DC 20423-0001

RE: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

The Kingsbury Elevator, Inc., Kingsbury Indiana, is supporting the proposed merger of the CN and KCS railroads.

The Canadian National Railroad has been our partner for decades, enabling us to offer exemplary service and competitive pricing to the agricultural community. The proposed merger would enable a more cost-effective access to southern markets in the United States and Mexico, one of the primary importers of U.S. agricultural products. In addition, this same improved access from the south will create new opportunities for expansion of our business by creating more efficient routes to transport raw materials from the southern United States to our facility in northwest Indiana.

In this ever-growing global economy, any opportunity to reduce costs and improve efficiency is welcomed. This proposed merger of the CN and the KCS railroads is one such opportunity.

Sincerely,

Edgar Lindborg, president
Kingsbury Elevator, Inc.

FERROUS PROCESSING & TRADING Co. CN/KCS MERGER SUPPORT LETTER

Dear Ms. Brown

My name is Viktor Velichkov and my business address is 3400 E Lafayette Ave Detroit, MI 48207. I am Rail Logistics Manager of Ferrous Processing & Trading Co. In my role, I am responsible for everything that has to do with the railroads including: track/railcar leases, OT57s, Umler, railcar purchases/sales, railcar repair, and any new business development involving rail.

Ferrous Processing & Trading Co. is a customer of both CN and KCS. We currently have CN service at FPT Schlafer, Zalev Brothers, FPT Pontiac, and Nissan Canton. We ship to various steel mills served by CN/KCS. We currently ship scrap metal via KCSM/KCS from Jumandi in Chicalote, AG Mexico to Steel Dynamics in Columbus, MS. We are very happy with our service, our rates, and our relationship with KCS/CN.

Ferrous Processing & Trading Co. supports approval of the CN/KCS combination. The transaction would provide significant benefits that we are eager to see realized as soon as possible.

From our perspective, the transaction promises to provide improved service options and invigorate transportation competition in the markets we serve. The combined CN and KCS network _with new single-line hauls would help us reach our existing markets and new markets more efficiently. Ferrous Processing & Trading Co. has not often spoken favorably about railroad consolidation, but we see this transaction as uniquely beneficial.

We know from experience (both our own, and that of our competitors who have single-line rail options at their origins) that single-line rail service options are far superior in terms of both speed and cost.

We are very excited about the transaction because it will allow a combined CN and KCS to provide new, more efficient, and reliable rail service options. This will strengthen competition against the other, rail carriers and trucks that serve our markets. For example,

- **CN and KCS new single-line haul offerings will expand market reach and offer new competitive transportation options for our shipments of scrap metal from Chicalote, AG in Mexico to metals markets in the Midwest where previously business was cost prohibitive due to high freight rates and transit times.**
- **We are particularly enthusiastic about the role new CN and KCS single-line routes will play in expanding access to growing markets across the United States, Mexico, and Canada under the USMCA trade agreement. It is important that there be a true USMCA railroad option.**

KCS and CN have had a cooperative relationship in the past, and CN-KCS joint routes are among our transportation options, but as separate companies they have not been able to offer the kind of seamless, single-line service we have come to expect from our transportation providers. This transaction will improve our transportation options by consolidating our current multi-line hauls to a single line haul that is both more affordable and faster. One example would be our shipments from Nissan Canton, MS to Steel Dynamics in Arbel, MS.

At the same time, the entirely complementary nature of CN's and KCS' networks — connecting at only a few destinations and only overlapping at 1% of the combined network — means that the transaction will not have any adverse effects on competition. The transaction will only make these carriers a better alternative relative to the other options that already exist, since CN and KCS will continue to interchange with all of their other existing interline partners.

Given the straightforward network connectivity between CN and KCS, we are confident that they will be able to implement their transaction without the service disruptions that have accompanied some past rail mergers.

For these reasons, Ferrous Processing & Trading Co. is voicing support for the combination of CN and KCS, because it will enhance competition, provide expanded options, and drive efficiencies for customers of all sizes. Ferrous Processing & Trading Co. urges the STB to approve CN's acquisition of KCS as swiftly as possible so that these systems can be integrated, and the end-to-end benefits of this deal can be realized for the benefit of all stakeholders.

Cc: All parties of Record

VERIFICATION

I Viktor Velichkov, state under penalty of perjury that the foregoing is true and correct. Further, I certify that I am qualified and authorized to submit this letter,

Executed on 4/21/2021.

 [Signature]
Viktor Velichkov



Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Martin Product Sales is an asphalt and fuel oil supplier to construction contractors, cruise ships and our own wholesale terminals across the United States. We have plants in Nebraska, Texas and Florida with our headquarters in Houston. All of our locations are supplied by rail. Omaha terminal is serviced by the CN and one our Beaumont terminals is serviced by KCS.

Martin Product Sales supports CN's acquisition of KCS because of the superior benefits a CN-KCS railway would bring by offering faster, safer, cleaner and more direct service for North-South trade.

We believe that a combination of CN and KCS would help us to win in our markets. CN's strong track record of success with superior service, intermodal and safety gives us confidence that a combined CN-KCS would be best positioned to serve our needs. Additionally, CN's successful track record of acquisitions over the past 25+ years also provides assurance that CN will effectively and seamlessly be able to integrate and partner with KCS.

The combined company would create network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer and more economical rail option for us where we currently rely on trucks and provide shorter distances on many key routes. We are hopeful about this transaction as a CN-KCS rail will be able to provide the seamless transportation and service that would not be available through KCS should it go forward with an alternative combination.

For example:

- The combined company's single-owner, single-operator service would enhance our ability to be competitive in the markets in which we operate, benefiting our shipments of asphalt from Beaumont to our Texas and Omaha terminals and to wholesalers in Mexico.

- CN's significant experience providing seamless intermodal service throughout their network and across borders.

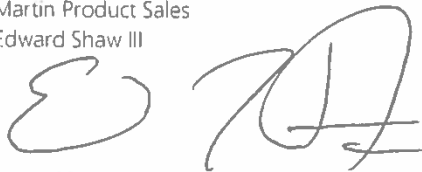
Central to the CN's bid for KCS is the establishment of a voting trust that benefits KCS shareholders. Martin Product Sales unequivocally supports approval of CN's voting trust. We believe CN's proposed voting trust benefits KCS and its shareholders by creating the opportunity for them to make a fair, informed decision when choosing between the competing offers and by shielding them from the lengthy regulatory approval process that would arise following an acquisition of KCS by either CN or CP.

To ensure fair and transparent review of CN's voting trust, Martin Product Sales also supports CN's request that the STB review CN's voting trust agreement simultaneously with CP's proposed voting trust and that the review process include a brief public comment period. Such a review would ensure a level playing field for the bids.

Martin Product Sales is confident in and strongly supports CN's proposed acquisition of KCS for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,

Martin Product Sales
Edward Shaw III

A handwritten signature in black ink, appearing to be 'ES' followed by a stylized 'III' or similar flourish.

cc: Parties of Record



Assumption Cooperative Grain Company

104 West North Street Assumption, Illinois 62510

217-226-3213

4.23.21

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Assumption Cooperative Grain Company is a farmer owned grain cooperative. We have about 1100 farmer owners. We handle corn, soybean, and wheat for our farmers. We ship the grain via truck and rail. Our primary markets are Decatur, IL processors, Saint Louis export markets and rail customers on the CN and UP rail lines. We ship grain on the Decatur Junction Railroad. This shortline connects to the CN for our access to CN rail customers.

Assumption Cooperative Grain Company supports CN's acquisition of KCS because of the superior benefits a CN-KCS railway would bring by offering faster, safer, cleaner and more direct service for North-South trade

We believe that a combination of CN and KCS would help us to win in our markets. CN's strong track record of success with superior service and safety gives us confidence that a combined CN-KCS would be best positioned to serve our needs. Additionally, CN's successful track record of acquisitions over the past 25+ years also provides assurance that CN will effectively and seamlessly be able to integrate and partner with KCS.

We believe this would give us access to markets beyond what are currently available to our cooperative and its farmer/owners. The prospect of sending grain into markets other than Decatur, IL and St. Louis is exciting. It would give us better utilization of our Shortline Railroad. Assumption Cooperative Grain Company and Legacy Grain Cooperative are co owners of Central Illinois Shippers, Inc.. Central Illinois Shippers owns the real estate and rail that comprise 17.5 miles of the 21 miles in the Decatur Junction Railroad.

The combined company would create a network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer and more economical rail option for us. We are hopeful about this transaction as being able to provide the seamless transportation and service that would otherwise not be available through KCS should it go forward with an alternative combination.

For example:

- The combined company's single-owner, single-operator service would enhance our ability to be competitive in the markets in which we operate, benefiting our shipments of corn and soybeans from Illinois to additional destination markets in the US and Mexico.
- A combined CN-KCS will improve the North American transportation network and create a true USMCA railway.
- 1.
 - Allows companies to maintain cost and competitive advantage, improve cycle times to reduce fleet requirements. Direct rail service is more competitive than interline rail service.
 - CN's proposal embraces the spirit of the new STB rules, including the requirement to enhance competition.
 - CN invests in technology and is prepared to extend our recent investments in automated track inspection technology and car inspection portals to enhance the safety, speed, and reliability of the KCS network.

Assumption Cooperative Grain Company is confident in and strongly supports CN's proposed acquisition of KCS for all of the reasons as stated above.

Sincerely,



Randall L. Sexton,
General Manager
Assumption Cooperative Grain Company

cc: Parties of Record



Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Vicenza Energy is working with CN on new ways to safely and efficiently transport Bitumen from Canada to new markets. We currently ship Bitumen as a solid in specialized 20 foot containers and are working with CN to expand this from a trial concept to Operational status.

Vicenza Energy supports CN's acquisition of KCS because of the superior benefits a CN-KCS railway would bring by offering faster, safer, cleaner and more direct service for North-South trade.

We believe that a combination of CN and KCS would help us to win in our markets. CN's strong track record of success with superior service, intermodal and safety gives us confidence that a combined CN-KCS would be best positioned to serve our needs. Additionally, CN's successful track record of acquisitions over the past 25+ years also provides assurance that CN will effectively and seamlessly be able to integrate and partner with KCS.

Vicenza Energy welcomes the merger as it would allow Vicenza a more direct rail route to move Bitumen as a solid to Gulf Coast markets. This would allow for the environmentally safe transport of Bitumen from Alberta to new and existing markets.

The combined company would create network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer and more economical rail option for us where we currently rely on trucks and provide shorter distances on many key routes. We are hopeful about this transaction as a CN-KCS rail will be able to provide the seamless transportation and service that would not be available through KCS should it go forward with an alternative combination.

For example:

- The combined company's single-owner, single-operator service would enhance our ability to be competitive in the markets in which we operate, benefiting our shipments of Bitumen from Alberta to the Gulf Coast.

- CN's significant experience providing seamless intermodal service throughout their network and across borders.

Central to the CN's bid for KCS is the establishment of a voting trust that benefits KCS shareholders. Vicenza Energy Inc. unequivocally supports approval of CN's voting trust. We believe CN's proposed voting trust benefits KCS and its shareholders by creating the opportunity for them to make a fair, informed decision when choosing between the competing offers and by shielding them from the lengthy regulatory approval process that would arise following an acquisition of KCS by either CN or CP.

To ensure fair and transparent review of CN's voting trust, Vicenza Energy Inc. also supports CN's request that the STB review CN's voting trust agreement simultaneously with CP's proposed voting trust and that the review process include a brief public comment period. Such a review would ensure a level playing field for the bids.

Vicenza Energy is confident in and strongly supports CN's proposed acquisition of KCS for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,



Yuri Butler
Partner – Vicenza Energy

Email: yuri@vicenza.energy
Phone: 403-651-2849

cc: Parties of Record



Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

April 21, 2021

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Effingham Equity is a 102-year-old agricultural cooperative that has our origin adjacent to the CN rail line in Effingham, IL. In the early days, our company was primarily a receiver of products that arrived by rail such as coal, hay, and feed ingredients. During the past 102 years we have utilized our rail access to grow our company from 53 farmer members at a single location in 1919 to over 5,000 farmer members across 18 locations encompassing more than 20,000 square miles in south central Illinois. Put simply, we do agriculture! We rely on the CN rail to bring us fertilizer and feed ingredients for our customers to successfully operate their farms. Additionally, as production agriculture has improved total output, we rely heavily on the CN rail to transport our grain to end users throughout their territory and to the export market.

Effingham Equity supports CN's acquisition of KCS because of the superior benefits a CN-KCS railway would bring by offering faster, safer, cleaner, and more direct service for North-South trade. We have utilized the CN rail to ship corn to feed mills in Canada. A combined CN-KCS will improve the North American transportation network and create a true USMCA railway whereby we could ship grain to end users from Canada to Mexico seamlessly via a single operator rail service.

We utilize railcar shipping for the majority of our grain sales with the remaining bushels shipped via truck. Rail shipments are of the highest efficiency both operationally and logistically for our company. Truck shipments are more time consuming and less efficient. Most of our truck shipments are directed to the Mississippi river to become export bushels. With a combined CN-KCS rail line we could utilize shipping by rail to either the St Louis river market or direct to the Texas Gulf export terminals, either destination would greatly improve shipping efficiency and logistics.

Effingham Equity is confident in and strongly supports CN's proposed acquisition of the KCS because it brings value to midwestern agriculture and our customers via inbound and outbound rail service.

Sincerely,

Mark Tarter
VP Grain
Effingham Equity

www.TheEquity.com

Ph: (217) 342-4101 • Toll Free: (800) 223-1337 • Fax: (217) 347-7601
P.O. Box 488 • 201 W. Roadway Ave. • Effingham, IL 62401



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NOJ1V0
1-888-997-0993
scott@roslin.ca

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Roslin Enterprises Inc. is shipping tank cars of renewable fuels feedstock from Ontario, Canada to Norco, Louisiana for the Renewable Fuel Industry. In the Renewable Fuel Industry the refining capacity is located in the Southern United States. Being a business based in Canada having the ability to ship product direct to the southern states is very positive for the future growth of our business.

Roslin Enterprises Inc. supports CN's acquisition of KCS because of the superior benefits a CN-KCS railway would bring by offering faster, safer, cleaner and more direct service for North-South trade.

We believe that a combination of CN and KCS would help us to win in our markets. CN's strong track record of success with superior service, intermodal and safety gives us confidence that a combined CN-KCS would be best positioned to serve our needs. Additionally, CN's successful track record of acquisitions over the past 25+ years also provides assurance that CN will effectively and seamlessly be able to integrate and partner with KCS.

Roslin Enterprises currently ships a large percentage of its feedstock by truck. This merger would help us transition our business to larger portion of rail service. This will allow us to access markets in a direct and cost competitive manner. Renewable diesel and biodiesel manufacturing is expanding in the Southern United States. These manufacturers are unreachable by truck transportation from Canada. Minimizing our carbon footprint is a core value for Roslin Enterprises. By shifting more of our volume to rail we will be minimizing that carbon footprint and contributing to the global reduction of CO2. Allowing us to access the growing markets in the southern United States.

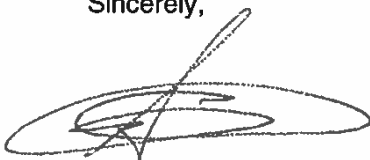
The combined company would create network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer and more economical rail option for us where we currently rely on trucks and provide shorter distances on many key routes. We are hopeful about this transaction as a CN-KCS rail will be able to provide the seamless transportation and service that would not be available through KCS should it go forward with an alternative combination.

For example:

- The combined company's single-owner, single-operator service would enhance our ability to be competitive in the markets in which we operate, benefiting our shipments of Fats and Oils from Ontario, Canada to Norco, Louisiana
- CN's significant experience providing seamless intermodal service throughout their network and across borders.

Roslin Enterprises Inc. is confident in and strongly supports CN's proposed acquisition of KCS for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,



Scott Dennis
President

cc: Parties of Record



May 4, 2021

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: **FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company**

Dear Ms. Brown:

Sterling Site Access Solutions, LLC is a preeminent supplier of products and services for right of way solutions used in the construction of power and energy related projects across the United States. Sterling uses CN railway as a turnkey solution provider for the operation of our private rail spur that provides Sterling with access to strategic raw materials and for the transportation of finished product to our customer job locations. Since 2015 we have operated with CN under an industry rail access agreement that has been instrumental to our success.

Sterling supports CN's acquisition of KCS because of the superior benefits a CN-KCS railway would bring by offering faster, safer, cleaner, and more direct service for North-South trade. This merger will benefit us, our customers, and suppliers, and would potentially help us grow and reach more markets. Their success leads to our success.

We believe that a combination of CN and KCS would help us to win in our markets. CN's strong track record of success with superior service, intermodal and safety gives us confidence that a combined CN-KCS would be best positioned to serve our needs. Additionally, CN's successful track record of acquisitions over the past 25+ years also provides assurance that CN will effectively and seamlessly be able to integrate and partner with KCS.

We currently rely mostly on trucks to move our product though the U.S. Rail access is important to us for long haul routes that often need to connect Chicago with the southern U.S. and Canada. The merger of CN/KCS would open additional avenues of transportation which could impact us significantly and certainly open new markets to us.

The combined company would create a network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer, and more economical rail option for us where we currently rely on trucks and provide shorter distances on many key routes. We are hopeful about



this transaction as a CN-KCS rail will be able to provide the seamless transportation and service that would not be available through KCS should it go forward with an alternative combination.

For example:

- The combined company's single-owner, single-operator service would enhance our ability to be competitive in the markets in which we operate, benefiting our ability to ship TerraLam CLT mats and other ground protecting and site access solutions from Chicago, IL and Lufkin, TX to the rest of North America.
- CN's significant experience providing seamless intermodal service throughout their network and across borders.
- The greater use of combined transportation helps lower transportation costs, which would be a strategic advantage for Sterling.

Central to the CN's bid for KCS is the establishment of a voting trust that benefits KCS shareholders. Sterling unequivocally supports approval of CN's voting trust. We believe CN's proposed voting trust benefits KCS and its shareholders by creating the opportunity for them to make a fair, informed decision when choosing between the competing offers and by shielding them from the lengthy regulatory approval process that would arise following an acquisition of KCS by either CN or CP.

To ensure fair and transparent review of CN's voting trust, Sterling also supports CN's request that the STB review CN's voting trust agreement simultaneously with CP's proposed voting trust and that the review process include a brief public comment period. Such a review would ensure a level playing field for the bids.

We are confident in, and strongly support, CN's proposed acquisition of KCS for all the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,

Carter Sterling
CEO

cc: Parties of Record



701 S. WOODWARD HEIGHTS | SUITE 128 | FERNDAL, MI 48220 | 248.591.4192 | METALOXWAREHOUSING.COM

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Metal Ox Warehousing & Logistics LLC has been a customer of CN's for the past year in our Roseville, Michigan location where we receive railcars of aluminum and copper that we store for use in the US supply chain. Metal Ox Warehousing & Logistics supports CN's acquisition of KCS because of the benefits a CN-KCS railway would bring by offering faster, safer, cleaner and more direct service for North-South trade.

We believe that a combination of CN and KCS would provide faster and more widespread availability and service. I have been working with CN since 1993 and have always found their service to be superior and their record on safety to be extremely strong. We have confidence that a combined CN-KCS would be best positioned to serve our needs. Additionally, CN's successful track record of acquisitions over the past 25+ years also provides assurance that CN will effectively and seamlessly be able to integrate and partner with KCS.

Metal Ox Warehousing & Logistics is seeking approval to be a registered London Metal Exchange warehouse, and as such, will be even more open to additional metal markets, both from a production and supply standpoint. We rely on being able to receive metals coming from the western US, through Chicago, to our Michigan facility, as well as from Michigan south to consumers in the Midwest and the southern United States.

The combined company would create a better network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer and more economical rail option for us where we currently rely on trucks and provide shorter distances on many key routes. We are hopeful about this transaction as a CN-KCS rail will be able to provide the seamless transportation and service that would not be available through KCS should it go forward with an alternative combination.

In addition, we are hopeful that the merger will create additional competition with Union Pacific for shipments coming from the west and also from Mexico. Competition serves the market by lowering prices for consumers and giving additional options, which is key in our business.

Furthermore, as many of our current shipments go through Chicago in route to our facility, it is my understanding that this merger could help clear up congestion in that area, which is highly beneficial to prompt receipt of our metals.

Metal Ox Warehousing & Logistics is happy to support this proposed merger between CN and KCS rail. I am available for any further questions at swv@metaloxwarehousing.com or 248-506-3013.

Best regards,



Stacey Wright-Verkeyn
President, Metal Ox Warehousing & Logistics LLC

cc: all parties of record



Badger Mining Corporation
409 South Church Street
Berlin, WI 54923

April 23, 2021

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Badger Mining Corporation mines frac and industrial sand in Wisconsin and Texas. For over 30 years, Badger has utilized CN at our Taylor, WI plant, and other idled mines over the years. CN provides good service, maintains a strong business relationship, and is a critical part of our supply chain.

Badger Mining Corporation supports CN's acquisition of KCS because of the superior benefits a CN-KCS railway would bring by offering faster, safer, cleaner, and more direct service for North-South trade.

We believe that a combination of CN and KCS would help us to win in our markets. CN's strong track record of success with superior service, intermodal, and safety gives us confidence that a combined CN-KCS would be best positioned to serve our needs. Additionally, CN's successful track record of acquisitions over the past 25+ years also provides assurance that CN will effectively and seamlessly be able to integrate and partner with KCS.

Badger Mining ships over 90% of our products out of Wisconsin by rail. We strongly believe the proposed acquisition will provide greater efficiencies for Badger, particularly in the Mexico market. We also believe the proposed acquisition will increase competition between Badger and some of our competitors who have mining operations on the Union Pacific and enjoy a cost advantage due to having a single-line haul.

The combined company would create a network with enhanced end-to-end single-owner, single-operator service, which will result in a faster, safer, and more economical rail option for us. We are hopeful about this transaction as a CN-KCS rail will provide the seamless transportation and service that would not be available through KCS should it go forward with an alternative combination.

For example:

- The combined company's single-owner, single-operator service would enhance our ability to be competitive in the markets we operate, benefiting our frac and industrial sand shipments from Taylor and Fairwater, WI to Mexico.

Badger Mining is confident in and strongly supports CN's proposed acquisition of KCS for all reasons as stated above. We hope to see the premier 21st-century railway come to life.

Sincerely,

A handwritten signature in black ink, appearing to read "Angelo LaMantia". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Angelo LaMantia
Executive Vice President, Supply Chain
Badger Mining Corporation

cc: Jean-Jacques Ruest – President and CEO, CN Rail
Kelly Levis – VP Industrial Products, CN Rail
Bruce Yi – Sales Manager, CN Rail
Cody Wickersheim - Co-President, Badger Mining Corporation
Adam Katz – Executive Vice President, Sales, Badger Mining Corporation
Shelly Berhagen – Director of Logistics, Badger Mining Corporation



Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings - Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

U.S. Oil has been asked to contact you regarding our strategic partnership with Canadian National Railway Company and their proposed acquisition of Kansas City Southern Railway Company.

The CN and U.S. Oil partnership is one of the oldest in our company's 70+ year history. Since 1979 U.S. Oil has been not only supplying CN with fuel for their needs, but we also ship a vast amount of petroleum products via their rail lines.

- U.S. Oil provides **70%** of Canadian National's United States operations Fuel requirements. Including **Renewable Diesel** product that contributes to the overall lowering of their carbon footprint.
- In 2019, U.S. Oil shipped via Canadian National Railway over **2.3 billion gls.** of petroleum products that provides the Northern U.S. with products ranging from Biodiesel and Butane to Ethanol and Diesel.

U.S. Oil supports CN's acquisition of KCS for several reasons...

- A merger of CN and KCS allows U.S. Oil to partner with CN and bring a range of renewable and traditional petrochemical products into the Southwestern region of the U.S. in a timely and cost-effective manner.
- The Southwest region of the U.S. is currently served by 2 dominant Western railroads. A CN-KCS merger would bring a new level of competition, pricing and service to businesses that operate in this market, thereby making their products and services more competitive.
- CN's successful track record of acquisitions over the past 25+ years provides an assurance that CN will effectively and seamlessly integrate and partner with KCS.
- With this merger it could create an additional Northern resource in providing essential energy needs to an impacted gulf region due to weather related storms that have crippled the Southern supply chain. This alone, is a huge step forward in supporting emergency back up energy needs.

We see the transaction as only beneficial; we do not anticipate any negative impacts to our company, the environment or market competition.

We thank you for the opportunity to share our perspective with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Olson".

Kevin Olson
Vice President Sales & Operations
U.S. Oil Division of US Venture Inc.



Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Optimodal, Inc. division of Odyssey Logistics provides liquid bulk intermodal services to the Chemical Industry, and we utilize CN rail services as part of our intermodal network. They are a user friendly partner that is accessible when needed for service issues, new lane start up, and they have a smooth interface for rail billing purposes. We primarily ship from New Orleans to Western Canada and Eastern Canada on the CN intermodal network.

Optimodal supports CN's acquisition of KCS because of the superior benefits a CN-KCS railway would bring by offering faster, safer, cleaner and more direct service for North-South trade. In particular, we feel this acquisition would open up a direct corridor between Canada and both Houston and Mexico which are key markets that are currently indirect and expensive to ship via intermodal. A seamless intermodal route would enable us to be more competitive vs. tank truck; allowing us to convert more shipments to a greener solution that helps with the industry's driver capacity challenges while offering a savings in freight cost. This acquisition would open up more single line service that will benefit our intermodal business and chemical shippers throughout North America.

We believe that a combination of CN and KCS would help us to win in our markets. CN's strong track record of success with superior service, intermodal and safety gives us confidence that a combined CN-KCS would be best positioned to serve our needs. Additionally, CN's successful track record of acquisitions over the past 25+ years also provides assurance that CN will effectively and seamlessly be able to integrate and partner with KCS.

Central to the CN's bid for KCS is the establishment of a voting trust that benefits KCS shareholders. Optimodal unequivocally supports approval of CN's voting trust. We believe CN's proposed voting trust benefits KCS and its shareholders by creating the opportunity for them to make a fair, informed decision when choosing between the competing offers and by shielding them from the lengthy regulatory approval process that would arise following an acquisition of KCS by either CN or CP.

To ensure fair and transparent review of CN's voting trust, Optimodal also supports CN's request that the STB review CN's voting trust agreement simultaneously with CP's proposed voting trust and that the review process include a brief public comment period. Such a review would ensure a level playing field for the bids.

Optimodal is confident in and strongly supports CN's proposed acquisition of KCS for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,

A handwritten signature in black ink, reading "Barb Slawter". The signature is written in a cursive, flowing style.

Barb Slawter
President, Optimodal Inc.

Cc: Parties of Record

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Hutchison Ports Mexico as a member of the Hutchison Ports Group, is a leading Terminal Operator that handles 32% of Mexican ports throughput, with presence at Ensenada, Manzanillo, Lazaro Cardenas and the State of Hidalgo, in the center of Mexico with an Intermodal facility that serves as an extension to the port operation and connects via railway to main destinations at USA . HP Mexico has a commercial relationship with KCS Mexico as both serve the intermodal Mexican market of Lazaro Cardenas, HP intermodal facility and the Port of Veracruz, where KCS opened operations recently

Hutchison Ports Mexico supports CN's acquisition of KCS as we do see an excellent opportunity to improve the business synergies both companies can offer to the Mexican market. Below are the 3 pillars we consider are the base for a more aggressive growth for both companies not only in the Mexican market; but also in the FTA (USMCA) as well as business in the Panama rail transit.

- Recover lost intermodal rail market (from 85% to less than 30%) in the Lazaro Cardenas / Mexico Valley zone, lost due lack of competitive rates currently offered by KCS and maintain a sustainable growth for container business.
- Develop a faster & safer and a more direct service for the North – South trade via the FTA (USMCA) by using KCS railroad network at Mexico and Hutchison intermodal facility at Mexico Valley
- Improve synergies with Hutchison Terminals at Balboa in the Pacific and Cristobal in the Atlantic side of Panama

We believe that a combination of CN and KCS would help us to win in our markets. CN's strong track record of success with superior service, intermodal and safety gives us confidence that a combined CN-KCS would be best positioned to serve our needs. Additionally, CN's successful track record of acquisitions over the past 25+ years also provides assurance that CN will effectively and seamlessly be able to integrate and partner with KCS.

For example, our port operations in Lazaro Cardenas and Veracruz, both in Mexico, would enjoy greater market access by having a strong partner in CN, helping accelerate USMCA traffic in a more streamline and efficient manner.

The combined company would create network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer and more economical rail option for us where we currently rely on trucks and provide shorter distances on many key routes. We are hopeful about this transaction as a CN-KCS rail will be able to provide the seamless transportation and service that would not be available through KCS should it go forward with an alternative combination.

For example:

- The combined company's single-owner, single-operator service would enhance our ability to be competitive in the markets in which we operate, benefiting our shipments of international containers from Lazaro Cardenas and Veracruz, and domestic terminal in Hidalgo (central Mexico), to Texas and US Midwest.
- CN's significant experience providing seamless intermodal service throughout their network and across borders.

Hutchison Ports Mexico is confident in and strongly supports CN's proposed acquisition of KCS for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,



Francisco Javier Orozco Mendoza
Head of Commercial
Hutchison Ports Mexico



April 22, 2021

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

I am Vice-President, Transportation for Richardson International Limited ("Richardson"), Canada's leading agribusiness. Richardson was established in 1857, making it one of Canada's oldest companies. It continues to be privately-owned by the Richardson family, with its headquarters situated in Winnipeg, Manitoba.

Richardson is a vertically-integrated agribusiness, involved in the purchasing, handling, processing and export of North American grains and oilseeds. It owns and operates a network of grain terminals and crop input locations situated throughout Western Canada, along with port terminals in Vancouver and Prince Rupert (British Columbia), Thunder Bay and Hamilton (Ontario) and Sorel (Quebec).

Richardson canola processing plants are located in Yorkton (Saskatchewan) and Lethbridge (Alberta), with packaging operations in Lethbridge, Oakville (Ontario) and Memphis (Tennessee). In 2013, Richardson expanded its processing business to include oat milling and currently operates mills in Portage la Prairie (Manitoba), Martensville (Saskatchewan), Barrhead (Alberta), South Sioux City (Nebraska) and Bedford (United Kingdom).

Transportation logistics play a critical role in Richardson's operations and involve a number of transportation means including truck, rail and marine (barge, lakers and ocean freight). Approximately 50% of Richardson's facilities are served by CN. As a result, Richardson relies heavily on CN's service in order to achieve its business objectives. Quite simply put, if CN fails to provide adequate rail service, then Richardson's business will certainly fail.

When considering the proposed CN/KCS combination, Richardson sees the potential of resulting improved rail service. In particular, CN's ability to directly ship railcars from Richardson facilities in Canada to a wider number of destinations in the United States, including destinations significantly closer to Richardson's Memphis plant, offers obvious opportunities. Similarly, the ability for CN to move unit trains directly to Richardson customers situated in Mexico provides shipping opportunities that are currently limited. The growing opportunities for cross-border North American trade under the USMCA are more likely to be achieved with an efficient cross-border rail carrier such as the one that would result from the CN/KCS

Richardson International Limited

2800 One Lombard Place, Winnipeg, MB, Canada R3B 0X8 P 204.934.5961 F 204.947.2647

www.richardson.ca



combination. Furthermore, we fail to see any prejudice that would result from the proposed combination.

For these reasons, Richardson supports the combination of CN and KCS and requests the Surface Transportation Board to grant its approval. We would be pleased to provide any further information that you may require for that purpose.

Yours truly,

A handwritten signature in black ink, reading "Bielik". The signature is written in a cursive style with a large, looping initial "B".

Robert Bielik,
Vice-President, Transportation

Email: robert.bielik@richardson.ca

Direct Phone: 204.934.5498

Richardson International Limited

2800 One Lombard Place, Winnipeg, MB, Canada R3B 0X8 P. 204.934.5961 F. 204.947.2647

www.richardson.ca



Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Paterson GlobalFoods Inc. ("Paterson") is a fully diversified grain company with origination locations in both Canada and the United States. Paterson ships grain, oilseeds, pulses, fertilizer as well as processed grain ingredients to destinations in Canada, the United States and Mexico. CN has become a key component of our supply chain and we are quite satisfied with the level of service and accountability that they have offered over our 100+ year relationship.

While Paterson has previously written to you in favour of the CP acquisition of KCS, Paterson was not at that time aware of the possibility of a CN/KCS combination. Of the two proposed acquisitions, Paterson prefers CN's acquisition of KCS because of the superior benefits a CN/KCS railway would bring by offering faster, safer, cleaner and more direct service for North-South trade, specifically in and out of Southern Manitoba where Paterson has significant operations.

We believe that a combination of CN and KCS would help us to win in our markets. CN's strong track record of success with superior service, intermodal and safety gives us confidence that a combined CN-KCS would be best positioned to serve our needs. Additionally, CN's successful track record of acquisitions over the past 25+ years also provides assurance that CN will effectively and seamlessly be able to integrate and partner with KCS.

The combined company would create network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer and more economical rail option for us where we currently rely on trucks and provide shorter distances on many key routes. We are hopeful about this transaction as a CN-KCS rail will be able to provide the seamless transportation and service that would not be available through KCS should it go forward with an alternative combination.

PATERSON GLOBALFOODS INC. | 22nd Floor, 333 Main Street, Winnipeg, Manitoba, R3C 4E2
PHONE 204.956.2090 **FAX** 204.942.4389 **WEB** www.patersonglobalfoods.com
Earning Your Trust Since 1908



Mexico is an important market for Paterson, and currently the most efficient way to access this marketplace out of Southern Manitoba is by interswitching BNSF cars to CN at Emerson, loading them at Winnipeg or Morris, MB, and then returning them to the BNSF at Emerson for furtherance to Mexico, where they are again switched to a third carrier for delivery in Mexico. Having a single line haul from origin in Manitoba to destination in Mexico will create significant efficiencies for both parties and will allow Paterson to be more competitive in this marketplace. Equally, single line-haul access to the Gulf with greater optionality than that created by the CP/KCS combination will allow Paterson to expand into these markets. Finally, given CN's dedication to intermodal, which is not shared by CP, we expect that the CN/KC combination may open new markets for Paterson for intermodal grain shipments.

Paterson is confident in and strongly supports CN's proposed acquisition of KCS for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,

A handwritten signature in black ink, appearing to read 'ABP', is positioned above the printed name.

Andrew B. Paterson
President and Chief Executive Officer
Paterson GlobalFoods Inc.

cc: Parties of Record



420 W MARION

MONTICELLO, IL 61856

ATLANTA * ATWOOD * BEASON * BEMENT * CISCO * EMERY * JOHNSTON SIDING * KRUGER * LAPLACE
MAROA * MILMINE * MONTICELLO * PIERSON * SEYMOUR

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Topflight Grain Cooperative Inc. has been a shipper on the CN since 1998. Our loading locations are located in Illinois and we ship corn and soybeans to multiple destinations.

Topflight supports CN's acquisition of KCS because of the superior benefits a CN-KCS railway would bring by offering faster, safer, cleaner and more direct service for North-South trade.

We believe that a combination of CN and KCS would help us to win in our markets. CN's strong track record of success with superior service and safety gives us confidence that a combined CN-KCS would be best positioned to serve our needs. Additionally, CN's successful track record of acquisitions over the past 25+ years also provides assurance that CN will effectively and seamlessly be able to integrate and partner with KCS.

Topflight ships grain by truck and rail. We have loading locations on 3 class 1 railroads currently and have access to processors, ethanol plants, and the IL river with truck transportation.

The combined company would create a network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer and more economical rail option for us. We are hopeful about this transaction as being able to provide the seamless transportation and service that would otherwise not be available through KCS should it go forward with an alternative combination.

For example:

- The combined company's single-owner, single-operator service would enhance our ability to be competitive in the markets in which we operate, benefiting our shipments of corn and soybeans from Illinois to additional destination markets in the US and Mexico.

PHONE: 217-762-2163

FAX: 217-762-5500

- A combined CN-KCS will improve the North American transportation network and create a true USMCA railway.
- CN's proposal embraces the spirit of the new STB rules, including the requirement to enhance competition.

Topflight is confident in and strongly supports CN's proposed acquisition of KCS for all of the reasons as stated above.

Sincerely,



Derrick Bruhn
General Manager

cc: Parties of Record



20333 State Highway 249
Suite 400
Houston, TX. 77070

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Windstar LPG, Inc. and its affiliated companies are active shippers of Refined Products and Natural Gas Liquids (NGLs) with both CN and KCS railroads from Canada to Mexico. For over 8 years we have been moving fuels from Canada/US to US/Mexico and during that time we have had the opportunity to work close with both parties and have built a strong business relationship with both parties.

Windstar LPG, Inc. supports CN's acquisition of KCS because of the superior benefits a CN-KCS railway would bring by offering faster, safer, cleaner, and more direct service for North-South trade.

We believe that a combination of CN and KCS would help us to win in our markets. CN's strong track record of success with superior service, intermodal and safety gives us confidence that a combined CN-KCS would be best positioned to serve our needs. Additionally, CN's successful track record of acquisitions over the past 25+ years also provides assurance that CN will effectively and seamlessly be able to integrate and partner with KCS.

We currently ship over 1,000 railcars per month of hydrocarbon fuels from the Canada/US to US/Mexico. For this movement to occur in a safe and financial responsible manner we rely on the services that both the CN and the KCS offer to us. We look to grow this business and see the value in having this acquisition take place, as it will streamline the process and yield a more efficient method of transportation.

The combined company would create network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer and more economical rail option for us where we currently rely on trucks and provide shorter distances on many key routes. We are hopeful about this transaction as a CN-KCS rail will be able to provide the seamless transportation and service that would not be available through KCS should it go forward with an alternative combination.

For example:

- The combined company's single-owner, single-operator service would enhance our ability to be competitive in the markets in which we operate, benefiting our shipments of propane and refined products from Western Canada, the Bakken, and the Gulf Coast to Eastern and Central Mexico, where we have rail terminals that depend on this service for our wholesale and retail business in Mexico.

- CN's significant experience providing seamless intermodal service throughout their network and across borders.
- The acquisition will allow for faster movements from point A to point B, as now an interchange between two railroads slows down traffic significantly. The faster movement will allow for more efficient use of equipment, which in turn will make for a more efficient network overall.

Windstar LPG, Inc. is confident in and strongly supports CN's proposed acquisition of KCS for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,



Daniel Tabora
Chief Business Development Officer
Windstar LPG, Inc.

cc: Parties of Record



Interstate Asphalt Corp.
3301 S. California Ave.
Chicago, IL 60608
(954) 769-9500

April 22, 2021

Ms. Cynthia T. Brown, Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

RE: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail
Operating Subsidiaries-Control-Kansas City Southern, the Kansas City Southern Railway Company,
Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown,

Interstate Asphalt (IA) is a wholesaler of asphalt liquid and has done business with CN for decades. IA has five storage terminals located in Illinois and Michigan and provides asphalt for the heavy/highway construction industry in the Midwest.

As a wholesaler of asphalt, IA ships significant quantities of product from western Canada, as well as Western and Gulf Coast regions of the United States. CN is a key logistics component for this supply. Freight is a significant cost consideration to remain a low cost supplier in our highly competitive, hard bid industry. Due to multiple rail lines (freight cost) involved, it is currently difficult to bring much product from the Gulf Coast region at a competitive price.

IA supports approval of the CN/KCS combination. The transaction would provide greater competition/lower cost to move product from the Gulf Coast region to the Midwest. From our experience, single line rail options are the most efficient and cost-effective and are far superior.

We view the transaction favorably because it will allow a combined CN/KCS to provide more efficient and reliable rail service options. This will strengthen competition against the other rail carriers and trucks that serve our markets.

For these reasons, Interstate Asphalt is voicing support for the combination of CN and KCS.

Sincerely,

A handwritten signature in blue ink, appearing to read "B-a-l.", with a stylized flourish at the end.

Brian A. Inniger
President

cc: All Parties of Record



Dakkota Integrated Systems, LLC
123 Brighton Lake Rd.
Brighton, MI 48116

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Dakkota Integrated Systems LLC is a current customer of CN, shipping intermodal containers of automotive parts and packaging between San Luis Potosi, Mexico and Detroit, Michigan. Over the last 4 years, the intermodal service has allowed Dakkota to benefit from being able to ship greater weight at a reduced cost than what would be possible shipping over the road. Leveraging the rail service has also allowed Dakkota to reduce its carbon footprint.

Dakkota supports CN's acquisition of KCS because of the superior benefits a CN-KCS railway would bring by offering faster, safer, cleaner and more direct service for North-South trade.

We believe that a combination of CN and KCS would help us to win in our markets. CN's strong track record of success with superior service, intermodal and safety gives us confidence that a combined CN-KCS would be best positioned to serve our needs. Additionally, CN's successful track record of acquisitions over the past 25+ years also provides assurance that CN will effectively and seamlessly be able to integrate and partner with KCS.

Dakkota still mainly uses trucking as a transportation mode but has recently increased intermodal rail shipments to and from new suppliers in Mexico.

The combined company would create network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer and more economical rail option for us where we currently rely on trucks and provide shorter distances on many key routes. We are hopeful about this transaction as a CN-KCS rail will be able to provide the seamless transportation and service that would not be available through KCS should it go forward with an alternative combination.

For example:

- The combined company's single-owner, single-operator service would enhance our ability to be competitive in the markets in which we operate, benefiting our shipments of automotive parts from San Luis Potosi to Detroit.
- CN's significant experience providing seamless intermodal service throughout their network and across borders.
- The merger will provide seamless North South connectivity which will help further integrate North American supply chains and increase visibility of our shipments.
- CN would provide superior service at the borders, reducing friction for customers across geographies and transportation modes that it would leverage and apply to KCS's business.

- More accurate arrivals and departures with fewer interchange points would allow for better planning for us, the customer.

Dakota Integrated Systems LLC is confident in and strongly supports CN's proposed acquisition of KCS for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,



Jim Gervers
Logistics and Transportation Manager

cc: Parties of Record



MISSISSIPPI FORESTRY ASSOCIATION

6311 Ridgewood Road, Suite W405 • Jackson, Mississippi 39211 • Phone 601.354.4936 • Fax 601.354.4937

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

The Mississippi Forestry Association, located in Jackson, Mississippi, is the only statewide non-profit organization dedicated to sustaining Mississippi's forests. The CN network offers great market reach for Mississippi forest product manufacturers and is essential to the growth of the state of Mississippi.

We believe that a combination of CN and KCS would help Mississippi forest products manufacturers be more competitive by allowing more single carrier rail coverage within the state and by offering more reach to both domestic and export markets through additional port options. CN's strong track record of success with superior service, intermodal, and safety gives us confidence that a combined CN-KCS would be best positioned to serve our needs.

CN's acquisition of KCS will allow MFA members to offer enhanced services to their customers. While KCS and CN work together to provide joint routes which remain among the transportation options as separate companies, they have not been able to offer the kind of seamless service that would help MFA members compete on a global stage. The KCS-CN merger will further enhance this reach, and in turn, their product offerings. There is limited overlap in the networks, and additional connection points will facilitate the combined railway to create innovative transportation solutions and competitive lanes. The CN-KCS merger will provide shorter distances on many key routes for our growing industry and the Mississippi forest products economy.

We have been impressed with CN's commitment to innovation in the rail industry, and they have demonstrated that they are the industry leader in fuel consumptions, sustainability, and safety. CN's consistent track record in innovative solutions, such as the automated track



inspection technology and car inspections portals, will enhance the safety, speed, and reliability of the KCS network.

There is a need for more direct hauls from mill to port and mill to final destination, and the combined company would create a network with enhanced end-to-end single-owner, single-operator service. This will result in a faster, safer, and more economical rail option for our member companies where they currently rely on multi-line hauls. We are hopeful about this transaction as a CN-KCS rail will be able to provide the seamless transportation and service that is not currently available.

For the reasons stated above, Mississippi Forestry Association is expressing our support for the combination of CN and KCS as it will enhance overall competitiveness through the multiple connection points creating additional lower-cost, faster transportation lanes throughout the U.S. Heartland.

Sincerely,

A handwritten signature in blue ink, which appears to read 'J. Tedrick Ratcliff Jr.', is positioned below the word 'Sincerely,'.

Dr. J. Tedrick Ratcliff Jr.
Executive Vice President
Mississippi Forestry Association

cc: Parties of Record



Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Louisiana-Pacific, Corporation (LP) operates 10 facilities served by CN. These locations are located across Canada and the US Lakes States region. Combined, they have shipped an average of 11,750 cars a year since 2018. Much of this product is destined for the central and southern US.

We have been actively evaluating ways to better serve Texas and the south-central region as growth markets. This acquisition would greatly improve our options from multiple perspectives. We consider CN a strategic partner and believe the combined CN-KCS will allow us to create new value for LP and our customers.

LP supports CN's acquisition of KCS because of the superior benefits a CN-KCS railway would bring by offering faster, safer, cleaner and more direct service for North-South trade. We believe that a combination of CN and KCS would help us to win in our markets. CN's strong track record of success with superior service, and safety gives us confidence that a combined CN-KCS would be best positioned to serve our needs.

Currently, we do not move significant volume on the KCS, but as we look to future growth and additional manufacturing expansion, the combined CN-KCS would offer us a unique opportunity to have a single partner that could integrate much of our internal network in an efficient and cost-effective way.

The combined company would create enhanced end-to-end single-owner, single-operator service which will result in a faster, safer and more economical rail option for LP. We are hopeful about this transaction as a CN-KCS rail will be able to provide the seamless transportation and service that would not be available through KCS should it go forward with an alternative combination.

Below are some benefits examples:

- Our transit times from Canada to the Texas market would improve and become more consistent
- Our manufacturing regions would be directly connected to key customer regions
- Rail equipment moving between our markets could be more easily and efficiently reloaded, especially as we expand our manufacturing footprint
- LP will have multiple new opportunities to revise our material flows to better utilize rail and minimize regional and long-haul truck moves



LP is confident in and strongly supports CN's proposed acquisition of KCS for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,

A handwritten signature in black ink that reads "Michael W. Blosser".

Mike Blosser
Sr. Vice President, Manufacturing Services

cc: Parties of Record



ILLINOIS
MANUFACTURERS'
ASSOCIATION

www.ima-net.org

1301 West 22nd Street • Suite 307 • Oak Brook, Illinois 60523 • (630) 368-5300 • Fax: (630) 218-7467
220 East Adams Street • Springfield, Illinois 62701 • (217) 522-1240 • Fax: (217) 525-0055

Email: ima@ima-net.org

April 23, 2021

The Honorable Martin J. Oberman
Chairman
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Chairman Oberman:

On behalf of the Illinois Manufacturers' Association and our nearly 4,000 members companies, I appreciate the opportunity to express our strong support for Canadian National's (CN) announced proposal to combine with Kansas City Southern (KCS).

Illinois manufacturers employ 556,000 men and women on factory floors that contribute the single largest share of our state's economy. In 2019, manufacturing output totaled \$304 billion and 93 percent of Illinois exports are manufactured products. Manufacturers need a robust and efficient transportation system to move people and product around the world and that includes a strong rail system.

The announced proposal to combine CN and KCS would create the premier railway for the 21st century, connecting ports in the United States, Mexico and Canada to facilitate trade and economic prosperity across the United States and particularly in Illinois.

Illinois is a transportation hub and the only state in the nation with all seven Class I railroads. The CN-KCS combination would serve our state well by expanding the collective reach of both railroads and bringing new, sustainable transportation solutions to businesses in Illinois, throughout the Midwest, and across the nation.

For many years, CN has been an integral part of the transportation system in Illinois. Their freight railroad safely and reliably connects businesses, large and small, to markets around the world. Perhaps more importantly, as the most fuel-efficient railroad in North America, CN offers a sustainable transportation alternative to trucks – the more products we move by rail, the more we can help reduce greenhouse gas emissions and free up capacity on already congested roads and highways.

The IMA has worked with CN for many years and appreciate their responsiveness and openness to the needs of local residents. CN has operated in the U.S. for more than 100 years and is committed to being a strong local partner in everyone community where it operates. For all of the reasons outlined above, I strongly support CN's proposed combination with KCS and urge you and the Board to give the proposal every consideration.

Best,

Mark Denzler
President & CEO

BOLDLY MOVING MAKERS FORWARD



GREATER MEMPHIS CHAMBER

April 22, 2021

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and
CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas
City Southern Railway Company, Gateway Eastern Railway Company, and the
Texas Mexican Railway Company

Dear Ms. Brown:

My name is Ted Townsend, Chief Economic Development Officer at the Greater Memphis Chamber in Memphis, TN. The Greater Memphis economy has gained an international reputation as a location of choice for companies within a diverse set of key industries. Leveraging our strategic geographic location and leaning into our industry specializations, Greater Memphis is competitively positioned to grow future-focused density in the areas of Agribusiness and Technology, Food and Beverage Processing, Medical Devices, and Innovation as well as Transportation and Logistics.

Memphis is a city that was built around the railroads. Memphis can reach 45 states and Canada and Mexico by rail within 2 days and is one of only four cities in the U.S. to be served by 5 class 1 railroads. Single system shipment is available to all 48 contiguous states, Alaska, Mexico, and Canada. Access to rail is available 24/7 at nine intermodal yards throughout the Memphis metro. Home to five wide -span cranes, the intermodal yards can lift capacity of more than 2 million TEUs annually. CN's strong track record of success with superior service, intermodal and safety gives us confidence that a combined CN-KCS would be best positioned to serve our needs.

CN's acquisition of KCS will allow our partnership to offer an enhanced service to our customers. While KCS and CN work together to provide joint routes, which remain among the transportation options as separate companies they have not been able to offer the kind of seamless service that would benefit the Memphis area and the KCS-CN merger will further enhance our reach. While there is some overlap in the networks, the overlap between CN and KCS networks is very limited and additional connection points will facilitate the combined

railway to create new innovative transportation solutions and competitive lanes. The CN-KCS merger will provide shorter distances on many key routes for our growing industry partners as well as the Memphis economic community and its surrounding areas.

We have been impressed with CN's commitment to innovation in the rail industry making them an industry leader in fuel consumptions, sustainability and safety. CN's consistent track record in innovative solutions such as the automated track inspection technology and car inspection portals will enhance the safety, speed and reliability of the KCS network.

The combined company would create a network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer and more economical rail option for us where we currently rely on trucks and provide shorter distances on many key routes. We are hopeful about this transaction as a CN-KCS rail will be able to provide the seamless transportation and service that is not currently available.

For the reasons stated above, Greater Memphis Chamber is expressing our support for the combination of CN and KCS as it will enhance overall competition through the multiple connection points creating more and faster transportation lanes through the US Heartland.

We hope to see the premier 21st century railway come to life.

Sincerely,



Ted Townsend
Chief Economic Development Officer
Greater Memphis Chamber

CC: Parties of Record

BRANDY D. CHRISTIAN
CHIEF EXECUTIVE OFFICER



M. D. (MIKE) STOLZMAN
GENERAL MANAGER

NEW ORLEANS PUBLIC BELT RAILROAD

April 25, 2021

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Dear Ms. Brown:

The Port of New Orleans (Port NOLA) is a diverse deep-water port strategically located on the Mississippi River near the Gulf of Mexico -- with access to 30-plus major inland hubs such as Dallas, Memphis, Chicago and Canada via 14,500 miles of waterways, six Class I railroads and interstate roadways. Port NOLA works jointly with both the CN and KCS on international intermodal business moving in and out of the Port of New Orleans and the CN rail terminals in Memphis, Chicago and Toronto and the KCS rail terminal in Wylie, TX serving the Dallas-Fort Worth market. Additionally, both the CN and KCS provide rail service to the Port of New Orleans' industrial real estate tenants via the New Orleans Public Belt Railroad. New synergies would be created between Port NOLA and the combined CN-KCS railroad for markets like Kansas City and St. Louis due to enhanced intermodal networks and customer relationships.

The New Orleans Public Belt Railroad Corporation (NOPB) is a Class III switching railroad with a mission of serving the Port of New Orleans, local customers, and the New Orleans Rail Gateway. The NOPB connects six Class I railroads to each other and to properties in and near the Port complex. The NOPB interchanges with both CN and KCS on a daily basis.

Both Port NOLA and NOPB support CN's acquisition of KCS because of the strong benefits a CN-KCS railway would bring by offering faster, safer, cleaner and more direct service for the North-South trade.

We believe that a combination of CN and KCS would have benefit our intermodal marketing efforts. CN's strong track record of success with superior service, intermodal and safety gives us confidence that a combined CN-KCS would be best positioned to serve our needs. Additionally, CN's successful track record of acquisitions over the past 25+ years also provides assurance that CN will effectively and seamlessly be able to integrate and partner with KCS.

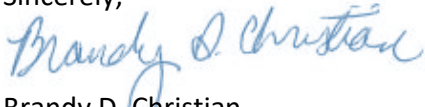
This merger offers a unique opportunity to fuel economic growth across North America while reducing freight congestion, helping the environment, and increasing transportation efficiencies.

April 25, 2021

Page 2

For these reasons, Port NOLA and NOPB are voicing strong support for the combination of CN and KCS, because it will provide expanded options and drive efficiencies for customers of all sizes. Port NOLA and NOPB urge the STB to approve CN's acquisition of KCS as swiftly as possible so that these systems can be integrated and the benefits of this deal can be realized for the benefit of all stakeholders.

Sincerely,



Brandy D. Christian
Chief Executive Officer

April 21, 2021

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

The Prince Rupert Port Authority (PRPA) is responsible for the overall planning, development, marketing, and management of the commercial port facilities within the Port of Prince Rupert, one of the fastest growing gateways in North America. Served exclusively by CN, the Port of Prince Rupert is a strategic gateway to enable trade between Asia and North America, facilitating more than \$70 billion in trade annually.

The Port of Prince Rupert's container terminal, owned and operated by DP World, is a key point of entry for US imports of retail goods, consumer products, and auto parts to Chicago, Memphis and the entire US Midwest. The second expansion of the container terminal has just commenced which will establish nearly 2 million TEUs of capacity by 2024, and a second 2M TEU container terminal is in the early stages of investigation culminating to establish significant capacity for US import and export activity. The many strategic advantages of the Prince Rupert gateway have contributed to a strong value proposition of speed and reliability of service for US importers in addition to adding capacity for US export industries. In addition, the capacity at the Port of Prince Rupert has provided US importers and exporters much needed resiliency in their supply chains during periods of port congestion on the west coast.

PRPA and CN have been supply chain partners for decades, and much of our success can be attributed to the special working relationship we have together. PRPA and CN collaborate on infrastructure investments to our mutual benefit and approach common challenges and opportunities as a team to best serve the import and export industries we serve together. PRPA and CN regularly collaborate on joint marketing efforts and work together on everything from long term strategy to day-to-day operations to better the current and future needs of the industries we support and the economic benefits they create.

PRPA supports CN's acquisition of KCS because of the superior benefits a CN-KCS railway would bring by offering faster, safer, and more direct service for North-South trade. In addition, the CN system linking Asia to the heartland of North America via the Port of Prince Rupert represents the lowest carbon intensity of any west coast trade route to the US Midwest assisting US importers in achieving their own carbon reduction objectives in their supply chains.

We believe that a combination of CN and KCS would help us better serve the needs of US import and export sectors. CN's strong track record of success with superior service, operational

excellence and safety gives us confidence that a combined CN-KCS would be best positioned to serve the needs of US industry. Additionally, CN's successful track record of acquisitions over the past 25+ years also provides assurance that CN will effectively and seamlessly be able to integrate and partner with KCS.

The combined company would create a network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer, and more economical service into key US markets. We are hopeful about this transaction as a CN-KCS rail will be able to provide the seamless transportation and service that would not be available through KCS should it go forward with an alternative combination.

For example:

- The combined company's single-owner, single-operator service would enhance our ability to be competitive in the markets in which we operate, benefiting our shipments of auto parts, footwear and apparel, furniture, appliances, electronics and other consumer goods into KCS's intermodal terminals in Kansas City, Dallas, Jackson, Kendleton and West Monroe.
- CN's significant experience providing seamless intermodal service throughout their network and across borders.
- Importers in the US Midwest and South are too reliant on the Ports of Los Angeles and Long Beach and suffer from significant delays due to port congestion, as clearly demonstrated over the last 6 months. The Port of Prince Rupert offers importers the opportunity to diversify their port of entry, mitigate supply chain risks and ensure fast, reliable service.
- Transpacific sailing times are 3 days faster in Prince Rupert compared to the Ports of Los Angeles and Long Beach, meaning that containers are already in-transit to their final destination before they are unloaded in California.
- CN has demonstrated a strong commitment to invest in network capacity to support future growth, which has been a critical success factor in the growth and development of the Port of Prince Rupert.
- The CN system linking Asia to the heartland of North America via the Port of Prince Rupert represents the lowest carbon intensity of any west coast trade route to the US Midwest.

PRPA is confident in and strongly supports CN's proposed acquisition of KCS for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,

PRINCE RUPERT PORT AUTHORITY



Shaun Stevenson
President & Chief Executive Officer

CC: Parties of Record



Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

My name is Chris Fedorchuk and my business address is 100-1475 Chevrier Blvd, Winnipeg Manitoba. I am the President of Volume Freight Solutions Inc. In my role, I am responsible for generating new business and overseeing all our departments of transportation including intermodal and railcars.

Volume Freight Solutions Inc is a third party logistics provider handling all modes of transportation. Our main market consists of shipping agricultural products with CP from the Prairies to Vancouver and Montreal. As well as loading boxcars and hopper cars from MB & SK to Texas for furtherance into Mexico with CP/KCS. Our growth into the cross-border intermodal market is an area of focus.

Volume Freight Solutions supports CN's acquisition of KCS because of the superior benefits a CN-KCS railway would bring by offering faster, safer, cleaner and more direct service for North-South trade.

We believe that a combination of CN and KCS would help us to win in our markets. CN's strong track record of success with superior service, intermodal and safety gives us confidence that a combined CN-KCS would be best positioned to serve our needs. Additionally, CN's successful track record of acquisitions over the past 25+ years also provides assurance that CN will effectively and seamlessly be able to integrate and partner with KCS.

Volume Freight currently loads boxcars and hoppers cars in Winnipeg MB with Agricultural commodities destined throughout the US and for furtherance into Mexico. Having CN and KCS join operations we hope to see better access to equipment availability due to increased network velocity. A potential reduction in transit times between Winnipeg and the Mexican market. And shared systems with better information sharing and visibility.

The combined company would create network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer and more economical rail option for us where we currently rely on trucks and provide shorter distances on many key routes. We are hopeful about this transaction as a CN-KCS rail will be able to provide the seamless transportation and service that would not be available through KCS should it go forward with an alternative combination.

Volume Freight Solutions is confident in and strongly supports CN's proposed acquisition of KCS for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,



Chris Fedorchuk
President

cc: Parties of Record



821 Aubrey Avenue, Ste. B1
Ardmore, PA 19003

Sunday, April 25, 2021

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Oleum Energy Solutions, LLC (hereinafter "Oleum") was founded at the beginning of 2014 to provide supply chain management services primarily to the Oil and Gas Industry, and we have been working closely with the Canadian National Railway Company (hereinafter "CN") since then. Beyond shipping with CN, our company and team has worked hand-in-hand with CN on terminal operations and expansion, as well as identifying both new and changing markets into which we could collectively deliver high-value service to mutual clients. CN and Oleum have worked together throughout North America, but with a majority of business moving from the United States into Canada. Our relationship with CN is a close one, and that is by choice. Much of our business and many of our shipping routes allow for access to other railroads, including the Canadian Pacific Railway. However, our team – which boasts a combined 30+ years of "railroading" experience – consistently chooses CN due to the high level of service, responsiveness, and competitiveness that the company and its teams provide us.

Along these lines, I am writing to express our support for the proposed transaction between CN and the Kansas City Southern Railway Company (et al.) (hereinafter "KCS"). We are confident that a combination of CN and KCS would not only help Oleum further expand our business, but also in the "high-touch", high quality manner that we have provided elsewhere to our clients with CN's support. Of course, we very much appreciate the difficulty in executing these types of transactions and successfully combining two large companies such as CN and the KCS. However, in this instance, our confidence is only further bolstered by CN's successful track record of acquisitions and its proven ability to execute such integrations.

While our team see many benefits of the proposed CN-KCS transaction, there are several notable ones worth highlighting:

- Enhanced end-to-end single operator service;
- “High-touch” service in a larger geographic footprint (with very little overlap compared to CN’s and KCS’ existing respective service areas); and,
- Visible international support for railroads as one of the most environmentally friendly modes of transportation.

We realize that these transactions are wrought with complication, particularly given the size of CN and the KCS. However, the potential synergies and advantages within this specific combination abound, and our team feels obligated to voice our support so that this opportunity is not missed.

We thank you in advance for your hard work and consideration related to this deal, and we are grateful to be able to expressly voice our support as a customer and partner of CN’s. We look forward to your review of the proposed transaction, and we hope for an outcome in favor of this unique “win-win” combination.

Sincerely,



Bryan Hurtado
CEO and Founder

Cc: All Parties of Record



TAILOR-MADE SUCCESS

April 25, 2021

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

QSL America Inc is the parent company of numerous multimodal terminals in the United States with the largest being in Chicago and operating under North America Stevedoring Co. (NASCO). Since 2010, we have worked with CN on creating a transloading facility to assist in the movement of many commodities for North America and the United States for distribution into the Midwest and then throughout the country. In 2020, we handled over 10,000 rail cars transitioning to or from rail cars to other modes of transportation such as inland barge, truck or reload back to rail.

QSL America, Inc supports CN's acquisition of KCS because of the superior benefits a CN-KCS railway would bring by offering faster, safer, cleaner and more direct service for North-South trade.

We believe that a combination of CN and KCS would help us to win in our markets. CN's strong track record of success with superior service, intermodal and safety gives us confidence that a combined CN-KCS would be best positioned to serve our needs. Additionally, CN's successful track record of acquisitions over the past 25+ years also provides assurance that CN will effectively and seamlessly be able to integrate and partner with KCS.

QSL America, Inc recently opened operations in the Gulf with 3 locations in Houston, TX and one in New Orleans, LA, all of whom are serviced by rail. We can easily see how our existing relationship and mutual customer base could allow us to recreate a similar multimodal facility in the south to compare to the NASCO location in Chicago but now include Mexico in addition to Canada for a truly North America multimodal transportation system for the benefit of all the rail carriers and the movement of commerce within the country.

The combined company of CN-KCS would create network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer and more economical rail option for us where we currently rely on trucks and provide shorter distances on many key routes. We are hopeful about this transaction as a CN-KCS rail will be able to provide the seamless transportation and service that would not be available through KCS should it go forward with an alternative combination.

Sincerely,



Stephen H. Mosher
Executive Vice President
3600 E. 95th Street
Chicago, IL 60617

WWW.QSL.COM

Charles City Rail Terminal, LLC

300 Lawler Street

Charles City, IA50616

Yesterday is history, tomorrow a mystery, but today is a gift ... that's why they call it the present

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

My name is Joe Natale and my business address is 300 Lawler Street, Charles City, IA 50616. I am the Founder and General Manager of Charles City Rail Terminal, LLC ("CCRT"). In my role, I am responsible for the commercial development and operations of the company. CCRT is developing a rail transloading facility to load and offload railcars and will provide transloading services for companies shipping on the CN.

CCRT supports approval of the CN's acquisition of KCS. The transaction would offer a faster, safer, cleaner, and more direct service for North-South trade. As well as provide significant benefits that we are eager to see realized as soon as possible.

We believe that a combination of CN and KCS would help us to win in our markets. CN's strong track record of success with superior service and safety gives us confidence that a combined CN-KCS would be best positioned to serve our needs. Additionally, CN's successful track record of acquisitions over the past 25+ years also provides assurance that CN will effectively and seamlessly be able to integrate and partner with KCS.

CCRT's transloading facility will service processing and production facilities in Iowa and surrounding states needing to transport multiple commodities (ethanol, corn/DCO, soybean/SBO, fertilizers, animal feedstock, etc.) to other regions of the country on the CN/KCS, into the Gulf region. CCRT will also serve Iowa and surrounding states with a reliable source of propane by providing destination delivered supply or railcar throughput arrangements as well as provide an origination point for suppliers seeking to optimize its supply logistics utilizing the CN/KCS.

The combined company would create a network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer, and more economical rail option for us. We are hopeful about this transaction as being able to provide the seamless transportation and service that would otherwise not be available through KCS should it go forward with an alternative combination.

For example:

- The combined company's single-owner, single-operator service would enhance our ability to be competitive in the markets in which we operate, benefiting our shipments to additional destination markets in the US, Canada and Mexico.

- A combined CN-KCS will improve the North American transportation network and create a true USMCA railway.
- 1.
- Allows companies to maintain cost and competitive advantage, improve cycle times to reduce fleet requirements. Direct rail service is more competitive than interline rail service.
 - CN invests in technology and is prepared to extend our recent investments in automated track inspection technology and car inspection portals to enhance the safety, speed, and reliability of the KCS network.

Our entire team at the Charles City Rail Terminal feel confident in and strongly supports CN's proposed acquisition of KCS for all the reasons as stated above.

Sincerely,



Joe Natale
Founder and General Manager



Village of Hanover Park Administration

Municipal Building
2121 West Lake Street, Hanover Park, IL 60133
630-823-5600 tel 630-823-5786 fax

hpil.org

Village President
Rodney S. Craig

Village Clerk
Eira L. Corral Sepulveda

Trustees
Liza Gutierrez
James Kemper
Herb Porter
Bob Prigge
Rick Roberts
Sharmin Shahjahan

Village Manager
Juliana A. Maller

April 22, 2021

The Honorable Martin J. Oberman
Chairman
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Chairman, Oberman:

Recently, Canadian National Railway Company (CN) announced its proposal to combine with Kansas City Southern (KCS), which would create the premier railway for the 21st century, connecting ports in the United States, Mexico and Canada to facilitate trade and economic prosperity across the United States and particularly in Illinois. I believe that this combination would serve the Village of Hanover Park and the Chicago region well by expanding the collective reach of both railroads and bringing new, sustainable transportation solutions to our region.

The combined company would create a more efficient freight rail network that both our business and resident base rely on. We are hopeful this transaction will be able to provide more seamless transportation service that would not be available currently. In addition, the combined company's single-owner, single-operator service would enhance our ability to be competitive with other parts of the country and attract more businesses, jobs, and economic development to Northeastern Illinois.

We have maintained a strong working relationship with CN and have worked collaboratively with CN on a number of local issues in the Village like RR trespassing concerns. CN is committed to being a strong local partner in everyone community where it operates.

For all of the reasons outlined above, I strongly support CN's proposed combination with KCS and urge you and the Board to give the proposal every consideration.

Sincerely,

Mayor Rodney S. Craig
Village of Hanover Park, IL



MICHAEL P. COLLINS
PRESIDENT

Michelle Gibas
VILLAGE CLERK

TRUSTEES

Harry Benton
Margie Bonuchi
Kevin M. Calkins
Patricia T. Kalkanis
Cally Larson
Brian Wojowski

April 25, 2021

The Honorable Martin J. Oberman
Chairman
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Chairman Oberman:

Canadian National (CN) recently announced its proposal to combine with Kansas City Southern (KCS), which would create the premier railway for the 21st century, connecting ports in the United States, Mexico, and Canada to facilitate trade and economic prosperity across the United States and particularly in Plainfield, Illinois. I believe that this combination would serve Plainfield well by expanding the collective reach of both railroads and bringing new, sustainable transportation solutions to businesses in the Village of Plainfield and Will County.

For many years, CN has been an integral part of the transportation system in Plainfield. Their freight railroad safely and reliably connects local businesses, large and small, to markets around the world. Perhaps more importantly, as the most fuel-efficient railroad in North America, CN offers a sustainable transportation alternative to trucks – the more products we move by rail, the more we can help reduce greenhouse gas emissions and free up capacity on already congested roads and highways.

I have worked with CN for many years and appreciate their responsiveness and openness to the needs of local residents. CN has operated in the U.S. for more than 100 years and is committed to being a strong local partner in every community where it operates. We appreciate their commitment to the community as Plainfield is fortunate to be a recipient of an EcoConnexions From The Ground Up Grant. For all of the reasons outlined above, I strongly support CN's proposed combination with KCS and urge you and the Board to give the proposal every consideration.

Sincerely,

Michael P. Collins
Village President

David R. Brady
President

Yvette Solis
Village Clerk



VILLAGE OF BEDFORD PARK

6701 South Archer Road
Bedford Park, Illinois 60501
Phone: (708) 458-2067 • Fax: (708) 458-2079
www.villageofbedfordpark.com

April 22, 2021

Trustees:
Katrina M. Errant
Anthony W. Kensik
Dr. Thomas J. Pallardy
Gail P. Rubel
Terry J. Stocks
Nancy A. Wesolowski

The Honorable Martin J. Oberman
Chairman
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Chairman Oberman:

Recently, Canadian National Railway Company (CN) announced its proposal to combine with Kansas City Southern (KCS), which would create the premier railway for the 21st century, connecting ports in the United States, Mexico and Canada to facilitate trade and economic prosperity across the United States and particularly in the Village of Bedford Park, Illinois. I believe that this combination would serve the Village well by expanding the collective reach of both railroads and bringing new, sustainable transportation solutions to businesses in the Village and the Northeastern Illinois region.

For many years, CN has been an integral part of the transportation system in our area. Their freight railroad safely and reliably connects the Village of Bedford Park's businesses, large and small, to markets around the world. Perhaps more importantly, as the most fuel-efficient railroad in North America, CN offers a sustainable transportation alternative to trucks – the more products we move by rail, the more we can help reduce greenhouse gas emissions and free up capacity on already congested roads and highways.

I have worked with CN for many years and appreciate their responsiveness and openness to the needs of our local residents. CN and its US rail subsidiaries have operated in the U.S. for more than 100 years and CN is committed to being a strong local partner wherever it operates, including a positive and productive relationship with our Village. For the reasons outlined above, I strongly support CN's proposed combination with KCS and urge you and the Board to give the proposal every consideration.

Sincerely,

David R. Brady
Village President

"PRESERVING THE PAST TO ENHANCE THE FUTURE"



**custom
packaging
company, inc.**

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Custom Packaging Company is a supplier to the Canadian National Railway Company. We have supplied since 2007. We supply hygiene and safety items used by their employees.

Custom Packaging Company supports CN's acquisition of KCS because of the superior benefits a CN-KCS railway would bring by offering faster, safer, cleaner and more direct service for North-South trade.

Central to the CN's bid for KCS is the establishment of a voting trust that benefits KCS shareholders. Custom Packaging Company unequivocally supports approval of CN's voting trust. We believe CN's proposed voting trust benefits KCS and its shareholders by creating the opportunity for them to make a fair, informed decision when choosing between the competing offers and by shielding them from the lengthy regulatory approval process that would arise following an acquisition of KCS by either CN or CP.

To ensure fair and transparent review of CN's voting trust, Custom Packaging Company also supports CN's request that the STB review CN's voting trust agreement simultaneously with CP's proposed voting trust and that the review process include a brief public comment period. Such a review would ensure a level playing field for the bids.

Custom Packaging Company is confident in and strongly supports CN's proposed acquisition of KCS. We hope to see the premier 21st century railway come to life.

Sincerely,
CUSTOM PACKAGING CO., INC.

J. Matthew Shane
President

Mailing Address:
P.O. Box 35309
Louisville, KY 40232

Plant Location:
4830 Jennings Lane
Louisville, KY 40218

Telephone: (502) 966-3937
Fax: (502) 966-3949



405 S. Banker Street • P.O. Box 629 • Effingham, IL 62401-0629

Phone: (217) 342-9412 • FAX: (217) 347-5949

April 30, 2021

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

TOTAL GRAIN MARKETING, LLC is a grain cooperative located in southern to the central part of Illinois. We are owned by three farmer cooperatives, GROWMARK, SOUTH CENTRAL FS, and WABASH VALLEY SERVICE COMPANY. We operate thirty eight country grain elevators. We handle over eighty million bushels of grain for our farmers, of which over half is transported by rail.

TOTAL GRAIN MARKETING, LLC supports CN's acquisition of KCS because of the superior benefits a CN-KCS railway would bring by offering faster, safer, cleaner and mor direct service for North-South trade.

We believe that a combination of CN and KCS would help us to win in our markets. CN's strong track record of success with superior service and safety gives us confidence that a combined CN-KCS would be best positioned to serve our needs. Additionally, CN's successful track record of acquisitions over the past 25+ years also provides assurance that CN will effectively and seamlessly be able to integrate and partner with KCS.

TOTAL GRAIN MARKETING, LLC ships over fifty percent of their bushels by rail. We ship on the CN, UP and the CSX. This combination of the CN/CKS could open new markets for our cooperative members and allow us to ship additional bushels by rail and allow our farmer owners to be more competitive in the marketplace.

The combined company would create a network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer, and more economical rail option for us. We are hopeful about this transaction as a CN-KCS rail will be able to provide the seamless transportation and service that would not be available through KCS should it go forward with an alternative combination.

For example:

- The combined company's single-owner, single-operator service would enhance our ability to be competitive in the markets in which we operate, benefiting our shipments of grain from Arcola, Lis, Neoga and Watson, IL to additional destination markets in the United States and Mexico.
- A combined CN-KCS will improve the North American transportation network and create a true USMCA railway.
- Allows companies to maintain cost and competitive advantage, improve cycle times to reduce fleet requirements. Direct rail service is more competitive than interline rail service.
- Customers of both companies would benefit from faster, safer, more direct, and more efficient service for North-South trade.

Central to the CN's bid for KCS is the establishment of a voting trust that benefits KCS shareholders. TOTAL GRAIN MARKETING unequivocally supports approval of CN's voting trust. We believe CN's proposed voting trust benefits KCS and its shareholders by creating the opportunity for them to make a fair, informed decision when choosing between the competing offers and by shielding them from the lengthy regulatory approval process that would arise following an acquisition of KCS by either CN or CP.

To ensure fair and transparent review of CN's voting trust, TOTAL GRAIN MARKETING also supports CN's request that the STB review CN's voting trust agreement simultaneously with CP's proposed voting trust and that the review process include a brief public comment period. Such a review would ensure a level playing field for the bids.

TOTAL GRAIN MARKETING is confident in and strongly supports CN's proposed acquisition of KCS for all the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,



Joseph L. Meinhart

CEO
South Central FS, Inc.
TOTAL GRAIN MARKETING, LLC



2010 South Main Street, Monticello, IA 52310-7707

Phone: (319) 465-6896 www.ias.coop

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

Innovative Ag Services is a large cooperative in central and eastern Iowa. We have two locations that are serviced by the CN railroad. They are Alden and Independence, with Alden being a shuttle train location for corn and soybeans. Most recent shipments were to the export market, Canada, and southeastern United States. There has been limited rail shipments from our locations in last year due to the derecho in central Iowa, and the truck demand from local ethanol plants, soybean crushers and feedmills.

Innovative Ag Services supports CN's acquisition of KCS because of the superior benefits a CN-KCS railway would bring by offering faster, safer, cleaner and more direct service for North-South trade.

We believe that a combination of CN and KCS would help us to win in our markets. CN's strong track record of success with superior service and safety gives us confidence that a combined CN-KCS would be best positioned to serve our needs. Additionally, CN's successful track record of acquisitions over the past 25+ years also provides assurance that CN will effectively and seamlessly be able to integrate and partner with KCS.

The combined company would create a network with enhanced end-to-end single-owner, single-operator service which will result in a faster, safer and more economical rail option for us. We are hopeful about this transaction as a CN-KCS rail will be able to provide the seamless transportation and service that would not be available through KCS should it go forward with an alternative combination.

For example:

- The combined company's single-owner, single-operator service would enhance our ability to be competitive in the markets in which we operate, benefiting our shipments of corn and soybeans from Alden and Independence Iowa to additional destination markets in the United States and Mexico.
- A combined CN-KCS will improve the North American transportation network and create a true USMCA railway.

- Allows companies to maintain cost and competitive advantage, improve cycle times to reduce fleet requirements. Direct rail service is more competitive than interline rail service.
- Customers of both companies would benefit from faster, safer, more direct and more efficient service for North-South trade.

Central to the CN's bid for KCS is the establishment of a voting trust that benefits KCS shareholders. Innovative Ag Services unequivocally supports approval of CN's voting trust. We believe CN's proposed voting trust benefits KCS and its shareholders by creating the opportunity for them to make a fair, informed decision when choosing between the competing offers and by shielding them from the lengthy regulatory approval process that would arise following an acquisition of KCS by either CN or CP.

To ensure fair and transparent review of CN's voting trust, Innovative Ag Services also supports CN's request that the STB review CN's voting trust agreement simultaneously with CP's proposed voting trust and that the review process include a brief public comment period. Such a review would ensure a level playing field for the bids.

Innovative Ag Services is confident in and strongly supports CN's proposed acquisition of KCS for all of the reasons as stated above. We hope to see the premier 21st century railway come to life.

Sincerely,



Robin Sampson
VP of Grain
Innovative Ag Services

cc: Parties of Record



The Chemours Company
1007 Market Street
PO Box 2047
Wilmington, DE 19899

302-773-1000 t
chemours.com

April 30, 2021

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E. Street, S.W.
Washington, DC 20423-0001

Re: FD 36514, Canadian National Railway Company, Grand Trunk Corporation, and CN's Rail Operating Subsidiaries—Control—Kansas City Southern, the Kansas City Southern Railway Company, Gateway Eastern Railway Company, and the Texas Mexican Railway Company

Dear Ms. Brown:

The Chemours Company is a global leader in Titanium Technologies, Thermal & Specialized Solutions, Advanced Performance Materials, and Chemical Solutions providing its customers with solutions in a wide range of industries with market-defining products, application expertise and chemistry-based innovations. Chemours is headquartered in Wilmington, Delaware and is listed on the NYSE under the symbol CC.

Both CN and KCS are strategic supply chain partners without whom Chemours would not be successful. Chemours relies on CN to provide safe and efficient rail transportation for both inbound raw materials and outbound finished product at its manufacturing site in Woodstock, TN and likewise, Chemours relies on KCS for the safe and efficient delivery of raw materials to its manufacturing site in Delisle, MS. These two manufacturing sites alone represent well over 10,000 loaded inbound and outbound railcars per year. Excluded here are any railcars to / from our other sites in which either CN or KCS participates as a linehaul partner.

The Chemours Company supports CN's request that the Surface Transportation Board's current major merger rules be applied to this proposed transaction. Any merger involving KCS with another Class I carrier should not be subject to a different outdated and limited set of rules. That is why Chemours believes the STB should review this combination under the modern new rules, as opposed to having a combination with KCS reviewed under rules from four decades ago that have been opposed by multiple trade associations representing rail shipper interests.

In addition, Chemours unequivocally supports approval of CN's voting trust. We believe CN's proposed voting trust benefits KCS and its shareholders by creating the opportunity for them to make a fair, informed decision when choosing between the competing offers and by shielding them from the lengthy regulatory approval process that would arise following an acquisition of KCS by either CN or CP. We also support CN's request that the STB review CN's voting trust agreement simultaneously with CP's proposed voting trust and that the review process include a brief public comment period. Such a review would ensure a level playing field for the bids.



The Chemours Company
1007 Market Street
PO Box 2047
Wilmington, DE 19899

302-773-1000 t
chemours.com

The Chemours Company and its predecessor is proud of its 69-year relationship with CN and its predecessor road(s) and appreciate their outreach to us to discuss their plan for the combined CN-KCS network. Their request that the current major merger rules apply to any mergers involving KCS—as well as their proposed voting trust and their request that the STB review their voting trust concurrently with its review of CP's trust with a period for public comment—aligns with the customer-focused approach to business to which we have become accustomed. As the proposed merger develops, we hope that all parties show the same commitment to the current STB rules that CN has demonstrated.

Sincerely,

A handwritten signature in black ink that reads "Kevin G. Acker". The signature is fluid and cursive, with the first name "Kevin" being more prominent.

Kevin G. Acker
Director, Land Transportation Americas
Logistics Procurement
302 773 2270 (o)
302 438 9458 (m)

The Chemours Company
1007 Market Street; Room 520-6
Wilmington, DE 19801



Exhibit 8

Agreement and Plan of Merger
(fully executed, including Voting
Trust Agreement as Exhibit A)

STB Finance Docket No. 36514

AGREEMENT AND PLAN OF MERGER

by and among

CANADIAN NATIONAL RAILWAY COMPANY,
BROOKLYN MERGER SUB, INC.

and

KANSAS CITY SOUTHERN

Dated as of May 21, 2021

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EXHIBIT

Exhibit A Form of Voting Trust Agreement

AGREEMENT AND PLAN OF MERGER, dated as of May 21, 2021 (this “Agreement”), by and among Canadian National Railway Company, a Canadian corporation (“Parent”), Brooklyn Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of Parent (“Merger Sub”), and Kansas City Southern, a Delaware corporation (the “Company”).

W I T N E S S E T H:

WHEREAS, Parent desires to acquire the Company on the terms and subject to the conditions set forth in this Agreement;

WHEREAS, in furtherance of such acquisition, and on the terms and subject to the conditions set forth in this Agreement and in accordance with the General Corporation Law of the State of Delaware (the “DGCL”), Merger Sub shall be merged with and into the Company (the “Merger”), with the Company surviving the Merger as a wholly owned Subsidiary of Parent;

WHEREAS, the board of directors of the Company (the “Company Board”) has unanimously (a) determined that it is in the best interests of the Company and its stockholders, and declared it advisable, to enter into this Agreement, (b) approved the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including the Merger, and (c) resolved to recommend that the stockholders of the Company adopt this Agreement and directed that such matter be submitted for consideration of the stockholders of the Company at the Company Stockholder Meeting;

WHEREAS, the board of directors of Parent (the “Parent Board”) has unanimously (a) determined that it is in the best interests of Parent to enter into this Agreement and (b) approved and declared advisable the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including the Merger, the issuance of the Parent Common Shares comprising the Share Consideration and the Debt Financing;

WHEREAS, the board of directors of Merger Sub has unanimously (a) determined that it is in the best interests of Merger Sub and its sole stockholder, and declared it advisable, to enter into this Agreement, (b) approved the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including the Merger, and (c) resolved to recommend that the sole stockholder of Merger Sub adopt this Agreement and directed that such matter be submitted for consideration of the sole stockholder of Merger Sub; and

WHEREAS, Parent, Merger Sub and the Company desire to make certain representations, warranties, covenants and agreements specified herein in connection with this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties, covenants and agreements contained herein, and intending to be legally bound hereby, Parent, Merger Sub and the Company agree as follows:

ARTICLE 1

THE MERGER

Section 1.1 The Merger. On the terms and subject to the conditions set forth in this Agreement, at the Effective Time and in accordance with the DGCL, Merger Sub shall merge with and into the Company, the separate corporate existence of Merger Sub shall cease and the Company shall continue its corporate existence under Delaware law as the surviving corporation in the Merger (the “Surviving Corporation”) and a wholly owned Subsidiary of Parent.

Section 1.2 Closing. The closing of the Merger (the “Closing”) shall take place (a) at the offices of Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York 10019, at 8:30 a.m., New York City time, on the second Business Day after the satisfaction or waiver (to the extent permitted by applicable Law) of the conditions set forth in Article 6 (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions) or (b) at such other place, time and date as the Company and Parent may agree in writing. The date on which the Closing actually occurs is referred to as the “Closing Date.”

Section 1.3 Effective Time. Subject to the provisions of this Agreement, at the Closing, the Company shall cause a certificate of merger in connection with the Merger (the “Certificate of Merger”) to be executed, acknowledged and filed with the Secretary of State of the State of Delaware in accordance with the applicable provisions of the DGCL. The Merger shall become effective at such time as the Certificate of Merger has been duly filed with the Secretary of State of the State of Delaware or at such later time as may be agreed by the Company and Merger Sub in writing and specified in the Certificate of Merger in accordance with the DGCL (the effective time of the Merger being herein referred to as the “Effective Time”).

Section 1.4 Effects of the Merger. The Merger shall have the effects set forth in this Agreement and the applicable provisions of the DGCL.

Section 1.5 Organizational Documents of the Surviving Corporation. Subject to Section 5.11, at the Effective Time: (a) the certificate of incorporation of Merger Sub as in effect immediately prior to the Effective Time (amended so that the name of the Surviving Corporation shall be “Kansas City Southern”) shall be the certificate of incorporation of the Surviving Corporation until thereafter amended in accordance with the DGCL and such certificate of incorporation; and (b) the bylaws of Merger Sub as in effect immediately prior to the Effective Time (amended so that the name of the Surviving Corporation shall be “Kansas City Southern”) shall be the bylaws of the Surviving Corporation until thereafter amended in accordance with the DGCL and such bylaws; and

Section 1.6 Directors and Officers of the Surviving Corporation. (a) The directors of the Company as of immediately prior to the Effective Time shall be the initial directors of the Surviving Corporation as of the Effective Time and shall hold office until their respective successors are duly elected and qualified, or their earlier death, resignation or removal

and (b) the officers of the Company as of immediately prior to the Effective Time shall be the initial officers of the Surviving Corporation as of the Effective Time and shall hold office until their respective successors are duly elected and qualified, or their earlier death, resignation or removal.

ARTICLE 2

CONVERSION OF SHARES; EXCHANGE OF CERTIFICATES

Section 2.1 Effect of the Merger on Capital Stock.

(a) At the Effective Time, by virtue of the Merger and without any action on the part of the Company, Merger Sub or the holders of any securities of the Company or Merger Sub:

(i) Conversion of Company Common Stock. Each share of Company Common Stock that is outstanding immediately prior to the Effective Time, but excluding Excluded Shares and Dissenting Shares, shall be converted automatically into the right to receive (A) a number of Parent Common Shares equal to the Exchange Ratio (the “Share Consideration”), subject to Section 2.1(e) with respect to fractional Parent Common Shares, and (B) \$200 in cash (the “Cash Consideration” and, together with the Share Consideration, the “Merger Consideration”). All shares of Company Common Stock that have been converted into the right to receive the Merger Consideration as provided in this Section 2.1(a) shall be automatically cancelled and cease to exist on the conversion thereof, and uncertificated shares of Company Common Stock represented by book-entry form (“Common Book-Entry Shares”) and each certificate that, immediately prior to the Effective Time, represented any such shares of Company Common Stock (each, a “Common Certificate”) shall thereafter represent only the right to receive the Merger Consideration (including the right to receive, pursuant to Section 2.1(e), the Fractional Share Cash Amount) into which the shares of Company Common Stock represented by such Common Book-Entry Share or Common Certificate have been converted pursuant to this Section 2.1(a)(i).

(ii) Treatment of Excluded Shares. Each share of Company Common Stock or Company Preferred Stock that is directly owned by the Company (as treasury stock or otherwise), Parent or Merger Sub immediately prior to the Effective Time, other than shares held on behalf of third parties, shall be cancelled and shall cease to exist, and no consideration shall be delivered in exchange therefor (such shares, the “Cancelled Shares”). Each share of Company Common Stock that is owned by any wholly owned Subsidiary of the Company or Parent (other than Merger Sub) immediately prior to the Effective Time, other than shares held on behalf of third parties, shall automatically be converted into such number of shares of common stock of the Surviving Corporation such that each such holder of Company Common Stock owns the same percentage of the outstanding common stock of the Surviving Corporation immediately following the Effective Time as such holder owned in the Company immediately prior to the Effective Time (each such share, together with the Cancelled Shares, the “Excluded Shares”).

(iii) Conversion of Merger Sub Common Stock. Each share of common stock, par value \$0.01 per share, of Merger Sub outstanding immediately prior to the Effective Time shall be converted into and become one validly issued, fully paid and nonassessable share of common stock, par value \$0.01 per share, of the Surviving Corporation with the same rights, powers and privileges as the shares so converted and shall constitute the only outstanding shares of capital stock of the Surviving Corporation. From and after the Effective Time, all certificates representing the common stock of Merger Sub shall be deemed for all purposes to represent the number of shares of common stock of the Surviving Corporation into which they were converted in accordance with the immediately preceding sentence.

(iv) Conversion of Company Preferred Stock. Each share of Company Preferred Stock that is outstanding immediately prior to the Effective Time, but excluding Dissenting Shares and Cancelled Shares, shall be converted automatically into the right to receive \$37.50 per share in cash (the “Preferred Merger Consideration”). All shares of Company Preferred Stock that have been converted into the right to receive the Preferred Merger Consideration as provided in this Section 2.1(a)(iv) shall be automatically cancelled on the conversion thereof and shall cease to exist, and uncertificated shares of Company Preferred Stock represented by book-entry form (“Preferred Book-Entry Shares”) and each certificate that, immediately prior to the Effective Time, represented any such shares of Company Preferred Stock (each, a “Preferred Certificate”) shall thereafter represent only the right to receive the Preferred Merger Consideration into which the shares of Company Preferred Stock represented by such Preferred Book-Entry Share or Preferred Certificate have been converted pursuant to this Section 2.1(a)(iv).

(b) [Reserved.]

(c) Dissenters’ Rights. Any provision of this Agreement to the contrary notwithstanding, if required by the DGCL (but only to the extent required thereby), shares of Company Common Stock or Company Preferred Stock that are issued and outstanding immediately prior to the Effective Time (other than the Cancelled Shares) and that are held by holders of such shares who have not voted in favor of the adoption of this Agreement or consented thereto in writing and who have properly exercised appraisal rights with respect thereto in accordance with, and who have complied with, Section 262 of the DGCL with respect to any such shares held by any such holder (the “Dissenting Shares”) shall not be converted into the right to receive the Merger Consideration or the Preferred Merger Consideration, as applicable, and holders of such Dissenting Shares shall be entitled to receive payment of the fair value of such Dissenting Shares in accordance with the provisions of such Section 262, unless and until any such holder fails to perfect or effectively withdraws or loses its rights to appraisal and payment under the DGCL. If, after the Effective Time, any such holder fails to perfect or effectively withdraws or loses such rights, such Dissenting Shares shall thereafter be no longer considered Dissenting Shares under this Agreement and shall be treated as if they had been converted into, at the Effective Time, the right to receive the Merger Consideration or the Preferred Merger Consideration, as applicable, without any interest thereon, in accordance with Section 2.1(a). At the Effective Time, any holder of Dissenting Shares shall cease to have any rights with respect thereto, except the rights provided in Section 262 of the DGCL and as

provided in the previous sentence. The Company shall give Parent (i) prompt notice of any demands received by the Company for appraisals of shares of Company Common Stock or Company Preferred Stock under Section 262 of the DGCL and (ii) the opportunity to direct all negotiations and proceedings with respect to such demands. The Company shall not, except with the prior written consent of Parent (which consent shall not be unreasonably withheld, delayed or conditioned), make any payment with respect to any such demands for appraisal or settle, offer to settle or approve any withdrawal of any such demands.

(d) Certain Adjustments. If, between the date of this Agreement and the Effective Time, the outstanding shares of Company Common Stock or Company Preferred Stock or the outstanding Parent Common Shares shall have been changed into a different number of shares or a different class of shares by reason of any stock dividend, subdivision, reorganization, reclassification, recapitalization, stock split, reverse stock split, combination or exchange of shares, the Merger Consideration and/or the Preferred Merger Consideration, as applicable, shall be equitably adjusted, without duplication, to proportionally reflect such change.

(e) No Fractional Shares.

(i) No fractional Parent Common Shares shall be issued in connection with the Merger and no certificates or scrip representing fractional Parent Common Shares shall be delivered on the conversion of shares of Company Common Stock pursuant to Section 2.1(a)(i). Each holder of shares of Company Common Stock who would otherwise have been entitled to receive as a result of the Merger a fraction of a Parent Common Share (after aggregating all shares represented by the Common Certificates and Common Book-Entry Shares delivered by such holder) shall receive, in lieu of such fractional Parent Common Share, cash (without interest) in an amount (rounded down to the nearest cent) representing such holder's proportionate interest in the net proceeds from the sale by the Exchange Agent, on behalf of all such holders, of the aggregated number of fractional Parent Common Shares that would otherwise have been issuable to such holders as part of the Merger Consideration (the "Fractional Share Cash Amount").

(ii) As soon as practicable after the Effective Time, the Exchange Agent shall, on behalf of all such holders of fractional Parent Common Shares, effect the sale of all such Parent Common Shares that would otherwise have been issuable as part of the Merger Consideration at the then-prevailing prices on the NYSE through one or more member firms of the NYSE. After the proceeds of such sale have been received, the Exchange Agent shall determine the applicable Fractional Share Cash Amount payable to each applicable holder and shall make such amounts available to such holders in accordance with Section 2.2(b). The payment of cash in lieu of fractional Parent Common Shares to such holders is not a separately bargained-for consideration and solely represents a mechanical rounding-off of the fractions in the exchange.

(iii) No such holder shall be entitled to dividends, voting rights or any other rights in respect of any fractional Parent Common Share that would otherwise have been issuable as part of the Merger Consideration.

Section 2.2 Exchange of Certificates.

(a) Exchange Agent. Prior to the Effective Time, Parent and Merger Sub shall designate Computershare Investor Services Inc. or a bank or trust company or similar institution selected by Parent to serve as exchange agent hereunder and approved in advance by the Company in writing (which approval shall not be unreasonably withheld, conditioned or delayed) (the “Exchange Agent”). Prior to the Effective Time, Parent shall, on behalf of Merger Sub, deposit or shall cause to be deposited, with the Exchange Agent, in trust for the benefit of holders of shares of Company Common Stock and Company Preferred Stock, (i) cash in U.S. dollars sufficient to pay (A) the aggregate Cash Consideration payable pursuant to Section 2.1(a)(i) and (B) the aggregate Preferred Merger Consideration payable pursuant to Section 2.1(a)(iv) and (ii) evidence of Parent Common Shares in book-entry form representing the number of Parent Common Shares sufficient to deliver the aggregate Share Consideration deliverable pursuant to Section 2.1(a)(i). Parent agrees to deposit, or cause to be deposited, with the Exchange Agent from time to time, as needed, cash sufficient to pay any dividends and other distributions pursuant to Section 2.2(c). Any such cash and book-entry shares deposited with the Exchange Agent shall be referred to as the “Exchange Fund”.

(b) Payment Procedures.

(i) As soon as reasonably practicable after the Effective Time and in any event not later than the third Business Day following the Closing Date, Parent shall cause the Exchange Agent to mail to each holder of record of shares of Company Common Stock or Company Preferred Stock whose shares were converted into the right to receive the Merger Consideration or the Preferred Merger Consideration, as applicable, pursuant to Section 2.1, (A) a letter of transmittal with respect to Book-Entry Shares (to the extent applicable) and Certificates (which shall specify that delivery shall be effected, and risk of loss and title to Certificates shall pass, only on delivery of Certificates (or effective affidavits of loss in lieu thereof) to the Exchange Agent and shall be in such form and have such other provisions as Parent and the Company may mutually reasonably agree), and (B) instructions for use in effecting the surrender of Book-Entry Shares (to the extent applicable) or Certificates (or effective affidavits of loss in lieu thereof) in exchange for the Merger Consideration or the Preferred Merger Consideration, as applicable.

(ii) On surrender of Certificates (or effective affidavits of loss in lieu thereof) or Book-Entry Shares to the Exchange Agent, together with such letter of transmittal, duly completed and validly executed in accordance with the instructions thereto, or, in the case of Book-Entry Shares, receipt of an “agent’s message” by the Exchange Agent, and such other documents as may customarily be required by the Exchange Agent, the holder of such Certificates (or effective affidavits of loss in lieu thereof) or Book-Entry Shares shall be entitled to receive in exchange therefor, and the Exchange Agent shall be required to promptly deliver to each such holder, the Merger Consideration or the Preferred Merger Consideration, as applicable, into which the shares represented by such Certificates or Book-Entry Shares have been converted pursuant to this Article 2 (together with any Fractional Share Cash Amount and any dividends or other distributions payable pursuant to Section 2.2(c)). No interest shall be paid or

accrued on any amount payable on due surrender of Certificates (or effective affidavits of loss in lieu thereof) or Book-Entry Shares. If payment of the Merger Consideration or Preferred Merger Consideration, as applicable, is to be made to a Person other than the Person in whose name the surrendered Certificate is registered, it shall be a condition precedent of payment that (A) the Certificate so surrendered shall be properly endorsed or shall be otherwise in proper form for transfer and (B) the Person requesting such payment shall have paid any transfer and other similar Taxes required by reason of the payment of the Merger Consideration or Preferred Merger Consideration, as applicable, to a Person other than the registered holder of the Certificate surrendered or shall have established that such Tax either has been paid or is not required to be paid.

(iii) The Exchange Agent, the Company, Parent and Merger Sub, as applicable, shall be entitled to deduct and withhold from any amounts otherwise payable to holders of Company Common Stock or Company Preferred Stock pursuant to this Article 2 such amounts as are required to be withheld or deducted under the Internal Revenue Code of 1986, as amended (the “Code”), or under any provision of state, local or foreign Tax Law with respect to the making of such payment; it being understood that, provided that the representation and warranty of the Company in Section 3.15(c) is true and correct as of the Effective Time, no deduction or withholding shall be made under the Laws of Canada (or any province thereof) from any such amounts (other than, for greater certainty, (A) any dividend or other distribution referenced in Section 2.2(c), and (B) amounts referred to in Section 2.3 that are attributable to personal services performed by the applicable payee in Canada or any province thereof or by an applicable payee who is a resident, for income Tax purposes, of Canada) except to the extent that any such deduction or withholding shall be required by a change in Law after the date of this Agreement. To the extent that amounts are so deducted or withheld and timely paid over to the relevant Governmental Entity, such deducted or withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction or withholding was made.

(c) Treatment of Unexchanged Shares. No dividends or other distributions, if any, with a record date after the Effective Time with respect to Parent Common Shares shall be paid to the holder of any unsurrendered shares of Company Common Stock to be converted into Parent Common Shares pursuant to Section 2.1(a)(i) until such holder shall surrender such shares of Company Common Stock in accordance with this Section 2.2. After the surrender in accordance with this Section 2.2 of a share of Company Common Stock to be converted into Parent Common Shares pursuant to Section 2.1(a)(i), the holder thereof shall be entitled to receive (in addition to the Merger Consideration and the Fractional Share Cash Amount payable to such holder pursuant to this Article 2) any such dividends or other distributions, without any interest thereon, which theretofore had become payable with respect to the Parent Common Shares represented by such share of Company Common Stock, less such withholding or deduction for any Taxes required by applicable Law.

(d) Closing of Transfer Books. At the Effective Time, the stock transfer books of the Company shall be closed, and there shall be no further registration of transfers on the stock transfer books of the Surviving Corporation of the shares of Company Common Stock or Company Preferred Stock that were outstanding immediately prior to the Effective Time. If,

after the Effective Time, Certificates or Book-Entry Shares are presented to the Surviving Corporation, Parent or the Exchange Agent for transfer or any other reason, the holder of any such Certificates or Book-Entry Shares shall be given a copy of the letter of transmittal referred to in Section 2.2(b) and instructed to comply with the instructions in that letter of transmittal in order to receive the consideration to which such holder is entitled pursuant to this Article 2.

(e) Termination of Exchange Fund. Any portion of the Exchange Fund (including the proceeds of any investments thereof) that remains undistributed to the former holders of shares of Company Common Stock or Company Preferred Stock on the first anniversary of the Effective Time shall thereafter be delivered, at the direction of the Surviving Corporation, to Parent on demand, and any former holders of shares of Company Common Stock or Company Preferred Stock who have not surrendered their shares in accordance with this Article 2 shall thereafter look only to Parent for payment of their claim for the Merger Consideration (together with the Fractional Share Cash Amount and any dividends or other distributions payable pursuant to Section 2.2(c)) or Preferred Merger Consideration, as applicable, without any interest thereon, on due surrender of their shares.

(f) No Liability. Anything herein to the contrary notwithstanding, none of the Company, Parent, Merger Sub, the Surviving Corporation, the Exchange Agent or any other Person shall be liable to any former holder of shares of Company Common Stock or Company Preferred Stock for any amount properly delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law. Any portion of the Exchange Fund that remains undistributed to the holders of Company Common Stock or Company Preferred Stock as of immediately prior to the date on which the Exchange Fund would otherwise escheat to, or become property of, any Governmental Entity shall cease to represent any claim of any kind or nature and shall be deemed to be surrendered for cancellation to Parent.

(g) Investment of Exchange Fund. The Exchange Agent shall invest all cash included in the Exchange Fund as reasonably directed by Parent; provided, that any investment of such cash shall be limited to direct short-term obligations of, or short-term obligations fully guaranteed as to principal and interest by, the U.S. government; provided, further, that no such investment or loss thereon shall affect the amounts payable to holders of Certificates (or effective affidavits of loss in lieu thereof) or Book-Entry Shares pursuant to this Article 2, and following any losses from any such investment, Parent shall promptly provide, on behalf of the Surviving Corporation, additional funds to the Exchange Agent for the benefit of the holders of shares of Company Common Stock or Company Preferred Stock. Any interest and other income resulting from such investments shall be paid to or at the direction of Parent pursuant to Section 2.2(e).

(h) Lost Certificates. In the case of any Certificate that has been lost, stolen or destroyed, on the making of an affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed and, if required by the Exchange Agent, the posting by such Person of a bond in customary amount as indemnity against any claim that may be made against it with respect to such Certificate, the Exchange Agent shall issue in exchange for such lost, stolen or destroyed Certificate the Merger Consideration (together with the Fractional Share Cash Amount and any dividends or other distributions deliverable pursuant to Section 2.2(c)) or the Preferred Merger Consideration, as applicable, payable in accordance with Section 2.1 with respect to the

shares of Company Common Stock or Company Preferred Stock represented by such lost, stolen or destroyed Certificate.

Section 2.3 Treatment of Company Equity Awards.

(a) Each option to purchase shares of Company Common Stock (each, a “Company Option”), whether vested or unvested, that is outstanding as of immediately prior to the Effective Time shall, at the Effective Time, become fully vested and be converted into the right to receive an amount in cash equal to (i) the excess, if any of (A) the Merger Consideration Value over (B) the exercise price per share of Company Common Stock of such Company Option *multiplied by* (ii) the total number of shares of Company Common Stock subject to such Company Option as of immediately prior to the Effective Time. Parent shall or shall cause the Surviving Corporation or one of its Subsidiaries, as applicable, to deliver to the holders of Company Options the cash amounts described in the immediately preceding sentence, less such amounts as are required to be withheld or deducted under the Code or any provision of state, local or foreign Tax Law with respect to the making of such payment, promptly but no later than the next scheduled payroll of the Company that is at least four Business Days after the Effective Time. For the avoidance of doubt, any Company Option that has an exercise price per share of Company Common Stock that is greater than or equal to the Merger Consideration Value shall be cancelled at the Effective Time for no consideration or payment.

(b) Each award of shares of Company Common Stock granted subject to any vesting, forfeiture or other lapse restrictions (each, a “Company Restricted Share Award”) that is outstanding as of immediately prior to the Effective Time, shall, at the Effective Time, be converted into the right to receive (i) the Merger Consideration in respect of each share of Company Common Stock subject to such Company Restricted Share Award as of immediately prior to the Effective Time and (ii) the accrued but unpaid cash dividends corresponding to each share of Company Common Stock subject to such Company Restricted Share Award. Parent shall or shall cause the Surviving Corporation or one of its Subsidiaries, as applicable, to pay to the holders of Company Restricted Share Awards the cash amounts and Parent Common Shares described in the immediately preceding sentence, less such amounts as are required to be withheld or deducted under the Code or any provision of state, local or foreign Tax Law with respect to the making of such payment, promptly but no later than the next scheduled payroll of the Company that is at least four Business Days after the Effective Time.

(c) Each award of performance shares that corresponds to shares of Company Common Stock (each, a “Company Performance Share Award”) that is outstanding as of immediately prior to the Effective Time, shall, at the Effective Time, be converted into an award that entitles the holder thereof, upon vesting, to receive an amount in cash equal to the Merger Consideration Value in respect of each share of Company Common Stock subject to such Company Performance Share Award, with the number of shares of Company Common Stock subject to each such award equal to 200% of the target number of shares of Company Common Stock covered by each such award as of immediately prior to the Effective Time. Except as otherwise provided in this Section 2.3(c), each cash-based award covered by this Section 2.3(c) shall have the same terms and conditions (including vesting terms and conditions) as applied to the corresponding Company Performance Share Award; provided, that the performance-based

vesting conditions shall no longer apply, the award will be subject only to service-based vesting, and each such award shall vest in full upon a Qualifying Termination.

(d) Each share of director deferred stock (each, a “Director Deferred Share”) that is outstanding as of immediately prior to the Effective Time, shall, at the Effective Time, be converted into the right to receive the Merger Consideration. Parent shall or shall cause the Surviving Corporation or one of its Subsidiaries, as applicable, to deliver to the holders of Director Deferred Shares the cash amounts and Parent Common Shares described in the immediately preceding sentence, less such amounts as are required to be withheld or deducted under the Code or any provision of state, local or foreign Tax Law with respect to the making of such payment, promptly but no later than the next scheduled payroll of the Company that is at least four Business Days after the Effective Time.

(e) As soon as practicable following the date of this Agreement, the Company Board (or, if appropriate, any committee administering the Company ESPP) shall adopt such resolutions or take such other actions as may be required so that (i) participation in the Company ESPP shall be limited to those employees who are participants on the date of this Agreement, (ii) participants may not increase their payroll deduction elections or rate of contributions from those in effect on the date of this Agreement or make any separate non-payroll contributions to the Company ESPP on or following the date of this Agreement, (iii) no offering period shall be commenced after the date of this Agreement, and (iv) the Company ESPP shall terminate, effective on the earlier of the first purchase date following the date of this Agreement and the fifth trading day before the Effective Time, but subsequent to the exercise of purchase rights on such purchase date (in accordance with the terms of the Company ESPP).

(f) Prior to the Effective Time, the Company, through the Company Board or an appropriate committee thereof, shall adopt such resolutions as may reasonably be required in its discretion to effectuate the actions contemplated by this Section 2.3.

(g) Notwithstanding anything in Section 2.3(a), Section 2.3(b) or Section 2.3(c) to the contrary, but subject to Section 6.1(b), (i) to the extent the terms of any Company Option, Company Restricted Share Award or Company Performance Share Award granted on or after the date of this Agreement and not in violation of this Agreement expressly provide for treatment in connection with the occurrence of the Effective Time that is different from the treatment prescribed by this Section 2.3, or (ii) as mutually agreed by the parties hereto and a holder of any Company Option, Company Restricted Share Award or Company Performance Share Award, then in each case, the terms of such Company Option, Company Restricted Share Award or Company Performance Share Award, as applicable, shall control (and the applicable provisions of this Section 2.3 shall not apply).

ARTICLE 3

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as disclosed in the Company SEC Documents furnished or filed prior to the date of this Agreement (including any documents incorporated by reference therein and excluding any disclosures set forth in any “risk factors” section or in any “forward-looking

statements” section to the extent they are forward-looking statements or cautionary, predictive or forward-looking in nature) or in the disclosure schedules delivered by the Company to Parent concurrently with the execution of this Agreement (the “Company Disclosure Schedules”) (it being agreed that disclosure of any item in any section or subsection of the Company Disclosure Schedules shall be deemed disclosed with respect to any other section or subsection of this Agreement and the Company Disclosure Schedules to the extent that the relevance thereof is reasonably apparent on its face), the Company represents and warrants to Parent and Merger Sub as follows as of the date of this Agreement and as of the Closing Date (other than such representations and warranties that are expressly made as of a certain date, which are made as of such date):

Section 3.1 Qualification, Organization, Subsidiaries.

(a) The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the state of Delaware. Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, each of the Company’s Subsidiaries is a legal entity duly organized, validly existing and (where such concept is recognized) in good standing under the Laws of its respective jurisdiction of incorporation or organization, as applicable. Each of the Company and its Subsidiaries has all requisite corporate or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted and is qualified to do business and is in good standing as a foreign corporation in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except, in each case, as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. The Company has made available to Parent true, complete and correct copies of the Organizational Documents of the Company and each of its Significant Subsidiaries, each as amended prior to the date of this Agreement, and each as made available to Parent is in full force and effect.

(b) All of the outstanding shares of capital stock or voting securities of, or other equity interests in, each of the Company’s Subsidiaries have been validly issued and are owned by the Company, by another Subsidiary of the Company or by the Company and another Subsidiary of the Company, free and clear of all Liens other than restrictions imposed by applicable securities Laws or the Organizational Documents of any such Subsidiary or any Permitted Liens.

Section 3.2 Capitalization.

(a) The authorized share capital of the Company consists of 400,000,000 shares of Company Common Stock, 840,000 shares of Preferred Stock, par value \$25 per share (the “Company Preferred Stock”) and 2,000,000 shares of New Series Preferred Stock, par value \$1 per share (the “Company New Series Preferred Stock”). As of May 10, 2021, there were (i) 90,934,092 shares of Company Common Stock issued and outstanding (including 187,052 shares of Company Common Stock subject to Company Restricted Share Awards but no shares of Company Common Stock underlying outstanding Company Performance Share Awards and not including shares held in treasury), (ii) 32,418,093 shares of Company Common Stock held in treasury, (iii) 214,542 shares of Company Preferred Stock issued and outstanding

(not including shares held in treasury), (iv) 435,194 shares of Company Preferred Stock held in treasury, (v) no shares of Company New Series Preferred Stock issued and outstanding, (vi) Company Options to purchase an aggregate of 597,793 shares of Company Common Stock issued and outstanding, (vii) 124,711 shares of Company Common Stock underlying outstanding Company Performance Share Awards if performance conditions are satisfied at the target level, (viii) 8,872.6143 shares of Company Common Stock underlying outstanding Director Deferred Shares and (ix) 3,367,796 shares of Company Common Stock reserved for issuance under the Company ESPP. All outstanding shares of Company Common Stock are, and all such shares that may be issued prior to the Effective Time will be when issued, duly authorized and validly issued as fully paid and nonassessable, and are not subject to and were not issued in violation of any preemptive or similar right, purchase option, call or right of first refusal or similar right. To the Knowledge of the Company, as of the date hereof, no Person is the beneficial owner of ten percent or more of the issued shares of the Company Common Stock.

(b) Except as set forth in Section 3.2(a) or as required by the terms of the Company Benefit Plans, as of the date of this Agreement, (i) the Company does not have any shares of its capital stock issued or outstanding, other than shares of Company Common Stock that have become outstanding after May 10, 2021, which were reserved for issuance as of May 10, 2021 as set forth in Section 3.2(a), and (ii) there are no outstanding subscriptions, options, warrants, calls, convertible securities or other similar rights, agreements or commitments relating to the issuance of capital stock of the Company or any of the Company's Subsidiaries to which the Company or any of the Company's Subsidiaries is a party obligating the Company or any of the Company's Subsidiaries to (A) issue, transfer or sell any shares of capital stock of the Company or any of the Company's Subsidiaries or securities convertible into, exercisable for or exchangeable for such shares, (B) grant, extend or enter into any such subscription, option, warrant, call, convertible securities or other similar right, agreement or arrangement, or (C) redeem or otherwise acquire any such shares of capital stock.

(c) Neither the Company nor any of its Subsidiaries has outstanding bonds, debentures, notes or other similar obligations, the holders of which have the right to vote (or which are convertible into, exercisable for or exchangeable for securities having the right to vote) with the stockholders of the Company on any matter. No Subsidiary of the Company owns any capital stock of the Company. Except for its interests (i) in its Subsidiaries and (ii) in any Person in connection with any joint venture, partnership or other similar arrangement with a third party, the Company does not own, directly or indirectly, any capital stock of, or other equity interests in any Person.

(d) Except for any voting trust agreement entered into in compliance with Section 5.8(c) of this Agreement, there are no voting trusts or other agreements or understandings to which the Company or any of its Subsidiaries is a party with respect to the voting of the capital stock of the Company or any of its Subsidiaries.

(e) Section 3.2(e) of the Company Disclosure Schedules lists each Subsidiary of the Company, its jurisdiction of organization and the percentage of its equity interests directly or indirectly held by the Company.

Section 3.3 Corporate Authority Relative to This Agreement; Consents and Approvals; No Violation.

(a) The Company has the requisite corporate power and authority to enter into this Agreement and, subject to receipt of the Company Stockholder Approval, to perform its obligations hereunder and to consummate the transactions contemplated hereby. Except for the Company Stockholder Approval and the filing of the Certificate of Merger with the Secretary of State of the State of Delaware, no other corporate proceedings on the part of the Company are necessary to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by the Company and, assuming this Agreement constitutes the valid and binding agreement of Parent and Merger Sub, constitutes the valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except that (i) such enforcement may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws, now or hereafter in effect, relating to creditors' rights generally and (ii) equitable remedies of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought (collectively, the "Enforceability Exceptions").

(b) The Company Board at a duly called and held meeting has unanimously (i) determined that it is in the best interests of the Company and its stockholders, and declared it advisable, to enter into this Agreement, (ii) approved the execution, delivery and performance of this Agreement and the consummation of the Merger and the other transactions contemplated hereby and (iii) resolved to recommend that the stockholders of the Company adopt this Agreement (the "Company Recommendation") and directed that such matter be submitted for consideration of the stockholders of the Company at the Company Stockholder Meeting.

(c) The execution, delivery and performance by the Company of this Agreement and the consummation of the Merger and the other transactions contemplated hereby by the Company do not and will not require the Company or any of its Subsidiaries to procure, make or provide prior to the Closing Date any consent, approval, authorization or permit of, action by, filing with or notification to any United States or foreign, state, provincial, territorial or local governmental or regulatory agency, commission, court, body, entity or authority (each, a "Governmental Entity"), other than (i) the filing of the Certificate of Merger, (ii) authorizations from, or such other actions as are required to be made with or obtained from, the Surface Transportation Board (the "STB"), (iii) authorizations from, or such other actions as are required to be made with or obtained from, the Federal Communications Commission (the "FCC"), (iv) compliance with any applicable requirements of any Antitrust Laws, (v) authorizations from, or such other actions as are required to be made with or obtained from, the COFEC and the IFT, (vi) the filing of notices with the ARTF and the SCT, (vii) compliance with the applicable requirements of the Securities Act and the Exchange Act, including the filing with the SEC of the Form F-4 (including the Proxy Statement/Prospectus), (viii) compliance with the rules and regulations of the NYSE, (ix) compliance with any applicable foreign or state securities or blue sky laws and (x) the other consents and/or notices set forth on Section 3.3(c) of the Company Disclosure Schedules (clauses (i) through (x), collectively, the "Company Approvals"), and other than any consent, approval, authorization, permit, action, filing or notification the failure of

which to make or obtain would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(d) Assuming compliance with the matters referenced in Section 3.3(c) and receipt of the Company Approvals and the Company Stockholder Approval, the execution, delivery and performance by the Company of this Agreement and the consummation by the Company of the Merger and the other transactions contemplated hereby, do not and will not (i) contravene or conflict with the organizational or governing documents of the Company or any of its Subsidiaries, (ii) contravene or conflict with or constitute a violation of any provision of any Law binding on or applicable to the Company or any of its Subsidiaries or any of their respective properties or assets or (iii) result in any violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or to the loss of a benefit under any Contract, instrument, permit, concession, franchise, right or license binding on the Company or any of its Subsidiaries, other than, in the case of clauses (ii) and (iii), any such contravention, conflict, violation, default, termination, cancellation, acceleration, right or loss that would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 3.4 Reports and Financial Statements.

(a) The Company has filed or furnished, on a timely basis, all forms, statements, certifications, documents and reports required to be filed or furnished by it with the SEC pursuant to the Exchange Act or the Securities Act since December 31, 2018 (the forms, statements, certifications, documents and reports so filed or furnished by the Company and those filed or furnished to the SEC subsequent to the date of this Agreement, including any amendments thereto, the “Company SEC Documents”), each of which, in each case as of its date, or, if amended, as finally amended prior to the date of this Agreement, complied, or if not yet filed or furnished, will comply in all material respects with the applicable requirements of the Securities Act, the Exchange Act and the Sarbanes-Oxley Act, as the case may be, and no Company SEC Document as of its date (or, if amended or superseded by a filing prior to the date of this Agreement, as of the date of such amended or superseding filing) contained, and no Company SEC Documents filed with or furnished to the SEC subsequent to the date of this Agreement will contain, any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The Company is in compliance in all material respects with the applicable listing and corporate governance rules and regulations of the NYSE. Except as permitted by the Exchange Act, including Sections 13(k)(2) and 13(k)(3) thereunder, or the rules and regulations promulgated by the SEC, since December 31, 2018, neither the Company nor any of its Affiliates has made, arranged or modified (in any material way) any extensions of credit in the form of a personal loan to any executive officer or director of the Company.

(c) The consolidated financial statements (including all related notes and schedules) of the Company included in the Company SEC Documents (or, if any such Company SEC Document is amended or superseded by a filing prior to the date of this Agreement, such amended or superseding Company SEC Document) fairly presented in all material respects the

consolidated financial position of the Company and its consolidated Subsidiaries, as at the respective dates thereof, and the consolidated results of their operations and their consolidated cash flows for the respective periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein, including the notes thereto) and were prepared in all material respects in conformity with GAAP (except, in the case of the unaudited financial statements, as permitted by the SEC) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto).

Section 3.5 Internal Controls and Procedures.

(a) The Company has established and maintains disclosure controls and procedures as required by Rule 13a-15 under the Exchange Act. Such disclosure controls and procedures are effective in providing reasonable assurance that all information required to be disclosed by the Company is recorded and reported on a timely basis to the individuals responsible for the preparation of the Company's filings with the SEC and other public disclosure documents.

(b) The Company maintains a system of internal controls over financial reporting (as defined in Rule 13a-15 under the Exchange Act) that is effective in providing reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP and includes policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company in all material respects, (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP and to maintain accountability for assets, that access to assets is permitted only in accordance with authorizations of management and directors of the Company and that receipts and expenditures of the Company are being made only in accordance with authorizations of management and directors of the Company, and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Company's assets that could have a material effect on its financial statements. The records, systems, controls, data and information of the Company and its Subsidiaries that are used in the systems of disclosure controls and procedures and of financial reporting controls and procedures described above are recorded, stored, maintained and operated under means that are under the exclusive ownership and direct control of the Company or a wholly owned Subsidiary of the Company or its accountants, except as would not reasonably be expected to adversely affect or disrupt, in any material respect, the Company's systems of disclosure controls and procedures and of financial reporting controls and procedures or the reports generated thereby.

(c) The Company's management has completed an assessment of the effectiveness of the Company's internal controls over financial reporting pursuant to Section 404 of the Sarbanes-Oxley Act for the year ended December 31, 2020, and such assessment concluded that such controls were effective. The Company has disclosed, based on its most recent evaluation of its internal controls prior to the date of this Agreement, to the Company's auditors and the audit committee of the Company Board, (i) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting that

are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in internal control over financial reporting. As of the date of its most recent audited financial statements, neither the Company nor its auditors had identified any significant deficiencies or material weaknesses in its internal controls over financial reporting and, as of the date of this Agreement, to the Knowledge of the Company, nothing has come to its attention that has caused it to believe that there are any material weaknesses or significant deficiencies in such internal controls. To the Knowledge of the Company, since December 31, 2018, no material complaints from any source regarding accounting, internal accounting controls or auditing matters, and no concerns from Company employees regarding questionable accounting or auditing matters, have been received by the Company. To the Knowledge of the Company, since December 31, 2018, no attorney representing the Company or any of its Subsidiaries, whether or not employed by the Company or any of its Subsidiaries, has reported evidence of a violation of securities Laws, breach of fiduciary duty or similar violation by the Company or any of its officers, directors, employees or agents to the Company's chief legal officer, audit committee (or other committee designated for the purpose) of the Company Board pursuant to the rules adopted pursuant to Section 307 of the Sarbanes-Oxley Act or any Company policy contemplating such reporting, including in instances not required by those rules.

Section 3.6 No Undisclosed Liabilities. Except (a) as disclosed, reflected or reserved against in the audited consolidated balance sheet of the Company and its Subsidiaries as of December 31, 2020, and the footnotes to such consolidated balance sheet, in each case set forth in the Company's report on Form 10-K for the fiscal year ended December 31, 2020, (b) as expressly permitted or contemplated by this Agreement, (c) for liabilities or obligations that have been discharged or paid in full, (d) for liabilities arising in connection with obligations under any existing Contract (except to the extent such liabilities arose or resulted from a breach or a default of such Contract), (e) for liabilities and obligations incurred in the Ordinary Course of Business since December 31, 2020 (the "Company Balance Sheet Date"); or (f) as would not have, individually or in the aggregate, a Company Material Adverse Effect, neither the Company nor any Subsidiary of the Company has any liabilities or obligations that would be required by GAAP to be reflected on a consolidated balance sheet of the Company and its Subsidiaries.

Section 3.7 Compliance with Law; Permits.

(a) The Company and its Subsidiaries have been since December 31, 2018 in compliance with and not in default under or in violation of any federal, state, local or foreign law, statute, ordinance, rule, regulation, judgment, Order, injunction or decree of any Governmental Entity (collectively, "Laws" and each, a "Law") applicable to the Company and its Subsidiaries, except where such non-compliance, default or violation would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(b) The Company and its Subsidiaries are in possession of all franchises, grants, concessions, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals, clearances, tariffs, qualifications, registrations and orders of any Governmental Entities ("Permits") necessary for the Company and the Company's Subsidiaries to own, lease and operate their properties and assets or to carry on their businesses as they are

now being conducted (such Permits, the “Company Permits”), except where the failure to have any of the Company Permits would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. All Company Permits are in full force and effect and are not subject to any administrative or judicial proceeding that would reasonably be expected to result in modification, termination or revocation thereof, and the Company and each of its Subsidiaries is in compliance with the terms and requirements of such Company Permit, except where the failure to be in full force and effect or in compliance or where such proceeding would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(c) Neither the Company nor any of its Subsidiaries has received any written notice that the Company or its Subsidiaries is in violation of any Law applicable to the Company or any of its Subsidiaries or any Permit, except for such violations that would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. There are no Actions pending, threatened in writing or, to the Knowledge of the Company, otherwise threatened that would reasonably be expected to result in the revocation, withdrawal, suspension, non-renewal, termination, revocation, or adverse modification or limitation of any such Permit, except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

Section 3.8 Anti-Corruption; Anti-Bribery; Anti-Money Laundering.

(a) The Company, its Subsidiaries and, to the Knowledge of the Company, each of their directors, officers, employees, agents and each other Person acting on behalf of the Company or its Subsidiaries are in all material respects in compliance with and for the past five years, have in all material respects complied with (a) the Foreign Corrupt Practices Act of 1977, as amended (the “FCPA”), and (b) the provisions of all anti-bribery, anti-corruption and anti-money laundering Laws of each jurisdiction in which the Company and its Subsidiaries operate or have operated and in which any agent thereof is conducting or has conducted business on behalf of the Company or any of its Subsidiaries (“Anti-Corruption Laws”). The Company and its Subsidiaries have since December 31, 2018 (i) instituted policies and procedures that are reasonably designed to ensure compliance in all material respects with the FCPA and other anti-bribery, anti-corruption and anti-money laundering Laws in each jurisdiction in which the Company or any of its Subsidiaries operate and (ii) maintained such policies and procedures in full force and effect in all material respects.

(b) None of the Company, its Subsidiaries or, to the Knowledge of the Company, any of their directors, officers and employees and each other Person acting on behalf of the Company or its Subsidiaries has, in the past five years, directly or indirectly, violated any, or been subject to actual or, to the Knowledge of the Company, pending or threatened Proceedings, settlements or enforcement actions alleging violations on the part of any of the foregoing Persons of the FCPA or Anti-Corruption Laws or any terrorism financing Law.

(c) None of the Company, its Subsidiaries or, to the Knowledge of the Company, any of their directors, officers and their employees or any other Person acting on behalf of the Company or its Subsidiaries has, in the past five years: (i) directly or indirectly, paid, offered or promised to pay, or authorized or ratified the payment of any monies, gifts or

anything of value (A) which would violate any applicable Anti-Corruption Law, including the FCPA, applied for purposes hereof as it applies to domestic concerns, or (B) to any national, provincial, municipal or other Government Official or any political party or candidate for political office for the purpose of (x) influencing any act or decision of such official or of any Governmental Entity, (y) to obtain or retain business, or direct business to any Person or (z) to secure any other improper benefit or advantage; or (ii) aided, abetted, caused (directly or indirectly), participated in, or otherwise conspired with, any Person to violate the terms of any Order.

Section 3.9 Sanctions.

(a) For the past five years, the Company and each of its Subsidiaries has been, and currently is, in all material respects in compliance with relevant economic sanctions and export control Laws in jurisdictions in which the Company or any of its Subsidiaries do business or are otherwise subject to jurisdiction, including the United States International Traffic in Arms Regulations, the Export Administration Regulations, and United States sanctions Laws and regulations administered by the United States Department of the Treasury's Office of Foreign Assets Control or the United States Department of State (collectively "Export and Sanctions Regulations").

(b) None of the Company or any of its Subsidiaries, or, to the Knowledge of the Company, any director, officer, agent, employee or other Person acting on behalf of any of the Company or its Subsidiaries, in their capacity as such, is currently, or has in the past five years: (i) a Sanctioned Person or (ii) engaging in any dealings or transactions with, or for the benefit of, any Sanctioned Person or in any Sanctioned Country, to the extent such activities would cause the Company to violate applicable Export and Sanctions Regulations.

(c) For the past five years, the Company and its Subsidiaries have (i) instituted policies and procedures that are reasonably designed to ensure compliance in all material respects with the Export and Sanctions Regulations in each jurisdiction in which the Company and its Subsidiaries operate or are otherwise subject to jurisdiction and (ii) maintained such policies and procedures in full force and effect in all material respects.

(d) For the past five years, neither the Company nor any of its Subsidiaries (w) has been found in violation of, charged with or convicted of, any Export and Sanctions Regulations, (x) to the Knowledge of the Company, is under investigation by any Governmental Entity for possible violations of any Export and Sanctions Regulation, (y) has been assessed civil penalties under any Export and Sanctions Regulations or (z) has filed any voluntary disclosures with any Governmental Entity regarding possible violations of any Export and Sanctions Regulations.

Section 3.10 Environmental Laws and Regulations.

(a) Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect: (i) the Company and its Subsidiaries have for the past five years conducted their respective businesses in compliance with all applicable Environmental Laws; (ii) for the past five years, neither the Company nor any of its Subsidiaries

has received any written notices, demand letters or written requests for information from any Governmental Entity alleging that the Company or any of its Subsidiaries is in violation of or has liability under any Environmental Law and there are no legal, administrative, arbitral or other proceedings, claims or actions pending, or to the Knowledge of the Company threatened, against the Company or any of its Subsidiaries alleging any violation of or liability relating to any Environmental Law, in each case other than with respect to matters that have been fully resolved; (iii) to the Knowledge of the Company, there has been no treatment, storage or release of any Hazardous Substance in violation of or as could reasonably be expected to result in liability under any applicable Environmental Law from any properties currently or formerly owned or leased or held under concession by the Company or any of its Subsidiaries or any predecessor; and (iv) neither the Company nor any Subsidiary is subject to any agreement, order, judgment, decree or agreement by or with any Governmental Entity or other third party imposing any liability or obligation relating to any Environmental Law.

(b) The generality of any other representations and warranties in this Agreement notwithstanding, the representations and warranties in this Section 3.10 shall be deemed to be the Company's sole and exclusive representations and warranties in this Agreement with respect to Environmental Laws, Hazardous Substances and any other environmental matters.

Section 3.11 Employee Benefit Plans; Labor Matters.

(a) Section 3.11(a) of the Company Disclosure Schedules lists all material Company Benefit Plans.

(b) The Company has made available to Parent, with respect to each material Company Benefit Plan, each writing constituting a part of such Company Benefit Plan, including all amendments thereto.

(c) Except as would not have, individually or in the aggregate, a Company Material Adverse Effect: (i) each Company Benefit Plan (including any related trusts) has been maintained and administered in compliance with its terms and with applicable Law, including ERISA and the Code to the extent applicable thereto; (ii) each Company Benefit Plan intended to be "qualified" within the meaning of Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service or is entitled to rely on a favorable opinion issued by the Internal Revenue Service, (iii) no Company Benefit Plan is subject to Title IV of ERISA, (iv) no employee benefit plan of the Company or its Subsidiaries is a Multiemployer Plan or a plan subject to Title IV of ERISA that has two or more contributing sponsors, at least two of whom are not under common control, (v) all contributions or other amounts payable by the Company or any of its Subsidiaries with respect to each Company Benefit Plan in respect of current or prior plan years have been paid or accrued in accordance with GAAP and (vi) there are no pending, threatened or, to the Knowledge of the Company, anticipated claims (other than claims for benefits in accordance with the terms of the Company Benefit Plans) by, on behalf of or against any of the Company Benefit Plans or any trusts related thereto.

(d) With respect to any Multiemployer Plan contributed to by the Company or any ERISA Affiliate, neither the Company nor any ERISA Affiliate has incurred any withdrawal liability under Title IV of ERISA which remains unsatisfied as to an amount that would reasonably be expected to result in, individually or in the aggregate, material liability to the Company and its Subsidiaries, taken as a whole.

(e) Except as provided in this Agreement or required by applicable Law, the consummation of the transactions contemplated by this Agreement will not, either alone or in combination with another event, (i) entitle any current or former employee or director of the Company or any of its Subsidiaries to severance pay, or any other payment from the Company or its Subsidiaries, (ii) accelerate the time of payment or vesting, or increase the amount of, compensation due to any such employee or consultant, (iii) directly or indirectly cause the Company to transfer or set aside any assets to fund any material benefits under any Company Benefit Plan or (iv) limit or restrict the right to merge, materially amend, terminate or transfer the assets of any Company Benefit Plan on or following the Effective Time.

(f) The execution and delivery of this Agreement, stockholder or other approval of this Agreement or the consummation of the transactions contemplated by this Agreement would not, either alone or in combination with another event, result in the payment of any “excess parachute payment” as defined Section 280G(b)(1) of the Code.

(g) The Company is not a party to nor does it have any obligation under any Company Benefit Plan to compensate, indemnify or reimburse any person for excise Taxes payable pursuant to Section 4999 of the Code or for additional Taxes payable pursuant to Section 409A of the Code.

(h) The Company and its Subsidiaries are in compliance with their obligations pursuant to all notification and bargaining obligations arising under any Company Labor Agreements, except as would not have, individually or in the aggregate, a Company Material Adverse Effect.

(i) Except as would not reasonably be expected to result in, individually or in the aggregate, material liability to the Company and its Subsidiaries, taken as a whole as of the date of this Agreement, (A) there are no strikes or lockouts with respect to any employees of the Company or any of its Subsidiaries; (B) to the Knowledge of the Company, there is no union organizing effort pending or threatened against the Company or any of its Subsidiaries; (C) there is no labor dispute or labor arbitration proceeding pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries (other than, in each case, routine grievances, including those brought by unions or other collectively represented employees, to be heard by the applicable Governmental Entity); and (D) there is no slowdown, or work stoppage in effect or, to the Knowledge of the Company, threatened with respect to employees of the Company or any of its Subsidiaries;

(j) Except as would not have, individually or in the aggregate, a Company Material Adverse Effect, since December 31, 2018, the Company and its Subsidiaries have complied with all applicable Laws with respect to employment and employment practices (including all applicable Laws, rules and regulations regarding wage and hour requirements,

employee and worker classification, immigration status, discrimination in employment, harassment, employee health and safety, and collective bargaining).

(k) The consent or consultation of, or the rendering of formal advice by, any labor or trade union, works council or similar organization is not required for the Company to enter into this Agreement or to consummate any of the transactions contemplated hereby other than any consent, consultation or formal advice, the failure of which to obtain or, in the case of consultation, engage in, would not delay or prevent the consummation of the transactions contemplated by this Agreement or otherwise reasonably be expected to result in, individually or in the aggregate, material liability to the Company and its Subsidiaries, taken as a whole as of the date of this Agreement.

Section 3.12 Absence of Certain Changes or Events.

(a) Since the Company Balance Sheet Date through the date of this Agreement, there has not been any event, change, occurrence or development that has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(b) From the Company Balance Sheet Date through the date of this Agreement, the Company and its Subsidiaries have conducted their respective businesses in all material respects in the Ordinary Course of Business.

Section 3.13 Investigations; Litigation. Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, as of the date of this Agreement: (a) to the Knowledge of the Company, there is no investigation or review pending or threatened by any Governmental Entity with respect to the Company or any of the Company's Subsidiaries; and (b) there are no Actions pending (or, to the Knowledge of the Company, threatened) against or affecting the Company or any of the Company's Subsidiaries, or any of their respective assets or properties at law or in equity before, and there are no Orders of, any Governmental Entity against or affecting the Company or any of the Company's Subsidiaries, or any of their respective assets or properties.

Section 3.14 Company Information. The information supplied or to be supplied by the Company for inclusion in (i) the proxy statement relating to the Company Stockholder Meeting, which will be used as a prospectus of Parent with respect to the Parent Common Shares issuable in connection with the Merger (together with any amendments or supplements thereto, the "Proxy Statement/Prospectus") or (ii) the registration statement on Form F-4 pursuant to which the offer and sale of Parent Common Shares in connection with the Merger will be registered pursuant to the Securities Act and in which the Proxy Statement/Prospectus will be included as a prospectus of Parent (together with any amendments or supplements thereto, the "Form F-4") will not, at the time the Proxy Statement/Prospectus is first mailed to the Company's stockholders, at the time of the Company Stockholder Meeting or at the time the Form F-4 (and any amendment or supplement thereto) is declared effective, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, that no representation or warranty is made by the

Company with respect to statements made therein based on information supplied by Parent or Merger Sub for inclusion or incorporation by reference therein.

Section 3.15 Tax Matters.

(a) Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect: (i) the Company and each of its Subsidiaries have prepared and timely filed (taking into account any extension of time within which to file) all Tax Returns required to be filed by any of them under applicable Law with the appropriate Governmental Entity and all such filed Tax Returns are complete and accurate; (ii) the Company and each of its Subsidiaries have paid all Taxes required to be paid under applicable Law to the appropriate Governmental Entity and have withheld all Taxes required to be withheld by any of them (including in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, stockholder or other third party), except, in the case of clauses (i) and (ii), with respect to matters contested in good faith or for which adequate reserves have been established in accordance with GAAP; (iii) as of the date of this Agreement, there are not pending or, to the Knowledge of the Company, threatened in writing, any audits, examinations, investigations or other proceedings in respect of Taxes of the Company or any of its Subsidiaries, and neither the Company nor any of its Subsidiaries has received written notice within the past six years of any claim made by a Governmental Entity in a jurisdiction where the Company or any of its Subsidiaries, as applicable, does not file a Tax Return, that the Company or such Subsidiary is or may be subject to income taxation by, or have an obligation to file an income Tax Return in, that jurisdiction (and, solely in the case of the CRA, has not received such written notice within the past eight years); (iv) there are no liens for Taxes on any property of the Company or any of its Subsidiaries, except for Permitted Liens; (v) neither the Company nor any of its Subsidiaries has been a “controlled corporation” or a “distributing corporation” in any distribution occurring during the two-year period ending on the date of this Agreement that was purported or intended to be governed by Section 355 of the Code; (vi) neither the Company nor any of its Subsidiaries has participated in any “listed transaction” within the meaning of Treasury Regulations Section 1.6011-4(b)(2); (vii) neither the Company nor any of its Subsidiaries (A) is a party to or is bound by any Tax sharing, allocation or indemnification agreement or arrangement (other than such an agreement or arrangement (1) exclusively between or among the Company and/or its Subsidiaries or (2) not primarily related to Taxes and entered into in the Ordinary Course of Business), (B) has been a member of an affiliated, consolidated, unitary or combined group filing a consolidated federal income Tax Return (other than a group the common parent of which is or was the Company or any of its Subsidiaries), or (C) has any liability for the Taxes of any Person (other than the Company or any of its Subsidiaries) under Treasury Regulations Section 1.1502-6 (or any similar provision of federal, state, local or non-U.S. Law), as a transferee or successor; (viii) each Mexican Subsidiary of the Company has complied with all of its obligations to disclose reportable schemes within the meaning of Article 199 of the Federal Fiscal Code (*Código Fiscal de la Federación*); (ix) each Mexican Subsidiary of the Company has fulfilled all of its Mexican Income Tax and VAT Law obligations with respect to the labor structure that it has in place, including the 6% withholding tax obligation under Article 1-A, subsection IV of the VAT Law and the obligation to receive the information contained in Article 27, subsection V of the Mexican Income Tax Law in effect before 2020, and no Tax benefit has been claimed in respect of any Mexican Tax invoice issued in favor of any Mexican Subsidiaries of the Company by a Person included on the list published

on the webpage of the Mexican Tax Authorities and/or in the Mexican Official Gazette (Diario Oficial de la Federación) in terms of article 69-B of the Mexican Federal Tax Code; and (x) neither the Company nor any of its Subsidiaries will be required to include any item of income in, or to exclude any item of deduction from, taxable income in any taxable period (or portion thereof) ending after the Closing Date as a result of (A) any closing agreement, installment sale, or open transaction disposition, (B) any accounting method change or agreement with any Governmental Entity or (C) any election pursuant to Section 965(h) of the Code, in each case, made prior to the Closing.

(b) Neither the Company nor any of its Subsidiaries has taken or agreed to take any action or knows of any fact, agreement, plan or other circumstance that is reasonably likely to cause Parent to be treated as a “domestic corporation” pursuant to Section 7874(b) of the Code as a result of the Merger.

(c) At no time during the 60 months immediately preceding the Effective Time will more than 50% of the fair market value of the Company’s capital stock have been derived, directly or indirectly, from one or any combination of: real or immovable property situated in Canada, Canadian resources properties, timber resource properties and options in respect of, or interests in, any such property (whether or not such property exists), each within the meaning of the CITA.

(d) The generality of any other representations and warranties in this Agreement notwithstanding, the representations and warranties in this Section 3.15 and, to the extent applicable, Section 3.11 shall be deemed to be the Company’s sole and exclusive representations and warranties in this Agreement with respect to Tax matters.

Section 3.16 Intellectual Property; IT Assets; Privacy.

(a) Section 3.16(a) of the Company Disclosure Schedule sets forth a true, correct and complete list as of the date hereof of all material Registered Company Intellectual Property. Each such material item of Registered Company Intellectual Property is, to the Knowledge of the Company, subsisting and not invalid or unenforceable. No such material Registered Company Intellectual Property (other than any applications for Registered Company Intellectual Property) has expired or been cancelled or abandoned, except in accordance with the expiration of the term of such rights, or in the Ordinary Course of Business based on a reasonable business judgement of the Company.

(b) The Company and its Subsidiaries (i) own or have a written, valid and enforceable right to use all material Intellectual Property used in or necessary for the operation of their respective businesses and (ii) own all right, title, and interest in all Company Intellectual Property, free and clear of all Liens (other than Permitted Liens), in each case, except as has not been and would not reasonably be expected to be, individually or in the aggregate, material to the business of the Company and its Subsidiaries, taken as a whole. To the Knowledge of the Company, no Company Intellectual Property material to any business of the Company and its Subsidiaries is subject to any Order or Contract materially and adversely affecting the Company’s and its Subsidiaries’ ownership or use of, or any rights in or to, any such Intellectual Property.

(c) Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, since December 31, 2018, to the Knowledge of the Company, the operation of the business of the Company and its Subsidiaries has not infringed, violated or otherwise misappropriated any Intellectual Property of any third Person. Except as has not had and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) to the Knowledge of the Company, since December 31, 2018, no third Person has infringed, violated or otherwise misappropriated any Company Intellectual Property and (ii) to the Knowledge of the Company, there is, and there has been since December 31, 2018, no pending claim or asserted claim in writing asserting that the Company or any Subsidiary has infringed, violated or otherwise misappropriated, or is infringing, violating or otherwise misappropriating, any Intellectual Property of any third Person.

(d) The Company and its Subsidiaries have received from each Person (including current and former employees and contractors) who has created or developed any material Intellectual Property for or on behalf of the Company or any of its Subsidiaries, a written, valid, enforceable, present assignment of such Intellectual Property to the Company or its applicable Subsidiary.

(e) The Company and its Subsidiaries own all right, title and interest in and to the Company IT Assets, free and clear of any Liens other than Permitted Liens, except as has not been and would not reasonably be expected to be, individually or in the aggregate, material to the business of the Company and its Subsidiaries, taken as a whole. To the Knowledge of the Company, the Company and its Subsidiaries own or have a written valid and enforceable right to use all IT Assets, except as has not been and would not reasonably be expected to be, individually or in the aggregate, material to the business of the Company and its Subsidiaries, taken as a whole. Except as has not been and would not reasonably be expected to be, individually or in the aggregate, material to the business of the Company and its Subsidiaries, taken as a whole, the Company and each of its Subsidiaries have taken reasonable steps and implemented reasonable safeguards, consistent with best industry practices, to protect the IT Assets from any unauthorized access, use or other security breach. The IT Assets: (i) operate and perform in all material respects as required by the Company and its Subsidiaries for the operation of their respective businesses, (ii) since December 31, 2018, except as, individually or in the aggregate, has not resulted in, and is not reasonably expected to result in, material liability to, or material disruption of the business operations of, the Company and its Subsidiaries, (A) have not malfunctioned or failed, suffered unscheduled downtime, or been subject to unauthorized access, use or other security breach, and (B) have been free from any viruses, Trojan horses, spyware or other malicious code.

(f) The Company and its Subsidiaries have taken commercially reasonable measures to protect the confidentiality of the material Trade Secrets owned by the Company and its Subsidiaries, and to the Knowledge of the Company, no such material Trade Secrets has been used or discovered by or disclosed to any Person except pursuant to written, valid and enforceable non-disclosure agreements protecting the confidentiality thereof, which agreements have not been breached in any material respect.

(g) Since December 31, 2018, the Company and its Subsidiaries have in all material respects complied with all Privacy Laws and with its and their privacy policies and other contractual commitments relating to privacy, security or processing of personal information or data. Except as has been and would not reasonably be expected to be, individually or in the aggregate, material to the business of the Company and its Subsidiaries, taken as a whole, since December 31, 2018, neither the Company nor any of its Subsidiaries has received any written threat, notice or claim alleging (i) non-compliance with any Privacy Laws or with such privacy policies or contractual commitments or (ii) a violation of any third Person's rights under Privacy Laws or such privacy policies or contractual commitments, including any third Person's rights with respect to Sensitive Data. Except as has not been and would not reasonably be expected to be, individually or in the aggregate, material to the business of the Company and its Subsidiaries, taken as a whole, since December 31, 2018, to the Knowledge of the Company, there has been no unauthorized access, use, processing, transfer or disclosure, or any loss or theft, of Sensitive Data or other personal or personally identifiable information that are protected by Privacy Laws while such Sensitive Data or such other personal or personally identifiable information was in the possession or control of the Company, its Subsidiaries or third-party vendors or service providers.

Section 3.17 Title to Assets. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, the Company or one of its Subsidiaries has good and valid title to all tangible assets owned by the Company or any of its Subsidiaries as of the date of this Agreement, free and clear of all Liens other than Permitted Liens, or good and valid leasehold interests in all tangible assets leased or subleased by the Company or any of its Subsidiaries as of the date of this Agreement, or good and valid rights under the corresponding concession in all tangible assets held subject to such concession by the Company or any of its Subsidiaries as of the date of this Agreement.

Section 3.18 Title to Properties.

(a) Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, each Contract under which the Company or any of its Subsidiaries is the landlord, sublandlord, tenant, subtenant or occupant (a "Company Real Property Lease") with respect to material real property leased, subleased, held under concession, licensed or otherwise occupied (whether as tenant, subtenant or pursuant to other occupancy arrangements) by the Company or any of its Subsidiaries (collectively, including the improvements thereon, "Company Leased Real Property") is valid and binding on the Company or the Subsidiary thereof party thereto, and, to the Knowledge of the Company, each other party thereto. Neither the Company nor any of its Subsidiaries is currently subleasing, licensing or otherwise granting any person the right to use or occupy a material portion of the Company Leased Real Property that would reasonably be expected to adversely affect the existing use of the remaining portion of the Company Leased Real Property by the Company or its Subsidiaries in the operation of their business thereon, except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect. Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, there is no uncured default by the Company or any of its Subsidiaries under any Company Real Property Lease or, to the Knowledge of the Company, by any other party thereto, and, to the Knowledge of the Company, no event has occurred that with the lapse of time or the

giving of notice or both would reasonably be expected to constitute a default thereunder by the Company or any of its Subsidiaries or by any other party thereto. As of the date of this Agreement, neither the Company nor any of its Subsidiaries has received any written notice of termination or cancelation, and to the Knowledge of the Company, no termination or cancelation is threatened, under any material Company Real Property Lease.

(b) Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, the Company or its Subsidiaries has good and valid title to all of the real property owned by the Company and its Subsidiaries (the “Owned Real Property”).

(c) Except as would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect, neither the Company nor any of its Subsidiaries has received written notice of any condemnation proceeding or proposed action or agreement for taking in lieu of condemnation, nor is any such proceeding, action or agreement pending before a Governmental Entity or, to the Knowledge of the Company, threatened, with respect to any portion of any Owned Real Property.

Section 3.19 Opinion of Financial Advisor. The Company Board has received the opinions of BofA Securities, Inc. and Morgan Stanley & Co. LLC, substantially to the effect that, as of the date of such opinions and subject to the assumptions, limitations, qualifications and other matters stated therein, the Merger Consideration to be received by the holders of Company Common Stock (other than the Excluded Shares and the Dissenting Shares) in the Merger pursuant to this Agreement is fair, from a financial point of view, to such holders.

Section 3.20 Required Vote of the Company Stockholders. The affirmative vote of the holders of a majority of the outstanding shares of Company Voting Stock in favor of the adoption of this Agreement (the “Company Stockholder Approval”) is the only vote of holders of securities of the Company that is required to approve this Agreement and the transactions contemplated hereby, including the Merger.

Section 3.21 Material Contracts.

(a) Except for this Agreement, agreements filed as exhibits to the Company SEC Documents or as set forth in Section 3.21 of the Company Disclosure Schedules, as of the date of this Agreement, neither the Company nor any of its Subsidiaries is a party to or expressly bound by any Contract (excluding any Company Benefit Plan) that:

(i) would constitute a “material contract” (as such term is defined in Item 601(b)(10) of Regulation S-K of the Securities Act);

(ii) is a Company Real Property Lease pursuant to which the Company or any of its Subsidiaries leases real property that is material to the business of the Company and its Subsidiaries, taken as a whole;

(iii) contains restrictions on the right of the Company or any of its Subsidiaries to engage in activities competitive with any Person or to solicit customers or suppliers anywhere in the world, other than restrictions (A) pursuant to limitations on the

use by the Company or its Subsidiaries of rail lines set forth in the agreements conveying those lines or granting rights to operate them, (B) that are part of the terms and conditions of any “requirements” or similar agreement under which the Company or any of its Subsidiaries has agreed to procure goods or services exclusively from any Person, or (C) that are not material to the business of the Company and its Subsidiaries, taken as a whole;

(iv) grants “most favored nation” status that, following the Merger, would apply to Parent and its Subsidiaries, including the Company and its Subsidiaries;

(v) provides for the formation, creation, operation, management or control of any joint venture, partnership or other similar arrangement with a third party;

(vi) is an indenture, credit agreement, loan agreement, note, or other Contract providing for indebtedness for borrowed money of the Company or any of its Subsidiaries (other than indebtedness among the Company and/or any of its Subsidiaries) in excess of \$50 million;

(vii) is a settlement, conciliation or similar Contract that would require the Company or any of its Subsidiaries to pay consideration of more than \$20 million after the date of this Agreement or that contains material restrictions on the business and operations of the Company or any of its Subsidiaries;

(viii) provides for the acquisition or disposition by the Company or any of its Subsidiaries of any business (whether by merger, sale of stock, sale of assets or otherwise), or any real property, that would, in each case, reasonably be expected to result in the receipt or making by the Company or any Subsidiary of the Company of future payments in excess of \$25 million;

(ix) is an acquisition agreement that contains material “earn-out” or other material contingent payment obligations;

(x) obligates the Company or any Subsidiary of the Company to make any future capital investment or capital expenditure outside the Ordinary Course of Business and in excess of \$50 million;

(xi) provides for the procurement of services or supplies from a Company Top Supplier by the Company or any of its Subsidiaries, or provides for sales to a Company Top Customer by the Company or any of its Subsidiaries;

(xii) limits or restricts the ability of the Company or any of its Subsidiaries to declare or pay dividends or make distributions in respect of their capital stock, partner interests, membership interests or other equity interests;

(xiii) other than any sales and marketing Contracts entered into the Ordinary Course of Business, is a Contract pursuant to which the Company or any of its Subsidiaries is a party, or is otherwise bound, and the contracting counterparty of which (A) is a Governmental Entity or (B) to the Knowledge of the Company, has

entered into such Contract in its capacity as a prime contractor or other subcontractor of any Contract with a Governmental Entity and such Contract imposes upon the Company obligations or other liabilities due to such Governmental Entity; or

(xiv) is a Contract pursuant to which (A) the Company or any of its Subsidiaries is granted any license or other right with respect to Intellectual Property of another Person, where such Contract is material to the business of the Company or any of its Subsidiaries (other than non-exclusive licenses for unmodified, commercially available “off-the-shelf” software that have been granted on standardized, generally available terms); or (B) the Company or any of its Subsidiaries grants to another Person any license or other right with respect to any material Company Intellectual Property.

Each Contract of the type described in clauses (i) – (xiv) of this Section 3.21(a) is referred to herein as a “Company Material Contract.”

(b) True, correct and complete copies of each Company Material Contract have been publicly filed with the SEC prior to the date of this Agreement or otherwise made available to Parent. Neither the Company nor any Subsidiary of the Company is in breach of or default under the terms of any Company Material Contract where such breach or default would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. To the Knowledge of the Company, as of the date of this Agreement, no other party to any Company Material Contract is in breach of or default under the terms of any Company Material Contract where such breach or default would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect. Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, as of the date of this Agreement, each Company Material Contract is a valid and binding obligation of the Company or the Subsidiary of the Company that is party thereto and, to the Knowledge of the Company, of each other party thereto, and is in full force and effect, subject to the Enforceability Exceptions.

Section 3.22 Suppliers and Customers.

(a) Section 3.22(a) of the Company Disclosure Schedules sets forth a correct and complete list of (i) the top 10 suppliers (each a “Company Top Supplier”) and (ii) the top 10 customers (each a “Company Top Customer”), respectively, by the aggregate dollar amount of payments to or from, as applicable, such supplier or customer, during the calendar year 2020.

(b) Except as would not, individually or in the aggregate, reasonably be expected to be material to the Company and its Subsidiaries, taken as a whole, since December 31, 2019 through the date of this Agreement, (i) there has been no termination of or a failure to renew the business relationship of the Company or its Subsidiaries with any Company Top Supplier or any Company Top Customer and (ii) no Company Top Supplier or Company Top Customer has notified the Company or any of its Subsidiaries that it intends to terminate or not renew its business.

Section 3.23 Canadian Assets and Revenues. Neither the aggregate value of the assets in Canada of the Company, nor the gross revenues from sales in or from Canada generated

from those assets, exceeds CDN \$93 million as determined in accordance with Part IX of the Competition Act (Canada).

Section 3.24 Insurance Policies. Except as would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (i) the Company and its Subsidiaries maintain insurance coverage with reputable insurers in such amounts and covering such risks as the Company reasonably believes, based on past experience, is adequate for the businesses and operations of the Company and its Subsidiaries (taking into account the cost and availability of such insurance), (ii) each insurance policy maintained by the Company or any of its Subsidiaries is in full force and effect, (iii) all premiums due by the Company or any of its Subsidiaries with respect to such insurance policies have been paid and (iv) the Company and its Subsidiaries are in compliance with all contractual requirements applicable thereto contained in such insurance policies. Neither the Company nor any of its Subsidiaries has received, as of the date of this Agreement, written notice of any pending or threatened cancellation with respect to any of its material insurance policies.

Section 3.25 Affiliate Party Transactions. Since December 31, 2018 through the date of this Agreement, there have been no material transactions, agreements, arrangements or understandings between the Company or any of its Subsidiaries, on the one hand, and any Person owning 5% or more of the Company Common Stock or any Affiliate of such Person or any director or executive officer of the Company or any of its Affiliates (or any relative thereof), on the other hand, or that would be required to be disclosed by the Company under Item 404 under Regulation S-K under the Securities Act and that have not been so disclosed in the Company SEC Documents, other than Ordinary Course of Business employment agreements and similar employee and indemnification arrangements otherwise set forth on the Company Disclosure Schedules.

Section 3.26 Finders or Brokers. Except for BofA Securities, Inc. and Morgan Stanley & Co. LLC, neither the Company nor any of its Subsidiaries has employed or engaged any investment banker, broker or finder in connection with the transactions contemplated by this Agreement who would be entitled to any fee or any commission in connection with or on consummation of the Merger.

Section 3.27 Takeover Laws. Assuming the representations and warranties of Parent and Merger Sub set forth in Section 4.22 are true and correct, as of the date of this Agreement, no “fair price,” “moratorium,” “control share acquisition,” “business combination” or other form of anti-takeover statute or regulation or any anti-takeover provision in the certificate of incorporation or bylaws of the Company is, and the Company has no rights plan, “poison pill” or similar agreement that is, applicable to this Agreement, the Merger or the other transactions contemplated hereby.

Section 3.28 Canadian Pacific Agreement. Concurrently with the execution of this Agreement, the Agreement and Plan of Merger, dated of March 21, 2021 (the “Canadian Pacific Agreement”), by and among Canadian Pacific Railway Limited (“Canadian Pacific”), Cygnus Merger Sub 1 Corporation, Cygnus Merger Sub 2 Corporation and the Company, was terminated by the Company in accordance with its terms and the Company has paid, or caused to be paid, to Canadian Pacific or its designee the “Company Termination Fee” (as defined in the

Canadian Pacific Agreement). There have not been any amendments or modifications to the Canadian Pacific Agreement prior to its termination. As of the date of this Agreement, the Company has not received notice of any breach of the Canadian Pacific Agreement.

Section 3.29 No Other Representations or Warranties; No Reliance. The Company acknowledges and agrees that, except for the representations and warranties contained in Article 4, none of Parent, Merger Sub or any other Person acting on behalf of Parent or Merger Sub has made or makes, and the Company has not relied on, any representation or warranty, whether express or implied, with respect to Parent, Merger Sub, their respective Subsidiaries or their respective businesses, affairs, assets, liabilities, financial condition, results of operations, future operating or financial results, estimates, projections, forecasts, plans or prospects (including the reasonableness of the assumptions underlying such estimates, projections, forecasts, plans or prospects) or with respect to the accuracy or completeness of any other information provided or made available to the Company or any of its representatives by or on behalf of Parent or Merger Sub. The Company acknowledges and agrees that none of Parent, Merger Sub or any other Person acting on behalf of Parent or Merger Sub has made or makes, and the Company has not relied on, any representation or warranty, whether express or implied, with respect to any projections, forecasts, estimates or budgets made available to the Company or any of its representatives of future revenues, future results of operations (or any component thereof), future cash flows or future financial condition (or any component thereof) of Parent, Merger Sub, or any of their respective Subsidiaries.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF PARENT AND MERGER SUB

Except as disclosed in the Parent Public Documents furnished or filed prior to the date of this Agreement (including any documents incorporated by reference therein and excluding any disclosures set forth in any risk factor section or in any “forward-looking statements” section to the extent they are forward-looking statements or cautionary, predictive or forward-looking in nature) or in the disclosure schedules delivered by Parent to the Company concurrently with the execution of this Agreement (the “Parent Disclosure Schedules”) (it being agreed that disclosure of any item in any section or subsection of the Parent Disclosure Schedules shall be deemed disclosed with respect to any other section or subsection of this Agreement and the Parent Disclosure Schedules to the extent that the relevance thereof is reasonably apparent on its face), Parent and Merger Sub jointly and severally represent and warrant to the Company as follows as of the date of this Agreement and as of the Closing Date (other than such representations and warranties that are expressly made as of a certain date, which are made as of such date):

Section 4.1 Qualification, Organization, Subsidiaries.

(a) Each of Parent and Merger Sub is a legal entity duly organized, validly existing and in good standing under the Laws of its respective jurisdiction of incorporation, organization or formation, as applicable. Except as would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, each of Parent’s Subsidiaries is a legal entity duly organized, validly existing and (where such concept is recognized) in good

standing under the Laws of its respective jurisdiction of incorporation or organization, as applicable. Each of Parent and Merger Sub and each of their respective Subsidiaries has all requisite corporate or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted and is qualified to do business and is in good standing as a foreign corporation in each jurisdiction where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except, in each case, as would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. Parent has made available to the Company true, complete and correct copies of Parent and Merger Sub's Organizational Documents, each as amended prior to the date of this Agreement, and each as made available to the Company is in full force and effect.

(b) All of the outstanding shares of capital stock or voting securities of, or other equity interests in, each of Parent's wholly owned Subsidiaries have been validly issued and are owned by Parent, by another Subsidiary of Parent or by Parent and another Subsidiary of Parent, free and clear of all Liens other than restrictions imposed by applicable securities Laws or the Organizational Documents of any such Subsidiary or any Permitted Liens.

Section 4.2 Capitalization.

(a) The authorized share capital of Parent consists of an unlimited number of Parent Common Shares, an unlimited number of Class A Preferred Shares (the "Parent Class A Preferred Shares") and an unlimited number of Class B Preferred Shares (the "Parent Class B Preferred Shares"). As of May 10, 2021, there were (i) 707,960,398 Parent Common Shares issued and outstanding, (ii) no Parent Class A Preferred Shares issued and outstanding, (iii) no Parent Class B Preferred Shares issued and outstanding, (iv) Parent Options to purchase an aggregate of 4,035,980 Parent Common Shares issued and outstanding, (v) 665,887 notional Parent Common Shares underlying outstanding Parent DSU Awards (including Parent DSU Awards that may be settled in cash or in Parent Common Shares that are purchased on the market, newly issued or held in trust for purposes of the applicable Parent Share Plan), (vi) 1,189,395 notional Parent Common Shares underlying outstanding Parent PSU Awards if performance conditions are satisfied at the target level (including Parent PSU Awards that may be settled in Parent Common Shares that are purchased on the market, newly issued or held in trust for purposes of the applicable Parent Share Plan) and (vii) 13,583,782 Parent Common Shares reserved for issuance under the Parent Share Plans. All outstanding Parent Common Shares are, and, when issued and delivered in accordance with the terms of this Agreement, the Parent Common Shares to be issued as part of the Merger Consideration will be, duly authorized and validly issued as fully paid and nonassessable, listed and posted for trading on the NYSE and the TSX, and not subject to or issued in violation of any preemptive or similar right, purchase option, call or right of first refusal or similar right. The Parent Common Shares to be issued as part of the Merger Consideration shall not be subject to any resale restrictions under applicable Canadian Securities Laws provided that the conditions set forth in subsection 2.6(3) (paragraphs 2 through 5) of National Instrument 45-102 – *Resale of Securities* of the Canadian Securities Administrators are satisfied in respect of any such trade.

(b) Except as set forth in Section 4.2(a) or as required by the terms of the Parent Benefit Plans, as of the date of this Agreement, (i) Parent does not have any shares of its capital stock issued or outstanding, other than Parent Common Shares that have become

outstanding after May 10, 2021, which were reserved for issuance as of May 10, 2021 as set forth in Section 4.2(a), and (ii) there are no outstanding subscriptions, options, warrants, calls, convertible securities or other similar rights, agreements or commitments relating to the issuance of capital stock of Parent or any of Parent's Subsidiaries to which Parent or any of Parent's Subsidiaries is a party obligating Parent or any of Parent's Subsidiaries to (A) issue, transfer or sell any shares of capital stock of Parent or any of Parent's Subsidiaries or securities convertible into, exercisable for or exchangeable for such shares, (B) grant, extend or enter into any such subscription, option, warrant, call, convertible securities or other similar right, agreement or arrangement, or (C) redeem or otherwise acquire any such shares of capital stock.

(c) Neither Parent nor any of its Subsidiaries has outstanding bonds, debentures, notes or other similar obligations, the holders of which have the right to vote (or which are convertible into, exercisable for or exchangeable for securities having the right to vote) with the shareholders of Parent on any matter.

(d) There are no voting trusts or other agreements or understandings to which Parent or any of its Subsidiaries is a party with respect to the voting of the Parent Common Shares or other capital stock of the Parent or, except for any voting trust agreement entered into in compliance with Section 5.8(c) of this Agreement, capital stock of any of Parent's Subsidiaries.

Section 4.3 Corporate Authority Relative to This Agreement; Consents and Approvals; No Violation.

(a) Each of Parent and Merger Sub has all requisite power and authority to enter into this Agreement and to perform its obligations hereunder and to consummate the transactions contemplated hereby. Except for (i) the adoption of this Agreement by the sole stockholder of Merger Sub (which such adoption shall occur immediately following the execution of this Agreement) and (ii) the filing of the Certificate of Merger with the Secretary of State of the State of Delaware, no other proceedings on the part of Parent or Merger Sub are necessary to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by Parent and Merger Sub and, assuming this Agreement constitutes the valid and binding agreement of the Company, this Agreement constitutes the valid and binding agreement of Parent and Merger Sub, enforceable against each of Parent and Merger Sub in accordance with its terms, subject to the Enforceability Exceptions.

(b) (i) The Parent Board at a duly called and held meeting has unanimously (A) determined that it is in the best interests of Parent to enter into this Agreement and (B) approved the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including the Merger, the issuance of the Parent Common Shares comprising the Share Consideration and the Debt Financing; and (ii) the board of directors of Merger Sub has unanimously (A) determined that it is in the best interests of Merger Sub and its sole stockholder, and declared it advisable, to enter into this Agreement, (B) approved the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including the Merger, and (C) resolved to recommend

that the sole stockholder of Merger Sub adopt this Agreement and directed that such matter be submitted for consideration of the sole stockholder of Merger Sub.

(c) The execution, delivery and performance by Parent and Merger Sub of this Agreement and the consummation of the Merger and the other transactions contemplated hereby by Parent and Merger Sub do not and will not require Parent, Merger Sub or any of their Subsidiaries to procure, make or provide prior to the Closing Date any consent, approval, authorization or permit of, action by, filing with or notification to any Governmental Entity or other third party, other than (i) the filing of the Certificate of Merger, (ii) authorizations from, or such other actions as are required to be made with or obtained from, the STB, (iii) authorizations from, or such other actions as are required to be made with or obtained from, the FCC, (iv) compliance with any applicable requirements of any Antitrust Laws, (v) authorizations from, or such other actions as are required to be made with or obtained from, the COFECE and the IFT, (vi) the filing of notices with the ARTF and the SCT, (vii) compliance with the applicable requirements of the Securities Act, the Exchange Act and the Canadian Securities Laws, including the filing with the SEC of the Form F-4 (including the Proxy Statement/Prospectus), (viii) compliance with the rules and regulations of the NYSE and the TSX, (ix) compliance with any applicable foreign or state securities or blue sky laws and (x) the other consents and/or notices set forth on Section 4.3(c) of the Parent Disclosure Schedules (clauses (i) through (x), collectively, the “Parent Approvals”), and other than any consent, approval, authorization, permit, action, filing or notification the failure of which to make or obtain would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(d) Assuming compliance with the matters referenced in Section 4.3(c) and receipt of the Parent Approvals, the execution, delivery and performance by Parent and Merger Sub of this Agreement and the consummation by Parent and Merger Sub of the Merger and the other transactions contemplated hereby, do not and will not (i) contravene or conflict with the organizational or governing documents of Parent or any of its Subsidiaries, (ii) contravene or conflict with or constitute a violation of any provision of any Law binding on or applicable to Parent or any of its Subsidiaries or any of their respective properties or assets, or (iii) result in any violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or to the loss of a benefit under any Contract, instrument, permit, concession, franchise, right or license binding on Parent or any of its Subsidiaries, other than, in the case of clauses (ii) and (iii), any such contravention, conflict, violation, default, termination, cancellation, acceleration, right, loss or Lien that would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

Section 4.4 Reports and Financial Statements.

(a) Parent is a “reporting issuer” or the equivalent and not on the list of reporting issuers in default under applicable Canadian Securities Laws in each of the provinces and territories in Canada. Since December 31, 2018, (i) Parent has filed or furnished all forms, statements, certifications, documents and reports required to be filed or furnished by it with the SEC pursuant to the Exchange Act or the Securities Act since December 31, 2018 (the forms, statements, certifications, documents and reports so filed or furnished by Parent and those filed or furnished to the SEC subsequent to the date of this Agreement, including any amendments

thereto, the “Parent SEC Documents”) and (ii) Parent has filed or furnished all forms, documents and reports required to be filed or furnished by it with the Canadian Securities Administrators prior to the date of this Agreement (together with the Parent SEC Documents, the “Parent Public Documents”). Each of the Parent Public Documents, in each case as of its date, or, if amended, as finally amended prior to the date of this Agreement, complied, or if not yet filed or furnished, will comply in all material respects with the applicable requirements of the Securities Act, the Exchange Act, the Sarbanes-Oxley Act, the Canadian Securities Laws, as the case may be, and no Parent Public Document as of its date (or, if amended or superseded by a filing prior to the date of this Agreement, as of the date of such amended or superseding filing) contained, and no Parent Public Documents filed with or furnished to the SEC or the Canadian Securities Administrators subsequent to the date of this Agreement will contain, any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. Parent has not filed any confidential material change report with any Canadian Securities Administrators that, as of the date of this Agreement, remains confidential.

(b) Parent is in compliance in all material respects with the applicable listing and corporate governance rules and regulations of the NYSE and the TSX. Except as permitted by the Exchange Act, including Sections 13(k)(2) and 13(k)(3) thereunder, or the rules and regulations promulgated by the SEC, since December 31, 2018, neither Parent nor any of its Affiliates has made, arranged or modified (in any material way) any extensions of credit in the form of a personal loan to any executive officer or director of Parent.

(c) The consolidated financial statements (including all related notes and schedules) of Parent included in the Parent SEC Documents (or, if any such Parent SEC Document is amended or superseded by a filing prior to the date of this Agreement, such amended or superseding Parent SEC Document) fairly presented in all material respects the consolidated financial position of Parent and its consolidated Subsidiaries, as at the respective dates thereof, and the consolidated results of their operations and their consolidated cash flows for the respective periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein, including the notes thereto) and were prepared in all material respects in conformity with GAAP (except, in the case of the unaudited financial statements, as permitted by the SEC) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto).

Section 4.5 Internal Controls and Procedures.

(a) Parent has established and maintains disclosure controls and procedures as required by Rule 13a-15 under the Exchange Act. Such disclosure controls and procedures are effective in providing reasonable assurance that information required to be disclosed by Parent is recorded and reported on a timely basis to the individuals responsible for the preparation of Parent’s filings with the SEC and Canadian Securities Administrators and other public disclosure documents.

(b) Parent maintains a system of internal controls over financial reporting (as defined in Rule 13a-15 under the Exchange Act) that is effective in providing reasonable assurance regarding the reliability of financial reporting and the preparation of financial

statements for external purposes in accordance with GAAP and includes policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of Parent in all material respects, (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP and to maintain accountability for assets, that access to assets is permitted only in accordance with authorizations of management and directors of Parent and that receipts and expenditures of Parent are being made only in accordance with authorizations of management and directors of Parent, and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the Parent's assets that could have a material effect on its financial statements. The records, systems, controls, data and information of Parent and its Subsidiaries that are used in the systems of disclosure controls and procedures and of financial reporting controls and procedures described above are recorded, stored, maintained and operated under means that are under the exclusive ownership and direct control of Parent or a wholly owned Subsidiary of Parent or its accountants, except as would not reasonably be expected to adversely affect or disrupt, in any material respect, the Company's systems of disclosure controls and procedures and of financial reporting controls and procedures or the reports generated thereby.

(c) Parent's management has completed an assessment of the effectiveness of Parent's internal controls over financial reporting pursuant to Section 404 of the Sarbanes-Oxley Act for the year ended December 31, 2020, and such assessment concluded that such controls were effective. Parent has disclosed, based on its most recent evaluation of its internal controls prior to the date of this Agreement, to the Parent's auditors and the audit committee of the Parent Board, (i) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting that are reasonably likely to adversely affect the Parent's ability to record, process, summarize and report financial information and (ii) any fraud, whether or not material, that involves management or other employees who have a significant role in internal control over financial reporting. As of the date of its most recent audited financial statements, neither Parent nor its auditors had identified any significant deficiencies or material weaknesses in its internal controls over financial reporting and, as of the date of this Agreement, to the Knowledge of Parent, nothing has come to its attention that has caused it to believe that there are any material weaknesses or significant deficiencies in such internal controls. To the Knowledge of Parent, since December 31, 2018, no material complaints from any source regarding accounting, internal accounting controls or auditing matters, and no concerns from Parent employees regarding questionable accounting or auditing matters, have been received by Parent. To the Knowledge of Parent, since December 31, 2018, no attorney representing Parent or any of its Subsidiaries, whether or not employed by Parent or any of its Subsidiaries, has reported evidence of a violation of securities Laws, breach of fiduciary duty or similar violation by Parent or any of its officers, directors, employees or agents to the Parent's chief legal officer, audit committee (or other committee designated for the purpose) of the Parent Board pursuant to the rules adopted pursuant to Section 307 of the Sarbanes-Oxley Act or any Parent policy contemplating such reporting, including in instances not required by those rules.

Section 4.6 No Undisclosed Liabilities. Except (a) as disclosed, reflected or reserved against in the audited consolidated balance sheet of Parent and its Subsidiaries as of December 31, 2020, and the footnotes to such consolidated balance sheet, in each case set forth in Parent's report on Form 40-F (including the exhibits thereto) for the fiscal year ended

December 31, 2020, (b) as expressly permitted or contemplated by this Agreement, (c) for liabilities or obligations that have been discharged or paid in full, (d) for liabilities arising in connection with obligations under any existing Contract (except to the extent such liabilities arose or resulted from a breach or a default of such Contract), (e) for liabilities and obligations incurred in the Ordinary Course of Business since December 31, 2020 (the “Parent Balance Sheet Date”); or (f) as would not have, individually or in the aggregate, a Parent Material Adverse Effect, neither Parent nor any Subsidiary of Parent has any liabilities or obligations that would be required by GAAP to be reflected on a consolidated balance sheet of Parent and its Subsidiaries.

Section 4.7 Compliance with Law; Permits.

(a) Parent and its Subsidiaries have been since December 31, 2018 in compliance with and not in default under or in violation of any Law applicable to Parent and its Subsidiaries, except where such non-compliance, default or violation would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(b) Parent and its Subsidiaries are in possession of all Permits necessary for Parent and Parent’s Subsidiaries to own, lease and operate their properties and assets or to carry on their businesses as they are now being conducted (such Permits, the “Parent Permits”), except where the failure to have any of the Parent Permits would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. All Parent Permits are in full force and effect and are not subject to any administrative or judicial proceeding that would reasonably be expected to result in modification, termination or revocation thereof, and Parent and each of its Subsidiaries is in compliance with the terms and requirements of such Parent Permit, except where the failure to be in full force and effect or in compliance or where such proceeding would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(c) Neither Parent nor any of its Subsidiaries has received any written notice that Parent or its Subsidiaries is in violation of any Law applicable to Parent or any of its Subsidiaries or any Permit, except for such violations that would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect. There are no Actions pending, threatened in writing or, to the Knowledge of Parent, otherwise threatened that would reasonably be expected to result in the revocation, withdrawal, suspension, non-renewal, termination, revocation, or adverse modification or limitation of any such Permit, except as would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

Section 4.8 Anti-Corruption; Anti-Bribery; Anti-Money Laundering.

(a) Parent, its Subsidiaries and, to the Knowledge of Parent, each of their directors, officers and employees and each other Person acting on behalf of Parent or its Subsidiaries are in all material respects in compliance with and for the past five years, have in all material respects complied with (a) the FCPA, and (b) the provisions of all Anti-Corruption Laws. Parent and its Subsidiaries have since December 31, 2018 (i) instituted policies and procedures that are reasonably designed to ensure compliance in all material respects with the

FCPA and other anti-bribery, anti-corruption and anti-money laundering Laws in each jurisdiction in which Parent or any of its Subsidiaries operate and (ii) maintained such policies and procedures in full force and effect in all material respects.

(b) None of Parent, its Subsidiaries or, to the Knowledge of Parent, any of their directors, officers and employees and each other Person acting on behalf of Parent or its Subsidiaries has, in the past five years, directly or indirectly, violated any, or been subject to actual or, to the Knowledge of Parent, pending or threatened Proceedings, settlements or enforcement actions alleging violations on the part of any of the foregoing Persons of the FCPA or Anti-Corruption Laws or any terrorism financing Law.

(c) None of Parent, its Subsidiaries or, to the Knowledge of Parent, any of their directors, officers and their employees or any other Person acting on behalf of Parent or its Subsidiaries has, in the past five years: (i) directly or indirectly, paid, offered or promised to pay, or authorized or ratified the payment of any monies or anything of value (A) which would violate any applicable Anti-Corruption Law, including the FCPA, applied for purposes hereof as it applies to domestic concerns, or (B) to any national, provincial, municipal or other Government Official or any political party or candidate for political office for the purpose of (x) influencing any act or decision of such official or of any Governmental Entity, (y) to obtain or retain business, or direct business to any Person or (z) to secure any other improper benefit or advantage; or (ii) aided, abetted, caused (directly or indirectly), participated in, or otherwise conspired with, any Person to violate the terms of any Order.

Section 4.9 Sanctions.

(a) For the past five years, Parent and each of its Subsidiaries has been, and currently is, in all material respects in compliance with relevant Export and Sanctions Regulations.

(b) None of Parent or any of its Subsidiaries, or, to the Knowledge of the Parent, any director, officer, agent, employee or other Person acting on behalf of any of Parent or its Subsidiaries, in their capacity as such, is currently, or has been for the past five years: (i) a Sanctioned Person or (ii) engaging in any dealings or transactions with, or for the benefit of, any Sanctioned Person or in any Sanctioned Country, to the extent such activities would cause Parent to violate applicable Export and Sanctions Regulations.

(c) For the past five years, Parent and its Subsidiaries have (i) instituted policies and procedures that are reasonably designed to ensure compliance in all material respects with the Export and Sanctions Regulations in each jurisdiction in which Parent and its Subsidiaries operate or are otherwise subject to jurisdiction and (ii) maintained such policies and procedures in full force and effect in all material respects.

(d) For the past five years, neither Parent nor any of its Subsidiaries (w) has been found in violation of, charged with or convicted of, any Export and Sanctions Regulations, (x) to the Knowledge of Parent, is under investigation by any Governmental Entity for possible violations of any Export and Sanctions Regulation, (y) has been assessed civil penalties under

any Export and Sanctions Regulations or (z) has filed any voluntary disclosures with any Governmental Entity regarding possible violations of any Export and Sanctions Regulations.

Section 4.10 Environmental Laws and Regulations.

(a) Except as would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect: (i) Parent and its Subsidiaries have for the past five years conducted their respective businesses in compliance with all applicable Environmental Laws; (ii) for the past five years, neither Parent nor any of its Subsidiaries has received any written notices, demand letters or written requests for information from any Governmental Entity alleging that Parent or any of its Subsidiaries is in violation of or has liability under any Environmental Law and there are no legal, administrative, arbitral or other proceedings, claims or actions pending, or to the Knowledge of Parent threatened, against Parent or any of its Subsidiaries alleging any violation of or liability relating to any Environmental Law, in each case other than with respect to matters that have been fully resolved; (iii) to the Knowledge of Parent, for the past five years, there has been no treatment, storage or release of any Hazardous Substance in violation of or as could reasonably be expected to result in liability under any applicable Environmental Law from any properties currently or formerly owned or leased or held under concession by Parent or any of its Subsidiaries or any predecessor; and (iv) neither Parent nor any Subsidiary is subject to any agreement, order, judgment, decree or agreement by or with any Governmental Entity or other third party imposing any liability or obligation relating to any Environmental Law.

(b) The generality of any other representations and warranties in this Agreement notwithstanding, the representations and warranties in this Section 4.10 shall be deemed to be Parent's sole and exclusive representations and warranties in this Agreement with respect to Environmental Laws, Hazardous Substances and any other environmental matters.

Section 4.11 Employee Benefit Plans; Labor Matters.

(a) Section 4.11(a) of the Parent Disclosure Schedules lists all material Parent Benefit Plans.

(b) Parent has made available to the Company, with respect to each material Parent Benefit Plan, each writing constituting a part of such Parent Benefit Plan, including all amendments thereto.

(c) Except as would not have, individually or in the aggregate, a Parent Material Adverse Effect: (i) each Parent Benefit Plan (including any related trusts) has been maintained and administered in compliance with its terms and with applicable Law, including ERISA and the Code to the extent applicable thereto; (ii) each Parent Benefit Plan intended to be "qualified" within the meaning of Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service or is entitled to rely on a favorable opinion issued by the Internal Revenue Service, (iii) no Parent Benefit Plan is subject to Title IV of ERISA, (iv) no employee benefit plan of Parent or its Subsidiaries is a Multiemployer Plan or a plan subject to Title IV of ERISA that has two or more contributing sponsors, at least two of whom are not under common control, (v) all contributions or other amounts payable by Parent or

any of its Subsidiaries with respect to each Parent Benefit Plan in respect of current or prior plan years have been paid or accrued in accordance with GAAP and (vi) there are no pending, threatened or, to the Knowledge of Parent, anticipated claims (other than claims for benefits in accordance with the terms of the Parent Benefit Plans) by, on behalf of or against any of the Parent Benefit Plans or any trusts related thereto.

(d) With respect to any Multiemployer Plan contributed to by Parent or any ERISA Affiliate, neither Parent nor any ERISA Affiliate has incurred any withdrawal liability under Title IV of ERISA which remains unsatisfied as to an amount that would reasonably be expected to result in, individually or in the aggregate, material liability to Parent and its Subsidiaries, taken as a whole.

(e) Except as provided in this Agreement or required by applicable Law, the consummation of the transactions contemplated by this Agreement will not, either alone or in combination with another event, (i) entitle any current or former employee or director of Parent or any of its Subsidiaries to severance pay, or any other payment from Parent or its Subsidiaries, (ii) accelerate the time of payment or vesting, or increase the amount of, compensation due to any such employee or consultant, (iii) directly or indirectly cause Parent to transfer or set aside any assets to fund any material benefits under any Parent Benefit Plan or (iv) limit or restrict the right to merge, materially amend, terminate or transfer the assets of any Parent Benefit Plan on or following the Effective Time.

(f) The execution and delivery of this Agreement, stockholder or other approval of this Agreement or the consummation of the transactions contemplated by this Agreement would not, either alone or in combination with another event, result in the payment of any “excess parachute payment” as defined Section 280G(b)(1) of the Code.

(g) Parent is not a party to nor does it have any obligation under any Parent Benefit Plan to compensate, indemnify or reimburse any person for excise Taxes payable pursuant to Section 4999 of the Code or for additional Taxes payable pursuant to Section 409A of the Code.

(h) Parent and its Subsidiaries are in compliance with their obligations pursuant to all notification and bargaining obligations arising under any Parent Labor Agreements, except as would not have, individually or in the aggregate, a Parent Material Adverse Effect.

(i) Except as would not reasonably be expected to result in, individually or in the aggregate, material liability to Parent and its Subsidiaries, taken as a whole as of the date of this Agreement, (A) there are no strikes or lockouts with respect to any employees of Parent or any of its Subsidiaries; (B) to the Knowledge of Parent, there is no union organizing effort pending or threatened against Parent or any of its Subsidiaries; (C) there is no labor dispute or labor arbitration proceeding pending or, to the Knowledge of Parent, threatened against Parent or any of its Subsidiaries (other than, in each case, routine grievances, including those brought by unions or other collectively represented employees, to be heard by the applicable Governmental Entity); and (D) there is no slowdown, or work stoppage in effect or, to the Knowledge of Parent, threatened with respect to employees of Parent or any of its Subsidiaries.

(j) Except as would not have, individually or in the aggregate, a Parent Material Adverse Effect, since December 31, 2018, Parent and its Subsidiaries have complied with all applicable Laws with respect to employment and employment practices (including all applicable Laws, rules and regulations regarding wage and hour requirements, employee and worker classification, immigration status, discrimination in employment, harassment, employee health and safety, and collective bargaining).

(k) The consent or consultation of, or the rendering of formal advice by, any labor or trade union, works council or similar organization is not required for Parent to enter into this Agreement or to consummate any of the transactions contemplated hereby other than any consent, consultation or formal advice, the failure of which to obtain or, in the case of consultation, engage in, would not delay or prevent the consummation of the transactions contemplated by this Agreement or otherwise reasonably be expected to result in, individually or in the aggregate, material liability to Parent and its Subsidiaries, taken as a whole as of the date of this Agreement.

Section 4.12 Absence of Certain Changes or Events.

(a) Since the Parent Balance Sheet Date through the date of this Agreement, there has not been any event, change, occurrence or development that has had or would reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(b) From the Parent Balance Sheet Date through the date of this Agreement, Parent and its Subsidiaries have conducted their respective businesses in all material respects in the Ordinary Course of Business.

Section 4.13 Investigations; Litigation. Except as would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect, as of the date of this Agreement, (a) to the Knowledge of Parent, there is no investigation or review pending or threatened by any Governmental Entity with respect to Parent or any of its Subsidiaries; and (b) there are no Actions pending (or, to the Knowledge of Parent, threatened) against or affecting Parent or any of Parent's Subsidiaries or any of their respective assets or properties at law or in equity before, and there are no Orders of any Governmental Entity against or affecting Parent or any of Parent's Subsidiaries or any of their respective assets or properties.

Section 4.14 Parent Information. The information supplied or to be supplied by Parent for inclusion in (i) the Proxy Statement/Prospectus or the Form F-4 will not, at the time the Proxy Statement/Prospectus is first mailed to the Company's stockholders, at the time of the Company Stockholder Meeting or at the time the Form F-4 (and any amendment or supplement thereto) is declared effective, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, that no representation or warranty is made by Parent with respect to statements made therein based on information supplied by the Company for inclusion or incorporation by reference therein.

Section 4.15 Tax Matters.

(a) Except as would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect: (i) Parent and each of its Subsidiaries have prepared and timely filed (taking into account any extension of time within which to file) all Tax Returns required to be filed by any of them under applicable Law with the appropriate Governmental Entity and all such filed Tax Returns are complete and accurate; (ii) Parent and each of its Subsidiaries have paid all Taxes required to be paid under applicable Law to the appropriate Governmental Entity and have withheld all Taxes required to be withheld by any of them (including in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, stockholder or other third party), except, in the case of clauses (i) and (ii), with respect to matters contested in good faith or for which adequate reserves have been established in accordance with GAAP; (iii) as of the date of this Agreement, there are not pending or, to the Knowledge of Parent, threatened in writing, any audits, examinations, investigations or other proceedings in respect of Taxes of Parent or any of its Subsidiaries, and neither Parent nor any of its Subsidiaries has received written notice within the past six years of any claim made by a Governmental Entity, in a jurisdiction where Parent or any of its Subsidiaries, as applicable, does not file a Tax Return, that Parent or such Subsidiary is or may be subject to income taxation by, or have an obligation to file an income Tax Return in, that jurisdiction; (iv) there are no liens for Taxes on any property of Parent or any of its Subsidiaries, except for Permitted Liens; (v) neither Parent nor any of its Subsidiaries has been a “controlled corporation” or a “distributing corporation” in any distribution occurring during the two-year period ending on the date of this Agreement that was purported or intended to be governed by Section 355 of the Code; (vi) neither Parent nor any of its Subsidiaries has participated in any “listed transaction” within the meaning of Treasury Regulations Section 1.6011-4(b)(2); (vii) neither Parent nor any of its Subsidiaries (A) is a party to or is bound by any Tax sharing, allocation or indemnification agreement or arrangement (other than such an agreement or arrangement (1) exclusively between or among Parent and/or its Subsidiaries or (2) not primarily related to Taxes and entered into in the Ordinary Course of Business), (B) has been a member of an affiliated, consolidated, unitary or combined group filing a consolidated federal income Tax Return (other than a group the common parent of which is or was Parent or any of its Subsidiaries), or (C) has any liability for the Taxes of any Person (other than Parent or any of its Subsidiaries) under Treasury Regulations Section 1.1502-6 (or any similar provision of federal, state, local or non-U.S. Law), as a transferee or successor; and (viii) neither Parent nor any of its Subsidiaries will be required to include any item of income in, or to exclude any item of deduction from, taxable income in any taxable period (or portion thereof) ending after the Closing Date as a result of (A) any closing agreement, installment sale, or open transaction disposition, (B) any accounting method change or agreement with any Governmental Entity, or (C) any election pursuant to Section 965(h) of the Code, in each case, made prior to the Closing.

(b) Neither Parent nor any of its Subsidiaries has taken or agreed to take any action or knows of any fact, agreement, plan or other circumstance that is reasonably likely to cause Parent to be treated as a “domestic corporation” pursuant to Section 7874(b) of the Code as a result of the Merger.

(c) The generality of any other representations and warranties in this Agreement notwithstanding, the representations and warranties in this Section 4.15 and, to the

extent applicable, Section 4.11 shall be deemed to be Parent's sole and exclusive representations and warranties in this Agreement with respect to Tax matters.

Section 4.16 Opinion of Financial Advisor. The Parent Board has received the separate oral opinion(s) of J.P. Morgan Securities Canada Inc. and RBC Dominion Securities Inc., to be confirmed by delivery of their respective written opinions, that, as of the date of the respective opinion and based upon and subject to the assumptions, limitations, qualifications and other matters stated therein, the Merger Consideration to be paid to the holders of Company Common Stock in the Merger pursuant to this Agreement is fair, from a financial point of view, to Parent.

Section 4.17 Financing.

(a) Parent has delivered to the Company true and complete copies as of the date of this Agreement of (i) a fully executed debt commitment letter, dated as of the date of this Agreement (including all exhibits and schedules thereto, the "Debt Commitment Letter"), by and among inter alia Parent and the Financing Parties specified therein and (ii) the executed fee letter, dated the date of this Agreement, referenced therein, relating to fees and other terms with respect to the Debt Financing contemplated by such Debt Commitment Letters (with only fee amounts and customary "flex" terms redacted, none of which redacted provisions could affect the conditionality, enforceability, availability, or aggregate principal amount of the Debt Financing) (the "Fee Letter" and together with the Debt Commitment Letter, the "Debt Commitment Letters"). Pursuant to the Debt Commitment Letters, and subject to the terms and conditions thereof, the Financing Parties party thereto have committed to provide Parent and/or its Subsidiary party thereto with the amounts set forth in the Debt Commitment Letters for the purposes set forth therein (the debt financing contemplated in the Debt Commitment Letters, together with any replacement debt financing, including any bank financing or debt securities issued in lieu thereof, the "Debt Financing").

(b) As of the date of this Agreement, the Debt Commitment Letters are in full force and effect and the respective commitments thereunder have not been withdrawn, rescinded, reduced or terminated, or otherwise amended or modified in any respect and, to the Knowledge of Parent, no termination, reduction, withdrawal, rescission, amendment or modification is contemplated (other than as set forth therein with respect to "flex" rights and/or to add additional lenders, arrangers, bookrunners, syndication agents and similar entities who had not executed the Debt Commitment Letters as of the date of this Agreement), and the Debt Commitment Letters, in the form so delivered, constitute the legal, valid and binding obligations of, and are enforceable against, Parent, its Subsidiary party thereto and, to the Knowledge of Parent, each of the other non-affiliated parties thereto, subject, in each case, to the Enforceability Exceptions.

(c) Parent has fully paid (or caused to be paid) any and all commitment fees or other fees required by the Debt Commitment Letters to be paid on or before the date of this Agreement, and will pay in full any such amounts as and when due and payable on or before the Closing Date. Except as expressly set forth in the Debt Commitment Letters, there are no conditions precedent to the obligations of the Financing Parties party thereto to provide the Debt Financing or any contingencies that would permit the Financing Parties party thereto to reduce the aggregate principal amount of the Debt Financing. Assuming the satisfaction of the

conditions set forth in Section 6.3(a) and 6.3(b), Parent does not have any reason to believe that it will be unable to satisfy on a timely basis all terms and conditions to be satisfied by it in any of the Debt Commitment Letters on or prior to the Closing Date, nor does Parent have knowledge as of the date of this Agreement that any Financing Party party thereto will not perform its obligations thereunder. Except for customary engagement letters and for the redacted Fee Letter provided to the Company in accordance with clause (a) above, as of the date of this Agreement, there are no contracts, agreements, “side letters” or other arrangements to which Parent or any of its Subsidiaries is a party relating to the Debt Commitment Letters or the Debt Financing.

(d) As of the date of this Agreement, no event has occurred which, with or without notice, lapse of time or both, constitutes, or would reasonably be expected to constitute, a default or breach by Parent or its Subsidiaries or, to the Knowledge of Parent, any other party thereto, of any term of the Debt Commitment Letters. The Debt Financing, when funded in accordance with the Debt Commitment Letters and giving effect to any “flex” provision in or related to the Debt Commitment Letters (including with respect to fees and original issue discount), together with cash and the other sources of immediately funds available to Parent on the Closing Date, shall provide Parent with cash proceeds on the Closing Date sufficient for the satisfaction of all of Parent’s obligations under this Agreement and the Debt Commitment Letters, including the payment of the Cash Consideration, the Preferred Merger Consideration and any fees and expenses of or payable by Parent or Merger Sub or Parent’s other Affiliates, and for any repayment or refinancing of any outstanding indebtedness of the Company and/or its Subsidiaries contemplated by, or required in connection with the transactions described in, this Agreement or the Debt Commitment Letters (such amounts, collectively, the “Financing Amounts”).

(e) Parent and Merger Sub expressly acknowledge and agree that their obligations under this Agreement to consummate the Merger or any of the other transactions contemplated by this Agreement, are not subject to, or conditioned on, the receipt or availability of any funds or the Debt Financing.

Section 4.18 Capitalization of Merger Sub. The authorized capital stock of Merger Sub consists of 100 shares of common stock, par value \$0.01 per share (“Merger Sub Common Shares”). As of the date of this Agreement, there were 50 Merger Sub Common Shares validly issued and outstanding. All of the issued and outstanding capital stock of Merger Sub is as of the date of this Agreement, and at all times through the Effective Time will be, owned, directly or indirectly, by Parent. There is no outstanding option, warrant, right or any other agreement pursuant to which any Person other than Parent or a wholly owned Subsidiary of Parent may acquire any equity securities of Merger Sub. Merger Sub has not conducted any business prior to the date of this Agreement, and prior to the Effective Time will have no assets, liabilities or obligations of any nature other than those incident to its formation and pursuant to this Agreement and the Merger and the other transactions contemplated by this Agreement.

Section 4.19 No Required Vote of Parent Shareholders. No approval by the shareholders of Parent is required in order for Parent to execute, deliver and perform its obligations under this Agreement or to consummate the transactions contemplated hereby on the terms and subject to the conditions of this Agreement.

Section 4.20 Finders or Brokers. Except for J.P. Morgan Securities Canada Inc. and RBC Dominion Securities Inc., neither Parent nor any Subsidiary of Parent (including Merger Sub) has employed or engaged any investment banker, broker or finder in connection with the transactions contemplated by this Agreement who would be entitled to any fee or any commission in connection with or on consummation of the Merger or the other transactions contemplated hereby.

Section 4.21 Certain Arrangements. Since December 31, 2018 through the date of this Agreement, there have been no contracts, undertakings, commitments, agreements, obligations or understandings, whether written or oral, or any material transactions, between Parent, Merger Sub or any of their respective Affiliates, on the one hand, and any beneficial owner of five percent or more of the outstanding shares of Company Common Stock or any member of the Company's management or the Company Board, on the other hand, relating in any way to the Company, the transactions contemplated by this Agreement or to the operations of the Surviving Corporation after the Effective Time.

Section 4.22 Ownership of Common Stock. None of Parent, Merger Sub or any of their respective Subsidiaries or Affiliates beneficially owns, directly or indirectly (including pursuant to a derivatives contract), any shares of Company Common Stock or other securities convertible into, exchangeable for or exercisable for shares of Company Common Stock or any securities of any Subsidiary of the Company, and none of Parent, Merger Sub or any of their respective Subsidiaries or Affiliates has any rights to acquire, directly or indirectly, any shares of Company Common Stock, except pursuant to this Agreement. None of Parent, Merger Sub or any of their "affiliates" or "associates" is, or at any time during the last three years has been, an "interested stockholder" of the Company, in each case as defined in Section 203 of the DGCL.

Section 4.23 Solvency. Immediately after giving effect to the consummation of the transactions contemplated by this Agreement (including any financings being entered into in connection therewith):

(a) the Fair Value of the assets of Parent and its Subsidiaries, taken as a whole, shall be greater than the total amount of Parent's and its Subsidiaries' liabilities (including all liabilities, whether or not reflected in a balance sheet prepared in accordance with GAAP, and whether direct or indirect, fixed or contingent, secured or unsecured, disputed or undisputed), taken as a whole;

(b) Parent and its Subsidiaries, taken as a whole, shall be able to pay their debts and obligations in the Ordinary Course of Business as they become due; and

(c) Parent and its Subsidiaries, taken as a whole, shall have adequate capital to carry on their businesses and all businesses in which they are about to engage.

(d) For the purposes of this Section 4.23, "Fair Value" means the amount at which the assets (both tangible and intangible), in their entirety, of Parent and its Subsidiaries would change hands between a willing buyer and a willing seller, within a commercially reasonable period of time, each having reasonable knowledge of the relevant facts, with neither being under any compulsion to act.

Section 4.24 No Other Representations or Warranties; No Reliance. Each of Parent and Merger Sub acknowledges and agrees that, except for the representations and warranties contained in Article 3, none of the Company or any other Person acting on behalf of the Company has made or makes, and neither Parent nor Merger Sub has relied on, any representation or warranty, whether express or implied, with respect to the Company, its Subsidiaries or their respective businesses, affairs, assets, liabilities, financial condition, results of operations, future operating or financial results, estimates, projections, forecasts, plans or prospects (including the reasonableness of the assumptions underlying such estimates, projections, forecasts, plans or prospects) or with respect to the accuracy or completeness of any other information provided or made available to Parent, Merger Sub or any of their respective representatives by or on behalf of the Company. Each of Parent and Merger Sub acknowledges and agrees that neither the Company nor any other Person acting on behalf of the Company has made or makes, and neither Parent nor Merger Sub has relied on, any representation or warranty, whether express or implied, with respect to any projections, forecasts, estimates or budgets made available to Parent, Merger Sub or any of their respective representatives of future revenues, future results of operations (or any component thereof), future cash flows or future financial condition (or any component thereof) of the Company or any of its Subsidiaries. Each of Parent and Merger Sub acknowledges and agrees that neither the Company nor any other Person acting on behalf of the Company has made or makes, and neither Parent nor Merger Sub has relied on, any representation or warranty, whether express or implied, with respect to the Company (except for the representations and warranties of the Company expressly set forth in Article 3).

ARTICLE 5

COVENANTS AND AGREEMENTS

Section 5.1 Conduct of Business by the Company.

(a) From and after the date of this Agreement and prior to earlier of the Control Date and the date, if any, on which this Agreement is earlier terminated pursuant to Section 7.1 (the “Termination Date”), except (i) as may be required by applicable Law, (ii) as may be agreed in writing by Parent (which consent shall not be unreasonably withheld, delayed or conditioned), (iii) as may be expressly contemplated, required or expressly permitted by this Agreement or (iv) as set forth in Section 5.1 of the Company Disclosure Schedules, the Company shall, and shall cause its Subsidiaries to, use its commercially reasonable efforts to (A) conduct its business in all material respects in the Ordinary Course of Business in accordance with the capital allocation policy set forth on Section 5.1(a) of the Company Disclosure Schedule (the “Company Capital Allocation Policy”), and (B) preserve intact in all material respects its business organization and maintain existing relationships and goodwill with Governmental Entities, customers, suppliers, licensors, licensees, creditors, lessors, distributors, employees, contractors and business associates; provided, that no action by the Company or its Subsidiaries with respect to matters specifically addressed by any provision of Section 5.1(b) shall be deemed a breach of this sentence unless such action would constitute a breach of such other provision.

(b) From and after the date of this Agreement and prior to the earlier of the Effective Time and the Termination Date (other than with respect to the covenants set forth in

Sections 5.1(b)(i), (ii), (iii), (iv), (v), (vi), (vii), (x), (xiii), (xv), (xvi), (xvii), (xviii) and (xxi), each of which shall apply from and after the date of this Agreement and prior to the earlier of the Control Date and the Termination Date), except (w) as may be required by applicable Law, (x) as may be agreed in writing by Parent (which consent shall not be unreasonably withheld, delayed or conditioned), (y) as may be expressly contemplated, required or expressly permitted by this Agreement or (z) as set forth in Section 5.1 of the Company Disclosure Schedules, the Company:

(i) shall not, and shall not permit any of its Subsidiaries that is not wholly owned to, authorize or pay any dividends on or make any distribution with respect to its outstanding shares of capital stock (whether in cash, assets, stock or other securities of the Company or its Subsidiaries), except (A) quarterly cash dividends paid by the Company on the outstanding shares of Company Common Stock consistent with the Company Capital Allocation Policy, appropriately adjusted to reflect any stock dividends, subdivisions, splits, combinations or other similar events relating to the shares Company Common Stock, (B) dividends paid by the Company on the outstanding shares of Company Preferred Stock in accordance with the terms thereof and (C) dividends and distributions paid by Subsidiaries of the Company to the Company or to any of the Company's other wholly owned Subsidiaries;

(ii) shall not, and shall not permit any of its Subsidiaries to, split, combine or reclassify any of its capital stock or issue or authorize or propose the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock, except as may be permitted by Section 5.1(b)(vi), and except for any such transaction by a wholly owned Subsidiary of the Company that remains a wholly owned Subsidiary after consummation of such transaction;

(iii) shall not, and shall not permit any of its Subsidiaries to, except in the Ordinary Course of Business, hire any employee or engage any independent contractor (who is a natural person) or terminate the employment of any employee of the Company or any of its Subsidiaries or increase the compensation or other benefits payable or provided to the Company's or any of its Subsidiaries' directors or employees, except that, notwithstanding the foregoing, except as required pursuant to the terms of any Company Benefit Plan in effect as of the date of this Agreement, the Company shall not, and shall not permit any of its Subsidiaries to (A) grant any transaction or retention bonuses, (B) grant any Company Equity Awards or other equity or long-term incentive compensation awards, or (C) enter into any employment, change of control, severance or retention agreement with any employee of the Company or any of its Subsidiaries (except (y) for severance agreements entered into with employees in the Ordinary Course of Business in connection with terminations of employment, providing for severance in accordance with the terms of the applicable Company Benefit Plan in effect as of the date of this Agreement or (z) for employment agreements terminable on no more than 90 days' notice without penalty);

(iv) shall not, and shall not permit any of its Subsidiaries to, materially change financial accounting policies or procedures or any of its methods of reporting income, deductions or other material items for financial accounting purposes, except as required by GAAP or SEC rule or policy;

(v) shall not adopt any amendments to the Organizational Documents of the Company or any of its Significant Subsidiaries, other than amendments solely to effect ministerial changes to such documents;

(vi) except for transactions among the Company and its wholly owned Subsidiaries or among the Company's wholly owned Subsidiaries, shall not, and shall not permit any of its Subsidiaries to, issue, sell, pledge, dispose of or encumber, or authorize the issuance, sale, pledge, disposition or encumbrance of, any shares of its capital stock or other ownership interests in the Company or any Subsidiaries of the Company or any securities convertible into, exercisable for or exchangeable for any such shares or ownership interests or take any action to cause to be vested any otherwise unvested Company Equity Award (except as otherwise provided by the terms of this Agreement or the express terms of any such Company Equity Award), other than (A) issuances of shares of Company Common Stock in respect of any exercise of or settlement of Company Equity Awards outstanding on the date of this Agreement or as may be granted after the date of this Agreement as permitted under this Section 5.1(b), (B) Permitted Liens and (C) pursuant to existing agreements in effect prior to the execution of this Agreement (or refinancings thereof permitted pursuant to Section 5.1(b)(viii)(D));

(vii) except for transactions among the Company and its Subsidiaries or among the Company's wholly owned Subsidiaries, shall not, and shall not permit any of its Subsidiaries to, purchase, redeem or otherwise acquire any shares of its capital stock or any rights, warrants or options to acquire any such shares, other than the acquisition of shares of Company Common Stock from a holder of Company Equity Awards in satisfaction of withholding obligations or in payment of the exercise price;

(viii) shall not, and shall not permit any of its Subsidiaries to, incur, assume, or guarantee, any indebtedness for borrowed money, other than in the Ordinary Course of Business, except for (A) any indebtedness among the Company and its wholly owned Subsidiaries or among the Company's wholly owned Subsidiaries, (B) any indebtedness incurred to replace, renew, extend, refinance or refund any existing indebtedness of the Company or its Subsidiaries (including indebtedness incurred to repay or refinance related fees, expenses, premiums and accrued interest), (C) guarantees or credit support provided by the Company or any of its Subsidiaries for indebtedness of the Company or any of its wholly owned Subsidiaries, to the extent such indebtedness is (1) in existence on the date of this Agreement or (2) incurred in compliance with this Section 5.1(b)(viii), (D) indebtedness incurred pursuant to agreements in effect prior to the execution of this Agreement (or replacements, renewals, extensions, or refinancings thereof) and (E) other indebtedness in an aggregate principal amount outstanding at any time incurred by the Company or any of its Subsidiaries that is consistent with the Company Capital Allocation Policy;

(ix) shall not, and shall not permit any of its Subsidiaries to, make any loans, advances, guarantees or capital contributions to or investments in any Person (other than between the Company or any of its wholly owned Subsidiaries, on the one hand, and any of the Company's wholly owned Subsidiaries, on the other hand) in excess of \$35 million individually or \$50 million in the aggregate;

(x) shall not, and shall not permit any of its Subsidiaries to, sell, lease, license, transfer, exchange or swap, or subject to any Lien (other than Permitted Liens), or otherwise dispose of, any material portion of its businesses, properties or assets, including the capital stock of its Subsidiaries but excluding Intellectual Property, other than in the Ordinary Course of Business, and except (A) pursuant to existing agreements in effect prior to the execution of this Agreement (or refinancings thereof permitted pursuant to Section 5.1(b)(viii)(B)), (B) transactions among the Company and its Subsidiaries or among the Company's Subsidiaries or (C) for consideration not in excess of \$25 million individually or \$50 million in the aggregate;

(xi) shall not, and shall not permit any of its Subsidiaries to, enter into any Contract with a term greater than two years, that may not be terminated by the Company or any of its Subsidiaries without cause, and would have been a Company Material Contract had it been entered into prior to this Agreement, terminate or modify, amend or waive any material rights under any Company Material Contract in any material respect in a manner that is adverse to the Company, in each case, other than in the Ordinary Course of Business or as otherwise contemplated by this Section 5.1(b);

(xii) shall not, and shall not permit any of its Subsidiaries to, acquire assets (other than pursuant to any capital expenditures permitted by Section 5.1(b)(xiv)) from any other Person with a fair market value or purchase price in excess of \$25 million individually or \$50 million in the aggregate, in each case, including any amounts or value reasonably expected to be paid in connection with a future earn-out, purchase price adjustment, release of "holdback" or similar contingent payment obligation, or that could reasonably be expected to prevent, materially delay or materially impair the ability of the Company to consummate the Merger and the other transactions contemplated by this Agreement, other than acquisitions of inventory or other goods in the Ordinary Course of Business;

(xiii) shall not, and shall not permit any of its Subsidiaries to, settle, pay, discharge or satisfy any Action, other than any Action that involves only the payment of monetary damages not in excess of \$15 million for any individual Action or \$25 million in the aggregate over the amount reflected or reserved against in the balance sheet (or the notes thereto) included in the Company SEC Documents relating to such Actions and would not result in (x) the imposition of any Order that would restrict the future activity or conduct of the Company or any of its Subsidiaries (excluding, for the avoidance of doubt, releases of claims, confidentiality and other *de minimis* obligations customarily included in monetary settlements) or (y) a finding or admission of a violation of Law;

(xiv) shall not, and shall not permit any of its Subsidiaries to, make or authorize any capital expenditures other than (A) capital expenditures not in excess of \$700 million in the aggregate in any 12-month period or (B) other capital expenditures to the extent necessary to restore service to Company railroads, repair improvements on Company real estate or guarantee safety in the event of railroad accidents or incidents (natural or otherwise) affecting railroad operations or real estate;

(xv) shall not, and shall not permit any of its Subsidiaries to, terminate or permit any material Company Permit to lapse, other than in accordance with the terms and regular expiration thereof, or fail to apply on a timely basis for any renewal of any renewable material Company Permit (excluding, in each case, any Company Permit that the Company, in its reasonable judgment, no longer believes to be material or necessary to the conduct of its businesses);

(xvi) shall not, and shall not permit any of its Subsidiaries to, adopt or enter into a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization of the Company or any of its Subsidiaries, except for any such transactions between or among the Company's Subsidiaries or between or among any of the Company's Subsidiaries and the Company;

(xvii) shall not, and shall not permit any of its Subsidiaries to, enter into any new line of business that is not reasonably related to the existing business lines of the Company and its Subsidiaries;

(xviii) shall not, and shall not permit any of its Subsidiaries to, reorganize, restructure or combine any railroads or railroad operations if any such action would result in the Company or any of its Subsidiaries ceasing to be classified as a Class I railroad by the STB;

(xix) other than consistent with past practice, shall not (A) make (other than in the Ordinary Course of Business), change or revoke any material Tax election, (B) change any material method of Tax accounting or Tax accounting period, (C) file any amended Tax Return with respect to any material Tax, (D) settle or compromise any material Tax proceeding for an amount in excess of \$10 million individually or \$25 million in the aggregate over the amount reflected or reserved against in the balance sheet (or the notes thereto) included in the Company SEC Documents relating thereto or enter into any closing agreement relating to any material Tax, (E) surrender any right to claim a material Tax refund, or (F) agree to an extension or waiver of the statute of limitations with respect to the assessment of any material Tax without notifying Parent in writing reasonably promptly after entering any such agreement;

(xx) shall not, and shall not permit any of its Subsidiaries to, become a party to, establish, adopt, materially amend, commence participation in or terminate any collective bargaining agreement or other agreement with a labor union, works council or similar organization;

(xxi) shall not, and shall not permit any of its Subsidiaries to, enter into any consent decree or similar agreement that, individually or in the aggregate, is material to the Company and its Subsidiaries, taken as a whole;

(xxii) shall not, and shall not permit any of its Subsidiaries to, terminate or fail to exercise renewal rights with respect to any insurance policies of the

Company and its Subsidiaries in a manner that would (after taking into account any replacement insurance policies) materially and adversely affect the overall insurance coverage of the Company and its Subsidiaries, taken as a whole;

(xxiii) shall not, and shall not permit any of its Subsidiaries to, sell, transfer, lease, license, mortgage, pledge, surrender, encumber, divest, or otherwise dispose of any Company Intellectual Property (other than Permitted Liens) material to the business of the Company or any of its Subsidiaries, except in for non-exclusive licenses of Company Intellectual Property granted in the Ordinary Course of Business;

(xxiv) shall not, and shall not permit any of its Subsidiaries to, abandon or otherwise allow to lapse or expire any material Registered Company Intellectual Property, other than lapses or expirations of any Registered Company Intellectual Property that is at the end of its maximum statutory term (with renewals); and

(xxv) shall not, and shall not permit any of its Subsidiaries to, agree, in writing or otherwise, to take any of the foregoing actions.

(c) Nothing contained in this Agreement shall give Parent or Merger Sub, directly or indirectly, the right to control or direct the Company's or its Subsidiaries' operations prior to the Control Date. Prior to the Control Date, the Company shall exercise, consistent with the terms and conditions of this Agreement and the Voting Trust Agreement and subject to applicable Law, complete control and supervision over its and its Subsidiaries' operations.

Section 5.2 Conduct of Business by Parent.

(a) From and after the date of this Agreement and prior to earlier of the Effective Time and the Termination Date, except (i) as may be required by applicable Law, (ii) as may be agreed in writing by the Company (which consent shall not be unreasonably withheld, delayed or conditioned), (iii) as may be expressly contemplated, required or expressly permitted by this Agreement or (iv) as set forth in Section 5.2 of the Parent Disclosure Schedules, Parent shall, and shall cause its Subsidiaries to, use its commercially reasonable efforts to (A) conduct its business in all material respects in the Ordinary Course of Business and (B) preserve intact in all material respects its business organization and maintain existing relationships and goodwill with Governmental Entities, customers, suppliers, licensors, licensees, creditors, lessors, distributors, employees, contractors and business associates; provided, that no action by Parent or its Subsidiaries with respect to matters specifically addressed by any provision of Section 5.2(b) shall be deemed a breach of this sentence unless such action would constitute a breach of such other provision.

(b) From and after the date of this Agreement and prior to the earlier of the Effective Time and the Termination Date, except (w) as may be required by applicable Law, (x) as may be agreed in writing by the Company (which consent shall not be unreasonably withheld, delayed or conditioned), (y) as may be expressly contemplated, required or expressly permitted by this Agreement or (z) as set forth in Section 5.2 of the Parent Disclosure Schedules, Parent:

(i) shall not, and shall not permit any of its Subsidiaries that is not wholly owned to, authorize or pay any dividends on or make any distribution with respect to its outstanding shares of capital stock (whether in cash, assets, stock or other securities of Parent or its Subsidiaries), except (A) regular quarterly cash dividends paid by Parent on the Parent Common Shares consistent with past practice, appropriately adjusted to reflect any stock dividends, subdivisions, splits, combinations or other similar events relating to the Parent Common Shares and (B) dividends and distributions paid by Subsidiaries of Parent to Parent or to any of Parent's other wholly owned Subsidiaries;

(ii) shall not, and shall not permit any of its Subsidiaries to, split, combine or reclassify any of its capital stock or issue or authorize or propose the issuance of any other securities in respect of, in lieu of or in substitution for shares of its capital stock, except for any such transaction by a wholly owned Subsidiary of Parent that remains a wholly owned Subsidiary after consummation of such transaction;

(iii) shall not, and shall not permit any of its Subsidiaries to, materially change financial accounting policies or procedures or any of its methods of reporting income, deductions or other material items for financial accounting purposes, except as required by GAAP or rule or policy of the SEC or the Canadian Securities Administrators;

(iv) shall not adopt any amendments to the Organizational Documents of Parent, other than amendments solely to effect ministerial changes to such documents;

(v) except for transactions among Parent and its wholly owned Subsidiaries or among Parent's wholly owned Subsidiaries, shall not, and shall not permit any of its Subsidiaries to, issue, sell, pledge, dispose of or encumber, or authorize the issuance, sale, pledge, disposition or encumbrance of, any shares of its capital stock or other ownership interests in any Subsidiaries of Parent or any securities convertible into, exercisable for or exchangeable for any such shares or ownership interests or take any action to cause to be vested any otherwise unvested Parent Equity Award (except as otherwise provided by the terms of this Agreement or the express terms of any such Parent Equity Award), other than (A) issuances of Parent Common Shares (x) in respect of any exercise of or settlement of Parent Equity Awards outstanding on the date of this Agreement, (y) as permitted under the Debt Commitment Letters or (z) as may be granted after the date of this Agreement in the Ordinary Course of Business, (B) the grant of Parent Equity Awards or other equity compensation awards in the Ordinary Course of Business (and the issuance or transfer of any Parent Common Shares in connection therewith), (C) any Permitted Liens and (D) pursuant to existing agreements in effect prior to the execution of this Agreement;

(vi) [Reserved.]

(vii) shall not, and shall not permit any of its Subsidiaries to, adopt or enter into a plan of complete or partial liquidation, dissolution, merger, consolidation, restructuring, recapitalization or other reorganization of Parent or any of its Subsidiaries, except for any such transactions between or among Parent's Subsidiaries; and

(viii) shall not, and shall not permit any of its Subsidiaries to, agree, in writing or otherwise, to take any of the foregoing actions.

(c) Anything to the contrary set forth in this Agreement notwithstanding, between the date of this Agreement and the earlier of the Effective Time and the Termination Date, Parent shall not, and shall cause its Affiliates not to, directly or indirectly (whether by plan of arrangement, amalgamation, business combination, merger, consolidation or otherwise), acquire, purchase, lease or license or otherwise enter into a transaction with (or agree to acquire, purchase, lease or license or otherwise enter into a transaction with) any business, corporation, partnership, association or other business organization or division or part thereof, or any securities or collection of assets, if doing so could reasonably be expected to: (i) impose any material delay in the obtaining of, or materially increase the risk of not obtaining, any Consent of any Governmental Entity necessary to consummate the Merger or any of the other transactions contemplated hereby or the expiration or termination of any applicable waiting period; (ii) materially increase the risk of any Governmental Entity entering an Order prohibiting the consummation of the Merger or any of the other transactions contemplated hereby; (iii) materially increase the risk of not being able to remove any such Order on appeal or otherwise; or (iv) otherwise prevent or materially delay the consummation of the Merger or any of the other transactions contemplated hereby (including the Debt Financing).

Section 5.3 Access.

(a) Subject to compliance with applicable Laws, each of the Company and Parent shall (and each shall cause its Subsidiaries to): (i) afford to the other party and to its officers, employees, accountants, consultants, legal counsel, financial advisors and agents and other representatives (collectively, "Representatives") reasonable access, solely for purposes of furthering the Merger and the other transactions contemplated hereby or integration planning relating thereto, during normal business hours, on reasonable advance notice of not less than two Business Days, throughout the period prior to the earlier of the Effective Time and the Termination Date, to the other party's and its Subsidiaries' businesses, properties, personnel, agents, contracts, commitments, books and records, other than any such matters that relate to the negotiation and execution of this Agreement, including with respect to the consideration or valuation of the Merger or any financial or strategic alternatives thereto, or any Company Alternative Proposal and (ii) promptly furnish the other party and its Representatives all other information concerning its business, properties and personnel as may reasonably be requested by the other party; provided, that the Company or Parent, as applicable, may provide such access by electronic means if physical access is not reasonably feasible or would not be permitted under applicable Law (including any COVID-19 Measures).

(b) Subject to compliance with applicable Laws, throughout the period from the Effective Time until the Control Date (or, as may be applicable in accordance with Section 5.20, the completion of the Post-Closing Disposition), the Company shall (and shall cause its Subsidiaries to) (i) afford to Parent and its Representatives reasonable access, for purposes of furthering the transactions contemplated hereby or integration planning relating thereto, during normal business hours, on reasonable advance notice of not less than two Business Days, to the Company's and its Subsidiaries' businesses, properties, personnel, agents, contracts, commitments, books and records, and (ii) promptly furnish Parent and its Representatives (A) such financial and operating data and other information concerning the Company and its Subsidiaries as may be reasonably requested and is necessary or advisable in connection with any filings contemplated pursuant to Section 5.6 or any Post-Closing Disposition, (B) all reports or other information concerning the Company and its Subsidiaries provided to third parties pursuant to the terms of any outstanding indebtedness of the Company or any of its Subsidiaries and (C) all other information concerning the Company's business, properties and personnel as may reasonably be requested by the other party; provided, that the Company may provide such access by electronic means if physical access is not reasonably feasible or would not be permitted under applicable Law (including any COVID-19 Measures); provided, further, that to the extent access to any information of the Company or any of its Subsidiaries requires the entry of a protective order by the STB, the Company or its applicable Subsidiary shall be required to grant such access only if such order is obtained, subject to the terms of such order.

(c) The foregoing provisions of this Section 5.3 notwithstanding, neither the Company nor Parent shall be required to afford such access or furnish such information if it would unreasonably disrupt the operations of such party or any of its Subsidiaries, would cause a violation of any agreement to which such party or any of its Subsidiaries is a party, would result in a loss of privilege or trade secret protection to such party or any of its Subsidiaries, would result in the disclosure of any information in connection with any litigation or similar dispute between the parties hereto, would constitute a violation of any applicable Law or result in the disclosure of any personal information that would expose the such party to the risk of liability. In the event that Parent or the Company objects to any request submitted pursuant to and in accordance with this Section 5.3 and withholds information on the basis of the foregoing sentence, the Company or Parent, as applicable, shall inform the other party as to the general nature of what is being withheld and the Company and Parent shall use reasonable best efforts to make appropriate substitute arrangements to permit reasonable disclosure that does not suffer from any of the foregoing impediments, including through the use of reasonable best efforts to (i) obtain the required consent or waiver of any third party required to provide such information and (ii) implement appropriate and mutually agreeable measures to permit the disclosure of such information in a manner to remove the basis for the objection, including by arrangement of appropriate clean room procedures (including as set forth in the Clean Team Agreement), if the parties determine that doing so would reasonably permit the disclosure of such information without violating applicable Law or jeopardizing such privilege.

(d) Each of the Company and Parent hereby agrees that all information provided to it or any of its Representatives in connection with this Agreement and the consummation of the transactions contemplated hereby shall be deemed to be "Confidential Information", as such term is used in, and shall be treated in accordance with, the confidentiality

agreement, dated as of April 26, 2021, between the Company and Parent (the “Confidentiality Agreement”) and, as applicable, the Clean Team Confidentiality Agreement, dated as of April 26, 2021, between the Company and Parent (the “Clean Team Agreement”).

Section 5.4 No Solicitation by the Company.

(a) Subject to the provisions of this Section 5.4, from the date of this Agreement until the earlier of the Effective Time and the Termination Date, the Company agrees that it shall not, and shall cause its Subsidiaries and its and their respective directors and officers not to, and shall use its reasonable best efforts to cause its other Representatives not to, directly or indirectly, (i) solicit, initiate or knowingly encourage or knowingly facilitate any inquiry regarding, or the making or submission of any proposal, offer or indication of intent that constitutes, or would reasonably be expected to lead to, or result in, a Company Alternative Proposal, (ii) engage in, continue or otherwise participate in any discussions or negotiations with any Person regarding a Company Alternative Proposal or any inquiry, proposal or offer that would reasonably be expected to lead to, or result in, a Company Alternative Proposal (except to notify such Person that the provisions of this Section 5.4 prohibit any such discussions or negotiations), (iii) furnish any nonpublic information relating to the Company or its Subsidiaries in connection with or for the purpose of facilitating a Company Alternative Proposal or any inquiry, proposal or offer that would reasonably be expected to lead to, or result in, a Company Alternative Proposal; (iv) recommend or enter into any other letter of intent, memorandum of understandings, agreement in principle, option agreement, acquisition agreement, merger agreement, joint venture agreement, partnership agreement or other similar agreement with respect to a Company Alternative Proposal (except for confidentiality agreements permitted under Section 5.4(b)); or (v) approve, authorize or agree to do any of the foregoing or otherwise knowingly facilitate any effort or attempt to make a Company Alternative Proposal.

(b) Notwithstanding anything in this Section 5.4 to the contrary, at any time prior to, but not after, obtaining the Company Stockholder Approval, if the Company receives a *bona fide*, unsolicited Company Alternative Proposal that did not result from the Company’s violation of this Section 5.4, the Company and its Representatives may contact the third party making such Company Alternative Proposal to clarify the terms and conditions thereof. If (i) such Company Alternative Proposal constitutes a Company Superior Proposal or (ii) the Company Board determines in good faith after consultation with outside legal and financial advisors that such Company Alternative Proposal could reasonably be expected to lead to a Company Superior Proposal, the Company may take the following actions: (A) furnish nonpublic information to the third party making such Company Alternative Proposal (including its Representatives and prospective equity and debt financing sources) in response to a request therefor, if, and only if, prior to so furnishing such information, the third party has executed a confidentiality agreement with the Company having confidentiality and use provisions that, in each case, are not less restrictive in the aggregate to such third party than the provisions in the Confidentiality Agreement are to Parent (it being understood that such confidentiality agreement need not contain any “standstill” or similar provisions or otherwise prohibit the making or amendment of any Company Alternative Proposal), provided, however, that if the third party making such Company Alternative Proposal is a known competitor of the Company, the Company shall not provide any commercially sensitive non-public information to such third party in connection with any actions permitted by this Section 5.4(b) other than in accordance

with customary “clean room” or other similar procedures designed to limit the disclosure of competitively sensitive information, and (B) engage in discussions or negotiations with the third party (including its Representatives) with respect to the Company Alternative Proposal. The Company shall promptly (and in any event within 48 hours) notify Parent in writing if: (i) any inquiries, proposals or offers with respect to a Company Alternative Proposal are received by the Company or any of its Representatives or (ii) any information is requested from the Company or any of its Representatives that, to the Knowledge of the Company, has been or is reasonably likely to have been made in connection with any Company Alternative Proposal, which notice shall identify the material terms and conditions thereof (including the name of the applicable third party and, if applicable, complete copies of any written requests, proposals or offers and any other material documents, including proposed agreements). It is understood and agreed that any contacts, disclosures, discussions or negotiations permitted under this Section 5.4(b), including any public announcement that the Company or the Company Board has made any determination contemplated under this Section 5.4(b) to take or engage in any such actions, shall not constitute a Company Change of Recommendation or otherwise constitute a basis for Parent to terminate this Agreement pursuant to Section 7.1(c)(ii). The Company shall keep Parent reasonably informed on a reasonably current basis of any material developments regarding any Company Alternative Proposals or any material change to the terms of any such Company Alternative Proposal and any material change to the status of any such discussions or negotiations with respect thereto.

(c) Except as set forth in this Section 5.4, the Company Board, including any committee thereof, shall not (i) withdraw, withhold, qualify or modify, or propose publicly to withdraw, withhold, qualify or modify, the Company Recommendation, (ii) fail to include the Company Recommendation in the Proxy Statement/Prospectus that is mailed by the Company to the stockholders of the Company; (iii) if any Company Alternative Proposal that is structured as a tender offer or exchange offer for the outstanding shares of Company Common Stock is commenced pursuant to Rule 14d-2 under the Exchange Act (other than by Parent or an Affiliate of Parent), fail to recommend, within ten Business Days after such commencement, against acceptance of such tender offer or exchange offer by its stockholders; (iv) approve, adopt, recommend or declare advisable any Company Alternative Proposal or publicly propose to approve, adopt or recommend, or declare advisable any Company Alternative Proposal; or (v) approve, adopt or recommend, or declare advisable or enter into, any letter of intent, memorandum of understanding, agreement in principle, acquisition agreement, merger agreement, option agreement, joint venture agreement, partnership agreement or other agreement (other than a confidentiality agreement referred to in and entered into compliance with Section 5.4(b)) with respect to any Company Alternative Proposal (any such action set forth in the foregoing clauses (i) through (v), a “Company Change of Recommendation”). Anything to the contrary set forth in this Agreement notwithstanding, prior to obtaining the Company Stockholder Approval, the Company Board may, in response to a Company Superior Proposal, (x) make a Company Change of Recommendation and/or (y) cause the Company to terminate this Agreement pursuant to Section 7.1(c)(ii); provided, that the Company Board shall not be entitled to make such a Company Change of Recommendation or cause any termination of this Agreement pursuant to Section 7.1(c)(ii) (A) unless the Company shall have given Parent at least five Business Days’ written notice (a “Company Superior Proposal Notice”) advising Parent of its intention to make such a Company Change of Recommendation or terminate this Agreement, which Company Superior Proposal Notice shall include a description of the terms and conditions

of the Company Superior Proposal that is the basis for the proposed action of the Company Board, the identity of the Person making the Company Superior Proposal and a copy of any proposed definitive agreement for such Company Superior Proposal, if any, and the Company shall have negotiated in good faith with Parent (to the extent Parent wishes to negotiate) to enable Parent to make such amendments to the terms of this Agreement as would permit the Company Board not to effect a Company Change of Recommendation or terminate this Agreement in connection with such Company Superior Proposal, and (B) unless, at the end of the five-Business Day period following the delivery of such Company Superior Proposal Notice (the “Company Superior Proposal Notice Period”), after taking into account any firm commitments made by Parent in writing to amend the terms of this Agreement and any other proposals or information offered by Parent during the Company Superior Proposal Notice Period, the Company Board concludes that the Company Superior Proposal giving rise to the Company Superior Proposal Notice continues to constitute a Company Superior Proposal if such amendments were to be given effect; provided, that any material modifications to the terms of the Company Superior Proposal (including any change in the amount or form of consideration) shall commence a new notice period pursuant clause (A) of three Business Days.

(d) Anything to the contrary set forth in this Agreement notwithstanding, prior to obtaining the Company Stockholder Approval, but not after, the Company Board may, in response to a Company Intervening Event, make a Company Change of Recommendation if the Company Board determines in good faith, after consultation with the Company’s outside legal counsel, that the failure of the Company Board to take such action would be reasonably likely to be inconsistent with its fiduciary duties under applicable Law; provided, that the Company Board shall not be entitled to make such a Company Change of Recommendation unless (i) the Company shall have given Parent at least five Business Days’ written notice (a “Company Intervening Event Notice”) advising Parent of its intention to make such a Company Change of Recommendation, which Company Intervening Event Notice shall include a description of the applicable Company Intervening Event and (ii) unless, at the end of the five-Business Day period following the delivery of such Company Intervening Event Notice (the “Company Intervening Event Notice Period”), after taking into account any firm commitments made by Parent in writing to amend the terms of this Agreement and any other proposals or information offered by Parent during the Company Intervening Event Notice Period, the Company Board determines in good faith, after consultation with the Company’s outside legal counsel, that the failure of the Company Board to make such Company Change of Recommendation would continue to be reasonably likely to be inconsistent with its fiduciary duties under applicable Law if such amendments were to be given effect.

(e) Nothing contained in this Agreement shall prohibit the Company or the Company Board or any committee thereof from (i) complying with its disclosure obligations under applicable Law or rules and policies of the NYSE, including taking and disclosing to its stockholders a position contemplated by Rule 14d-9 or Rule 14e-2(a) or Item 1012(a) of Regulation M-A under the Exchange Act (or any similar communication to stockholders) or from issuing a “stop, look and listen” statement pending disclosure of its position thereunder or (ii) making any disclosure to its stockholders if the Company Board determines in good faith, after consultation with the Company’s outside legal counsel, that the failure of the Company Board to make such disclosure would be reasonably likely to be inconsistent with its fiduciary duties to the Company’s stockholders under applicable Law.

(f) Further to Section 5.4(a), the Company shall (and shall cause its Subsidiaries and its and their respective directors and officers to, and shall use its reasonable best efforts to cause its other Representatives to) promptly terminate any existing discussions and negotiations conducted heretofore with any Person (other than Parent, the Company or any of their respective Affiliates or Representatives) with respect to any Company Alternative Proposal, or proposal or transaction that could reasonably be expected to lead to or result in a Company Alternative Proposal. Further, the Company shall promptly terminate all physical and electronic data access previously granted to such Persons and request that any such Persons promptly return or destroy all confidential information concerning the Company and any of its Subsidiaries and provide prompt written confirmation thereof.

(g) “Company Alternative Proposal” means any proposal, offer or indication of intent made by any Person or group of Persons (other than Parent, Merger Sub or their respective Affiliates) relating to or concerning (i) a merger, reorganization, share exchange, consolidation, business combination, recapitalization or similar transaction involving the Company, in each case, as a result of which the stockholders of the Company immediately prior to such transaction would cease to own at least 75% of the total voting power of the Company or the surviving entity (or any direct or indirect parent company thereof), as applicable, immediately following such transaction, (ii) the acquisition by any Person of more than 25% of the net revenues, net income or total assets of the Company and its Subsidiaries, on a consolidated basis, or (iii) the direct or indirect acquisition by any Person of more than 25% of the outstanding shares of Company Common Stock.

(h) “Company Superior Proposal” means an unsolicited, *bona fide* written Company Alternative Proposal, made after the date of this Agreement, substituting in the definition thereof “50%” for “25%” and for “75%” in each place each such phrase appears, made after the date of this Agreement, that the Company Board determines in good faith, after consultation with the Company’s outside legal and financial advisors, and considering all legal, financial, financing and regulatory aspects of the proposal, the identity of the Person(s) making the proposal and the likelihood of the proposal being consummated in accordance with its terms, would, if consummated, result in a transaction (A) that is more favorable to the Company’s stockholders from a financial point of view than the transactions contemplated by this Agreement and (B) that is reasonably likely to be completed, taking into account any regulatory, financing or approval requirements and any other aspects considered relevant by the Company Board.

(i) “Company Intervening Event” means any event, change, occurrence or development that is unknown and not reasonably foreseeable to the Company Board as of the date of this Agreement, or if known or reasonably foreseeable to the Company Board as of the date of this Agreement, the material consequences of which were not known or reasonably foreseeable to the Company Board as of the date of this Agreement; provided, that the receipt, existence or terms of a Company Alternative Proposal shall not be deemed to be a Company Intervening Event hereunder.

Section 5.5 [Reserved.]

Section 5.6 Filings; Other Actions.

(a) As promptly as reasonably practicable after the date of this Agreement, (i) the Company and Parent shall prepare and file with the SEC the preliminary Proxy Statement/Prospectus and (ii) Parent shall prepare and file with the SEC the Form F-4 with respect to the Parent Common Shares to be issued in connection with the Merger, which shall include the Proxy Statement/Prospectus; provided, that if the SEC determines that Parent is not eligible to file a registration statement on Form F-4, Parent shall instead prepare and file a registration statement on Form S-4 with respect to the Parent Common Shares to be issued in connection with the Merger, which shall include the Proxy Statement/Prospectus, and all references herein to the Form F-4 shall be deemed instead to refer to such registration statement on Form S-4. Each of the Company and Parent shall use its reasonable best efforts to (A) have the Form F-4 declared effective under the Securities Act as promptly as practicable after such filing and (B) keep the Form F-4 effective for so long as necessary to complete the Merger. Each of the Company and Parent shall furnish all information concerning itself, its Affiliates and the holders of its shares to the other and provide such other assistance as may be reasonably requested in connection with the preparation, filing and distribution of the Proxy Statement/Prospectus and the Form F-4. Each of the Company and Parent shall provide the other party with a reasonable period of time to review the Proxy Statement/Prospectus and any amendments thereto prior to filing and shall reasonably consider any comments from the other party. Each of the Company and Parent shall respond promptly to any comments from the SEC or the staff of the SEC, as applicable. Each of the Company and Parent shall notify the other party promptly of the receipt of any comments (whether written or oral) from the SEC or the staff of the SEC and of any request by the SEC or the staff of the SEC for amendments or supplements to the Proxy Statement/Prospectus or Form F-4 or for additional information and shall supply the other party with copies of all correspondence between it and any of its Representatives, on the one hand, and the SEC or the staff of the SEC, on the other hand, with respect to the Proxy Statement/Prospectus or Form F-4 or the transactions contemplated by this Agreement within 24 hours of the receipt thereof. The Proxy Statement/Prospectus and Form F-4 shall comply as to form in all material respects with the applicable requirements of the Exchange Act, the Securities Act and applicable Canadian Securities Laws. If at any time prior to the Company Stockholder Meeting (or any adjournment or postponement of the Company Stockholder Meeting) any information relating to Parent or the Company, or any of their respective Affiliates, officers or directors, is discovered by Parent or the Company that should be set forth in an amendment or supplement to the Proxy Statement/Prospectus and/or Form F-4, so that the Proxy Statement/Prospectus and/or Form F-4 would not include a misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the party that discovers such information shall promptly notify the other parties hereto and an appropriate amendment or supplement describing such information shall be promptly filed by the Company and/or Parent with the SEC and, to the extent required by applicable Law, disseminated to the stockholders of the Company. The Company shall cause the Proxy Statement/Prospectus to be mailed to the Company's stockholders as promptly as reasonably practicable after the Form F-4 is declared effective under the Securities Act (such date, the "Clearance Date").

(b) Each of Parent and the Company shall provide the other party and its legal counsel with a reasonable opportunity to review and comment on drafts of the Proxy Statement/Prospectus, Form F-4 and other documents related to the Company Stockholder Meeting or the issuance of the Parent Common Shares (and any amendments thereto) in connection with the Merger, prior to filing such documents with the applicable Governmental Entity and mailing such documents to the Company's stockholders. Each party hereto shall consider in good faith, in the Proxy Statement/Prospectus, Form F-4 and such other documents related to the Company Stockholder Meeting or the issuance of Parent Common Shares in connection with the Merger, all comments reasonably and promptly proposed by the other party or its legal counsel.

(c) Subject to Section 5.4 and Section 5.6(d), the Company shall take all action necessary in accordance with applicable Law and the certificate of incorporation and bylaws of the Company to set a record date for, duly give notice of, convene and hold a meeting of its stockholders following the mailing of the Proxy Statement/Prospectus for the purpose of obtaining the Company Stockholder Approval (the "Company Stockholder Meeting") as soon as reasonably practicable following the Clearance Date. Unless the Company shall have made a Company Change of Recommendation in compliance with Section 5.4, the Company shall include the Company Recommendation in the Proxy Statement/Prospectus and shall solicit, and use its reasonable best efforts to obtain, the Company Stockholder Approval at the Company Stockholder Meeting (including by soliciting proxies in favor of the adoption of this Agreement) as soon as reasonably practicable.

(d) The Company shall cooperate with and keep Parent informed on a reasonably current basis regarding its solicitation efforts and voting results following the dissemination of the Proxy Statement/Prospectus to its shareholders. The Company may adjourn or postpone the Company Stockholder Meeting (i) to allow time for the filing and dissemination of any supplemental or amended disclosure document that the Company Board has determined in good faith (after consultation with its outside legal counsel) is required to be filed and disseminated under applicable Law, (ii) if as of the time that the Company Stockholder Meeting is originally scheduled (as set forth in the Proxy Statement/Prospectus) there are insufficient shares of Company Common Stock represented (either in person or by proxy) to constitute a quorum necessary to conduct the business of the Company Stockholder Meeting, (iii) to allow reasonable additional time to solicit additional proxies necessary to obtain the Company Stockholder Approval, (iv) to comply with applicable Law or (v) with the prior written consent of Parent (which shall not be unreasonably withheld, conditioned or delayed). Without the prior written consent of Parent (which shall not be unreasonably withheld, conditioned or delayed), the adoption of this Agreement shall be the only matter (other than matters of procedure and matters required by applicable Law to be voted on by the Company's stockholders in connection with the adoption of this Agreement) that the Company shall propose to be acted on by the shareholders of the Company at the Company Stockholder Meeting.

(e) [Reserved.]

(f) [Reserved.]

(g) [Reserved.]

(h) Without limiting the generality of the foregoing, the Company agrees that its obligations to hold the Company Stockholder Meeting pursuant to this Section 5.6 shall not be affected solely by the making of a Company Change of Recommendation. The Company agrees that its obligations pursuant to this Section 5.6 shall not be affected solely by the commencement of or announcement or disclosure of or communication to Parent of any Company Alternative Proposal, and further, that it shall not terminate this Agreement on the grounds that such Company Alternative Proposal is a Company Superior Proposal, unless the Company may terminate this Agreement pursuant to and in accordance with Section 7.1.

Section 5.7 Employee Matters.

(a) From and after the Effective Time, the Company shall, and to the extent within its control, Parent shall cause the Company to, honor all Company Benefit Plans in accordance with their terms as in effect immediately before the Effective Time. For a period of one year following the Control Date, Parent shall provide, or shall cause to be provided, to each current employee of the Company and its Subsidiaries (“Company Employees”) (i) base compensation and cash and equity target incentive opportunities that, in each case, are no less favorable than were provided to the Company Employee immediately before the Effective Time (it being understood that in lieu of equity compensation awards, Parent may provide Company Employees who, as of immediately prior to the Effective Time were eligible to receive Company equity compensation awards, long-term incentive awards that are settled in cash in an amount sufficient to replace the grant date value of the Company Employee’s equity compensation opportunity immediately prior to the Effective Time, provided, that, except as set forth in this Section 5.7(a), such long-term incentive awards shall have the same terms and conditions as those applicable to the equity awards granted by Parent to its similarly situated employees), and (ii) employee benefits that are no less favorable in the aggregate than the employee benefits provided to the Company Employee immediately before the Effective Time. Without limiting the generality of the foregoing, (A) Parent shall or shall cause the Surviving Corporation to provide to each Company Employee whose employment terminates during the one-year period following the Control Date under circumstances that would give rise to severance benefits under the Company Benefit Plans set forth on Section 5.7(a) of the Company Disclosure Schedules (the “Company Severance Plans”), severance benefits in accordance with the terms of the applicable Company Severance Plan in which such Company Employee is eligible to participate immediately prior to the Effective Time and (B) during such one-year period following the Control Date, severance benefits offered to each Company Employee shall be determined taking into account all service with the Company, its Subsidiaries (and including, on and after the Effective Time, the Surviving Corporation and any of its Affiliates) and without taking into account any reduction after the Effective Time in compensation paid or benefits provided to such Company Employee.

(b) If the Control Date occurs before February 1, 2022, then no later than March 15, 2022, Parent shall, or shall cause the Surviving Corporation to, pay to each Company Employee who participates in a Company annual bonus plan (or any successor plan of Parent and its Subsidiaries) an annual bonus payment in respect of calendar year 2021 in an amount that is based on the achievement of the applicable performance goals at the greater of (i) target performance and (ii) 130% of actual performance, but in no event greater than 200% of target. If the Control Date occurs on or after February 1, 2022 but before February 1, 2023, then no later

than March 15, 2023, Parent shall, or shall cause the Surviving Corporation to, pay to each Company Employee who participates in a Company annual bonus plan (or any successor plan of Parent and its Subsidiaries) an annual bonus payment in respect of calendar year 2022 in an amount that is based on the achievement of the applicable performance goals at the greater of (A) target performance and (B) 130% of actual performance, but in no event greater than 200% of target.

(c) For all purposes (including for purposes of vesting, eligibility to participate and level of benefits) under the employee benefit plans of Parent and its Subsidiaries providing benefits to any Company Employees after the Control Date (the “New Plans”), each Company Employee shall be credited with his or her years of service with the Company and its Subsidiaries and their respective predecessors before the Control Date, to the same extent as such Company Employee was entitled, before the Control Date, to credit for such service under any similar Company Benefit Plan in which such Company Employee participated or was eligible to participate immediately prior to the Control Date; provided that the foregoing shall not apply (x) for benefit accrual under defined benefit pension plans, (y) for purposes of qualifying for subsidized early retirement benefits or (z) to the extent that its application would result in a duplication of benefits. In addition, and without limiting the generality of the foregoing, (i) each Company Employee shall be immediately eligible to participate, without any waiting time, in any New Plans to the extent coverage under such New Plan is comparable to a Company Benefit Plan in which such Company Employee participated immediately before the Control Date (such plans, collectively, the “Old Plans”), and (ii) for purposes of each New Plan providing medical, dental, pharmaceutical, vision and any other insurance benefits to any Company Employee, Parent shall cause all preexisting condition exclusions and actively-at-work requirements of such New Plan to be waived for such employee and his or her covered dependents, unless such conditions would not have been waived under the comparable plans of the Company or its Subsidiaries in which such employee participated immediately prior to the Control Date, and Parent shall cause any eligible expenses incurred by such employee and his or her covered dependents during the portion of the plan year of the Old Plans ending on the date such employee’s participation in the corresponding New Plan begins to be taken into account under such New Plan for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such employee and his or her covered dependents for the applicable plan year as if such amounts had been paid in accordance with such New Plan.

(d) Parent hereby acknowledges that a “change in control” (or similar phrase) within the meaning of the Company Benefit Plans will occur at the Effective Time, as applicable.

(e) Without limiting the generality of Section 8.10, the provisions of this Section 5.7 are solely for the benefit of the parties to this Agreement, and no current or former director, employee or consultant or any other person shall be a third-party beneficiary of this Agreement, and nothing herein shall be construed as an amendment to any Company Benefit Plan or other compensation or benefit plan or arrangement for any purpose or otherwise shall prevent Parent, the Surviving Corporation or any of their Affiliates from terminating the employment of any Company Employee.

Section 5.8 Efforts.

(a) Subject to the terms and conditions set forth in this Agreement, each of the parties hereto shall (and shall cause each of their respective Affiliates to) promptly take, or cause to be taken, all actions, and to promptly do, or cause to be done, and to assist and cooperate with the other parties in doing, all things necessary, proper or advisable under applicable Laws to cause the conditions to Closing set forth in Article 6 of this Agreement to be satisfied and to consummate and make effective the Merger and the other transactions contemplated by this Agreement as promptly as practicable after the date of this Agreement and in any event prior to the End Date, including (i) the obtaining of all necessary actions or nonactions, authorizations, permits, waivers, consents, clearances, approvals and expirations or terminations of waiting periods (collectively, “Consents”), including the Company Approvals and the Parent Approvals, from Governmental Entities and the making of all necessary registrations, notices, notifications, petitions, applications, reports and other filings and the taking of all steps as may be necessary, proper or advisable to obtain an approval, clearance or waiver from, or to avoid an action or proceeding by, any Governmental Entity, (ii) the obtaining of all necessary Consents from third parties, (iii) the defending of any Actions, lawsuits or other legal proceedings, whether judicial or administrative, challenging this Agreement or the consummation of the Merger and the other transactions contemplated by this Agreement (including the Voting Trust), or seeking to prohibit or delay the Closing and (iv) the execution and delivery of any additional instruments necessary, proper or advisable to consummate, and to fully carry out the purposes of the transactions contemplated by this Agreement; provided, that in no event shall either the Company or Parent or any of their respective Subsidiaries be required to pay prior to the Effective Time any fee, penalty or other consideration to any third party for any Consent required for or triggered by the consummation of the transactions contemplated by this Agreement under any contract or agreement or otherwise.

(b) Subject to the terms and conditions herein provided and without limiting the foregoing, the Company, Parent and Merger Sub shall (i) promptly, but in no event later than 30 Business Days after the date of this Agreement, file any and all notification and report forms to the COFECE and the IFT required under applicable Law with respect to the Merger and the other transactions contemplated by this Agreement, and take all other actions necessary to cause the expiration or termination of any applicable waiting periods under applicable Law as soon as practicable after the date of this Agreement, (ii) take all actions with CFIUS as may be advisable under applicable Law to obtain Completion of the CFIUS Process with respect to the transactions contemplated by this Agreement, including (A) promptly, but in no event later than 10 Business Days after the date of this Agreement, jointly informing CFIUS of the execution of this Agreement, (B) promptly, and in no event later than 10 Business Days after the Closing, submitting a draft CFIUS Joint Voluntary Notice to CFIUS, (C) submitting a final CFIUS Joint Voluntary Notice to CFIUS after promptly resolving all comments from CFIUS on the draft CFIUS Joint Voluntary Notice and (D) in the case of a CFIUS Declaration, submitting a CFIUS Joint Voluntary Notice if CFIUS so requests or informs the parties that it is not able to conclude action under Section 721 with respect to the Merger and the other transactions contemplated by this Agreement on the basis of such CFIUS Declaration, (iii) cooperate with each other in (A) determining whether any other filings are required to be made with, or Consents are required to be obtained from, or with respect to, any third parties or Governmental Entities, including under other applicable Antitrust Laws and/or in connection with the Company Approvals and

Parent Approvals, in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and (B) promptly making all such filings and timely obtaining all such Consents, (iv) supply to any Governmental Entity as promptly as practicable any additional information or documents that may be requested pursuant to any Law or by such Governmental Entity, including responding to any request for information from CFIUS in the applicable timeframe set forth in 31 C.F.R. Part 800, subject to any extensions of such time that may be granted by CFIUS staff upon request of a party to the Joint Notice, and (v) other than with respect to the the STB Voting Trust Approval and the STB Final Approval, which are discussed in Section 5.8(c), take, or cause to be taken, all other actions and do, or cause to be done, all other things necessary, proper or advisable to consummate and make effective the transactions contemplated hereby, including taking all such further action as may be necessary to resolve such objections, if any, as any state antitrust enforcement authorities, CFIUS, or any other Governmental Entity or other Person may assert under any Law (including in connection with the Company Approvals and Parent Approvals) with respect to the transactions contemplated hereby, and to avoid or eliminate each and every impediment under any Law that may be asserted by any Governmental Entity with respect to the Merger so as to enable the Closing to occur as promptly as practicable after the date of this Agreement, including (A) proposing, negotiating, committing to and effecting, by consent decree, hold separate order or otherwise, the sale, divestiture, license, hold separate or disposition of any and all of the share capital or other equity interest, assets (whether tangible or intangible), products or businesses of Parent and its Subsidiaries or of the Company and its Subsidiaries, and (B) otherwise taking or committing to take any actions that after the Closing Date would limit Parent's or its Subsidiaries' (including the Surviving Corporation's) freedom of action with respect to, or their ability to retain, one or more of their Subsidiaries' (including the Surviving Corporation's) assets (whether tangible or intangible), products, or businesses, in each case as may be required in order to avoid the entry of, or to effect the dissolution of, any injunction, temporary restraining order or other order that would otherwise have the effect of preventing or delaying the Closing; provided, that neither the Company nor any of its Subsidiaries shall be required to become subject to, or consent or agree to or otherwise take any action with respect to, any requirement, condition, understanding, agreement or order to sell, divest, license, hold separate or otherwise dispose of, or to conduct, restrict, operate, invest or otherwise change the assets, operations or business of the Company or any of its Subsidiaries, unless such requirement, condition, understanding, agreement or order is binding on or otherwise applicable to the Company or its Subsidiaries only from and after the Effective Time in the event that the Closing occurs. Notwithstanding the foregoing, other than with respect to the STB Voting Trust Approval and the STB Final Approval, which are discussed in Section 5.8(c), nothing in this Section 5.8 shall be deemed to require Parent or any of its Affiliates to take any action, or commit to take any action, or agree to any condition or restriction in connection with obtaining any Parent Approvals that would reasonably be expected to have a Parent Material Adverse Effect with respect to Parent and its Subsidiaries, taken as a whole, after giving effect to the Merger (measured on a scale relative to the Company and its Subsidiaries, taken as a whole). Except as otherwise permitted under this Agreement (including pursuant to the authority granted to Parent under Section 5.8(e)), the Company, Parent and Merger Sub shall not (and shall cause their Subsidiaries not to) take or agree to take any action that would be reasonably likely to prevent or materially delay the Closing. In the event that any information in the filings submitted pursuant to this Section 5.8(b) or any such supplemental information furnished in connection therewith is

deemed confidential by either party, the parties shall maintain the confidentiality of the same, and the parties shall seek authorization from the applicable Governmental Entity to withhold such information from public view.

(c) In furtherance and not in limitation of the other covenants of the parties contained in this Section 5.8:

(i) (A) Parent shall promptly submit to the STB a copy of the form of voting trust agreement attached hereto as Exhibit A (with such changes as may be made in accordance with Section 5.8(f)) (the “Voting Trust Agreement”), and (B) Parent and the Company shall use their reasonable best efforts to obtain, as promptly as practicable, the approval or authorization of the STB (the “STB Voting Trust Approval”) to consummate the proposed deposit of all outstanding shares of the Surviving Corporation into an irrevocable voting trust (the “Voting Trust” and such deposit, the “Voting Trust Transaction”) immediately following the Effective Time.

(ii) each of Parent and the Company shall, as promptly as practicable, but in no event later than two Business Days after the date of this Agreement, to the extent not previously filed, file with the STB a notice of intent to file the appropriate and necessary documentation for the approval of the Merger and the transactions contemplated hereby (the “STB Approval Application”);

(iii) each of Parent and the Company shall, as promptly as promptly as practicable, but in no event later than six months, after the date of this Agreement, file the STB Approval Application with the STB and shall use its reasonable best efforts to obtain, as promptly as practicable, the final and non-appealable approval or exemption by the STB of the Merger and the other transactions contemplated hereby pursuant to 49 U.S.C. § 11323 *et seq.* (the “STB Final Approval”);

(iv) each of Parent and the Company shall use their reasonable best efforts to (A) prosecute all such filings and other presentations made, and promptly make any subsequent filings or presentations, with the STB with diligence, (B) diligently oppose any third party’s objections to, appeals from or petitions to reconsider or reopen any approval, opinion, exemption or other authorization obtained from the STB, and (C) take all such further action as in the reasonable judgment of Parent and the Company may facilitate obtaining the STB Final Approval; and

(v) each of Parent and Company shall promptly furnish any information requested by CFIUS prior to filing of the draft CFIUS Joint Voluntary Notice and/or CFIUS Declaration with CFIUS, including information relating to the Voting Trust Transaction.

(d) The Company, Parent and Merger Sub shall cooperate and consult with each other in connection with the making of all registrations, filings, notifications, communications, submissions and any other actions pursuant to this Section 5.8, and, subject to applicable legal limitations and the instructions of any Governmental Entity, the Company, on the one hand, and Parent and Merger Sub, on the other hand, shall keep each other apprised of

the status of matters relating to the completion of the transactions contemplated thereby, including promptly informing and furnishing the other with copies of notices or other communications received or given by the Company or Parent, as the case may be, or any of their respective Subsidiaries, from or to any third party and/or any Governmental Entity with respect to such transactions. Subject to applicable Law relating to the exchange of information, the Company, on the one hand, and Parent and Merger Sub, on the other hand, shall permit counsel for the other party reasonable opportunity to review in advance, and consider in good faith the views of the other party in connection with, any proposed notifications or filings and any written communications or submissions, and with respect to any such notification, filing, written communication or submission, any documents submitted therewith to any Governmental Entity (except for any exhibits to such communications providing the personal identifying information required by 31 C.F.R. Section 800.502(c)(5)(vi) or that otherwise is requested by any Governmental Entity to remain confidential from the other parties); provided, that materials may be redacted (i) to remove references concerning the valuation of the businesses of the Company and its Subsidiaries, or proposals from third parties with respect thereto, (ii) as necessary to comply with contractual agreements and (iii) as necessary to address reasonable privilege or confidentiality concerns. The parties shall take reasonable efforts to share information protected from disclosure under the attorney-client privilege, work product doctrine, joint defense privilege or any other privilege pursuant to this Section 5.8 in a manner so as to preserve the applicable privilege. Each of the Company, Parent and Merger Sub agrees not to initiate or agree to participate in any meeting or discussion, either in person or by telephone or videoconference, with any Governmental Entity in connection with the proposed transactions unless it consults with the other party in advance and, to the extent not prohibited by such Governmental Entity, gives the other party the opportunity to attend and participate.

(e) Subject to the obligations of this Section 5.8, Parent shall, acting reasonably, devise and implement the strategy and timing for obtaining any Consents required under any applicable Law in connection with the transactions contemplated by this Agreement and Parent shall, for the avoidance of doubt, have the final authority over the development, presentation and conduct of the STB case. Parent shall take the lead in all meetings and communications with any Governmental Entity in connection with obtaining such Consents; provided, that Parent shall consult in advance with the Company and in good faith take the Company's views into account regarding the overall strategy and timing. The Company and its Subsidiaries shall not initiate any such discussions or proceedings with any Governmental Entity, or take or agree to take any actions, restrictions or conditions with respect to obtaining any Consents in connection with the Merger and the other transactions contemplated by this Agreement without the prior written consent of Parent.

(f) Subject to Section 5.17(a), applicable Law and to the rules, regulations and practices of the STB, the Voting Trust Agreement may be modified or amended at any time by Parent in its sole discretion; provided, that (i) prior to the Effective Time, the Voting Trust Agreement may not be modified or amended without the prior written consent of the Company unless such modification or amendment is not inconsistent with this Agreement and is not adverse to the Company or its stockholders and would not reasonably be expected to have a material and adverse effect on receipt of the STB Voting Trust Approval, and (ii) whether prior to or after the Effective Time, the Voting Trust Agreement may not be modified or amended without the prior written consent of the Company if such modification or amendment would

reasonably be expected to materially increase the liability exposure of the board of directors of the Surviving Corporation under applicable Law. No power of the Surviving Corporation, Parent or any of its Affiliates provided for in the Voting Trust Agreement may be exercised in a manner which violates this Agreement. Prior to the Effective Time, Parent, with the Company's consent (not to be unreasonably withheld, conditioned or delayed), shall change or modify the terms of the Voting Trust Agreement to the extent required by the STB as a condition to receiving the STB Voting Trust Approval, or to the extent requested by CFIUS to preclude the issuance of any type of order (whether temporary, provisional, or any other type) by CFIUS, in each case so long as the required changes or modifications do not have, in the aggregate, a material adverse effect on Parent's rights thereunder.

(g) In furtherance and not in limitation of the other covenants of the parties contained in this Section 5.8, if any administrative or judicial action or proceeding, including any proceeding by a private party, is instituted (or threatened to be instituted) challenging any transaction contemplated by this Agreement as violative of any Law, each of the Company, Parent and Merger Sub shall cooperate in all respects with each other and shall contest and resist any such Action or proceeding and to have vacated, lifted, reversed or overturned any Action, decree, judgment, injunction or other Order, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents or restricts consummation of the Merger and the other transactions contemplated by this Agreement.

Section 5.9 Takeover Statute. If any "fair price," "moratorium," "control share acquisition" or other form of anti-takeover statute or regulation shall become applicable to the transactions contemplated hereby, each of the Company, Parent and Merger Sub and the members of their respective boards of directors shall grant such approvals and take such actions as are reasonably necessary so that the transactions contemplated hereby may be consummated as promptly as practicable on the terms contemplated hereby and otherwise act to eliminate or minimize the effects of such statute or regulation on the transactions contemplated hereby.

Section 5.10 Public Announcements. The Company, on the one hand, and Parent and Merger Sub, on the other hand, shall consult with and provide each other a reasonable opportunity to review and comment on, and consider in good faith any reasonable comments by the other party on, any press release or other public statement or comment prior to the issuance of such press release or other public statement or comment relating to this Agreement or the transactions contemplated hereby and shall not issue any such press release or other public statement or comment prior to such consultation, except as may be required by applicable Law or by obligations pursuant to any listing agreement with any national securities exchange or as may be requested by a Governmental Entity; provided, that the restrictions in this Section 5.10 shall not apply (a) to any Company communication regarding a Company Alternative Proposal or from and after a Company Change of Recommendation or the Company or Parent response thereto, (b) in connection with any dispute between the parties regarding this Agreement, the Merger or the other transactions contemplated hereby or (c) to any statements made by the Company or Parent in response to questions by the press, analysts, investors or those participating in investor calls or industry conferences, so long as such statements are consistent with information previously disclosed in previous press releases, public disclosures or public statements made by the Company and/or Parent in compliance with this Section 5.10. Parent and the Company agree to issue a joint press release as the first public disclosure of this Agreement.

Section 5.11 Indemnification and Insurance.

(a) Parent, Merger Sub and the Company agree that all rights to exculpation, indemnification and advancement of expenses now existing in favor of the current or former directors, officers or employees, as the case may be, of the Company or its Subsidiaries as provided in their respective certificates of incorporation or bylaws or other organizational documents or in any agreement shall survive the Merger and shall continue at and after the Effective Time in full force and effect. For a period of six years after the Effective Time, Parent and the Surviving Corporation shall maintain in effect the exculpation, indemnification and advancement of expenses provisions of the Company's and any Company Subsidiary's certificates of incorporation and bylaws or similar organizational documents as in effect immediately prior to the Effective Time or in any indemnification agreements of the Company or any of its Subsidiaries with any of their respective directors, officers or employees as in effect immediately prior to the Effective Time, and shall not amend, repeal or otherwise modify any such provisions in any manner that would adversely affect the rights thereunder of any individuals who at the Effective Time were current or former directors, officers or employees of the Company or any of its Subsidiaries; provided, that all rights to indemnification in respect of any Proceeding (as defined below) pending or asserted or any claim made within such period shall continue until the final disposition of such Proceeding or resolution of such claim, even if beyond such six-year period. From and after the Control Date, Parent shall assume, be jointly and severally liable for, and honor, guarantee and stand surety for, and shall cause the Surviving Corporation and its Subsidiaries to honor, in accordance with their respective terms, each of the covenants contained in this Section 5.11.

(b) After the Effective Time, each of Parent and the Surviving Corporation shall, to the fullest extent permitted under applicable Law, indemnify and hold harmless (and advance funds in respect of each of the foregoing or any related expenses) each current and former director, officer or employee of the Company or any of its Subsidiaries and each Person who served as a director, officer, member, trustee or fiduciary of another corporation, partnership, joint venture, trust, pension or other employee benefit plan or enterprise at the request of or for the benefit of the Company or its Subsidiaries (each, together with such Person's heirs, executors or administrators, and successors and assigns, an "Indemnified Party") against any costs or expenses (including advancing attorneys' fees and expenses in advance of the final disposition of any Proceeding to each Indemnified Party to the fullest extent permitted by Law), judgments, fines, losses, claims, damages, obligations, costs, liabilities and amounts paid in settlement in connection with any actual or threatened claim, action, suit, proceeding or investigation, whether civil, criminal, administrative or investigative (a "Proceeding"), arising out of, relating to or in connection with any action or omission occurring or alleged to have occurred at or prior to the Effective Time (including acts or omissions in connection with such Persons serving as an officer, director, employee or other fiduciary of any entity if such service was at the request or for the benefit of the Company or its Subsidiaries), whether asserted or claimed prior to, at or after the Effective Time. In the event of any such Proceeding, Parent and the Surviving Corporation shall cooperate with the Indemnified Party in the defense of any such Proceeding.

(c) For a period of six years from the Effective Time, Parent and the Surviving Corporation shall cause to be maintained in effect the current policies of directors' and

officers' liability insurance and fiduciary liability insurance maintained by the Company and its Subsidiaries with respect to matters arising on or before the Effective Time; provided, that after the Effective Time, Parent and the Surviving Corporation shall not be required to pay annual premiums in excess of 300% of the last aggregate annual premium paid by the Company prior to the date of this Agreement in respect of the coverage required to be obtained pursuant hereto, but in such case shall purchase as much coverage as reasonably practicable for such amount. The Company shall purchase, prior to the Effective Time, a six-year prepaid "tail" policy on terms and conditions providing substantially equivalent benefits as the current policies of directors' and officers' liability insurance and fiduciary liability insurance maintained by the Company and its Subsidiaries with respect to matters arising on or before the Effective Time, covering without limitation the transactions contemplated hereby, and the purchase of such "tail" policy shall be deemed to discharge and satisfy the obligations of Parent and the Surviving Corporation pursuant to the immediately preceding sentence; provided, that the Company shall not commit or spend on such "tail" policy, in the aggregate, more than 300% of the last aggregate annual premium paid by the Company prior to the date of this Agreement for the Company's current policies of directors' and officers' liability insurance and fiduciary liability insurance, and if the cost of such "tail" policy would otherwise exceed such limit, the Company shall be permitted to purchase as much coverage as reasonably practicable for up to such limit. Parent and the Surviving Corporation shall cause such policy to be maintained in full force and effect, for its full term, and cause all obligations thereunder to be honored by the Surviving Corporation, and no other party shall have any further obligation to purchase or pay for insurance hereunder.

(d) Parent shall pay all reasonable expenses, including reasonable attorneys' fees, that may be incurred by any Indemnified Party in enforcing the indemnity and other obligations provided in this Section 5.11.

(e) The rights of each Indemnified Party hereunder shall be in addition to, and not in limitation of, any other rights such Indemnified Party may have under the certificates of incorporation or bylaws or other organizational documents of the Company or any of its Subsidiaries or the Surviving Corporation, any other indemnification arrangement, the DGCL or otherwise. The provisions of this Section 5.11 shall survive the consummation of the Merger and expressly are intended to benefit, and are enforceable by, each of the Indemnified Parties.

(f) In the event that Parent, the Surviving Corporation or any of their respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity in such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, then, and in either such case, proper provision shall be made so that the successors and assigns of Parent or the Surviving Corporation, as the case may be, shall assume the obligations set forth in this Section 5.11.

Section 5.12 Financing Cooperation.

(a) The Company shall use its reasonable best efforts, and shall cause each of its Subsidiaries to use its reasonable best efforts, and each of them shall use their reasonable best efforts to cause their respective Representatives to use their reasonable best efforts, to provide customary cooperation, to the extent reasonably requested by Parent in writing, in connection

with the offering, arrangement, syndication, consummation, issuance or sale of any Debt Financing or Alternative Financing obtained in accordance with Section 5.13 (provided, that such requested cooperation does not unreasonably interfere with the ongoing operations of the Company or any of its Affiliates), including, to the extent so requested, using reasonable best efforts to:

(i) furnish promptly to Parent the Financing Information, and such other financial information regarding the Company and its Subsidiaries as is reasonably requested by Parent in connection with the Debt Financing;

(ii) assist Parent in its preparation of the pro forma financial information identified in paragraph 4 of Annex D to the Debt Commitment Letters with respect to the Parent;

(iii) provide reasonable and customary assistance to Parent and the Financing Parties in the preparation of (A) customary offering documents, offering memoranda, offering circulars, private placement memoranda, registration statements, prospectuses, syndication documents and other syndication materials, including information memoranda, lender and investor presentations, bank books and other marketing documents, and similar documents for any portion of the Debt Financing and (B) materials for rating agency presentations;

(iv) make senior management of the Company available, at reasonable times and locations and upon reasonable prior notice, to participate in meetings (including one-on-one conference or virtual calls with Financing Parties and potential Financing Parties), drafting sessions, presentations, road shows, rating agency presentations and due diligence sessions and other customary syndication activities, provided, at the Company's option in consultation with Parent, any such meeting or communication may be conducted virtually by videoconference or other media;

(v) cause the Company's independent registered accounting firm to provide customary assistance, including by using reasonable best efforts to cause the Company's independent registered accounting firm to provide customary comfort letters (including "negative assurance" comfort, if customary and appropriate) in connection with any capital markets transaction comprising a part of the Debt Financing to the applicable Financing Parties and to participate in a reasonable number of due diligence sessions; provided, at the Company's option, any such session may be conducted virtually by videoconference or other media, and including by using reasonable best efforts to provide customary representation letters to the extent required by such independent registered accounting firm in connection with the foregoing;

(vi) provide customary authorization letters authorizing the distribution of Company information to prospective lenders in connection with a syndicated bank financing;

(vii) assist in obtaining or updating corporate and facility credit ratings;

(viii) assist in the negotiation and preparation of any credit agreement, indenture, note, purchase agreement, underwriting agreement, guarantees and customary closing certificates, as may be reasonably requested by Parent, in each case as contemplated in connection with the Debt Financing;

(ix) make introductions of Parent to the Company's existing lenders and facilitate relevant coordination between Parent and such lenders;

(x) cooperate with internal and external counsel of Parent in connection with providing customary back-up certificates and factual information regarding any legal opinion that such counsel may be required to deliver in connection with the Debt Financing;

(xi) deliver, at least three Business Days prior to Closing, to the extent reasonably requested in writing at least nine Business Days prior to Closing, all documentation and other information regarding the Company and its Subsidiaries that any Financing Party reasonably determines is required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including the USA Patriot Act of 2001, and, to the extent required by any Financing Party, a beneficial ownership certificate (substantially similar in form and substance to the form of Certification Regarding Beneficial Owners of Legal Entity Customers published jointly, in May 2018, by the Loan Syndications and Trading Association and Securities Industry and Financial Markets Association) in respect of any of the Company or any of its Subsidiaries that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation (31 C.F.R. § 1010.230);

(xii) at Parent's written request, cooperate with and use reasonable best efforts to provide all reasonable assistance to Parent in connection with any steps Parent may determine are necessary or desirable to take to (A) obtain consent for the Change of Control under and as defined in the Company Credit Agreement arising from consummation of the transactions contemplated by this Agreement, including facilitating and participating in communications with lenders under the Company Credit Agreement in relation to a Change of Control amendment request; provided that any such documentation prepared by the Company, its Subsidiaries and Representatives in connection with the foregoing shall be reasonably acceptable to Parent, and/or (B) prepay some or all amounts outstanding under the Company Credit Agreement, including (1) using reasonable best efforts to prepare and submit customary notices in respect of any such prepayment provided that such prepayment shall be contingent upon the occurrence of the Closing unless otherwise agreed in writing by the Company, and (2) using reasonable best efforts to obtain from the Company Credit Agreement agent a customary payoff letter in respect of the Company Credit Agreement;

(xiii) at Parent's written request, cooperate with and use reasonable best efforts to provide all reasonable assistance to Parent in connection with any amendments to (A) the Financing Agreement, dated as of February 21, 2012, between The Kansas City Southern Railway Company and the United States of America, represented by the Secretary of Transportation acting through the Administrator of the

Federal Railroad Administration and (B) the Financing Agreement, dated as of June 28, 2005, between Texas Mexican Railway Company and the United States of America, represented by the Secretary of Transportation acting through Administrator of the Federal Railroad Administration;

(xiv) on the Closing Date but immediately following the Closing, at Parent's request (which may be prior to the Closing Date), execute such documentation as is reasonably requested so that the Company can assume the Debt Commitment Letters in respect of the Company Credit Agreement (to the extent the debt commitments thereunder have not been terminated at Closing in accordance with their terms); and

(xv) consent to the use of its and its Subsidiaries' logos in connection with the Debt Financing; provided that such logos are used solely in a manner that is not intended to, nor reasonably likely to, harm or disparage the Company or its Subsidiaries or the Company's or its Subsidiaries' reputation or goodwill.

(b) The foregoing notwithstanding, none of the Company nor any of its Affiliates shall be required to take or permit the taking of any action pursuant to this Section 5.12 that would: (i) require the Company or its Subsidiaries or any of their respective Affiliates or any persons who are officers or directors of such entities to pass resolutions or consents to approve or authorize the execution of the Debt Financing or enter into, execute or deliver any certificate, document, instrument or agreement or agree to any change or modification of any existing certificate, document, instrument or agreement (except for the authorization letters contemplated by Section 5.12(a)(vi)), (ii) cause any representation or warranty in this Agreement to be breached by the Company or any of its Affiliates, (iii) require the Company or any of its Affiliates to (x) pay any commitment or other similar fee or (y) incur any other expense, liability or obligation which expense, liability or obligation is not reimbursed or indemnified hereunder in connection with the Debt Financing prior to the Closing, or (z) have any obligation of the Company or any of its Affiliates under any agreement, certificate, document or instrument be effective until the Closing, (iv) cause any director, officer, employee or stockholder of the Company or any of its Affiliates to incur any personal liability, (v) conflict with the Organizational Documents of the Company or any of its Affiliates or any Laws, (vi) reasonably be expected to result in a material violation or material breach of, or a default (with or without notice, lapse of time, or both) under, any Contract to which the Company or any of its Affiliates is a party (other than the Change of Control under and as defined in the Company Credit Agreement resulting from the consummation of the Merger), (vii) provide access to or disclose information that the Company or any of its Affiliates determines would jeopardize any attorney-client privilege or other applicable privilege or protection of the Company or any of its Affiliates, (viii) require the Company to prepare any financial statements or information (other than the Financing Information) that are not available to it and prepared in the ordinary course of its financial reporting practice, or (ix) require the Company to prepare or deliver any Excluded Information. Nothing contained in this Section 5.12 or otherwise shall require the Company or any of its Affiliates, prior to the Closing, to be an issuer or other obligor with respect to the Debt Financing. Parent shall, promptly on request by the Company, reimburse the Company or any of its Affiliates for all reasonable out-of-pocket costs incurred by them or their respective representatives in connection with such cooperation and shall indemnify and hold harmless the Company and its Affiliates and their respective representatives from and against any and all

losses suffered or incurred by them in connection with the arrangement of the Debt Financing, any action taken by them at the request of Parent or its representatives pursuant to this Section 5.12 and any information used in connection therewith.

(c) The parties hereto acknowledge and agree that the provisions contained in this Section 5.12 represent the sole obligation of the Company and its Subsidiaries with respect to cooperation in connection with the arrangement of any financing (including the Debt Financing) to be obtained by Parent with respect to the transactions contemplated by this Agreement, and no other provision of this Agreement (including the Exhibits and Schedules hereto) shall be deemed to expand or modify such obligations. In no event shall the receipt or availability of any funds or financing (including the Debt Financing) by Parent any of its Affiliates or any other financing or other transactions be a condition to any of Parent's obligations under this Agreement. Notwithstanding anything to the contrary in this Agreement, the Company's breach of any of the covenants required to be performed by it under this Section 5.12 shall not be considered in determining the satisfaction of the condition set forth in Section 6.3(b), unless such breach is the primary cause of Parent being unable to obtain the proceeds of the Debt Financing at the Closing.

(d) All non-public or otherwise confidential information regarding the Company or any of its Affiliates obtained by Parent or its representatives pursuant to this Section 5.12 shall be kept confidential in accordance with the Confidentiality Agreement; provided, that Parent shall be permitted to disclose such information to (i) the Financing Parties subject to their confidentiality obligations under the Debt Commitment Letters and the definitive documentation evidencing the Debt Financing and (ii) otherwise to the extent necessary and consistent with customary practices in connection with the Debt Financing subject to customary confidentiality arrangements reasonably satisfactory to the Company.

Section 5.13 Debt Financing.

(a) Parent shall use its reasonable best efforts, and shall cause each of its Subsidiaries to use its reasonable best efforts, to take, or cause to be taken, all actions, and do, or cause to be done, all things necessary, proper or advisable to obtain funds sufficient to fund the Financing Amounts, including using reasonable best efforts to take, or cause to be taken, all actions and do, or cause to be done, all things necessary, proper or advisable to obtain the proceeds of the Debt Financing on the terms and subject only to the conditions described in the Debt Commitment Letters, including by (i) maintaining in effect the Debt Commitment Letters, (ii) negotiating and entering into definitive agreements with respect to the Debt Financing (the "Definitive Agreements") consistent with the terms and conditions contained therein (including, as necessary, the "flex" provisions contained in any related fee letter) on or prior to the Closing Date, (iii) satisfying on a timely basis all conditions in the Debt Commitment Letters and the Definitive Agreements within Parent's control and complying with its obligations thereunder and (iv) enforcing its rights under the Debt Commitment Letters, in each case in a timely and diligent manner.

(b) In the event any portion of the Debt Financing contemplated by the Debt Commitment Letters becomes unavailable regardless of the reason therefor, (A) Parent shall promptly notify the Company in writing of such unavailability and the reason therefor and

(B) Parent shall use its reasonable best efforts, and shall cause each of its Subsidiaries to use their reasonable best efforts, to obtain as promptly as practicable following the occurrence of such event, alternative debt financing for any such portion from alternative sources (the “Alternative Financing”) in an amount sufficient, when taken together with cash and the other sources of immediately funds available to Parent at the Closing to pay the Financing Amounts and that do not include any conditions to the consummation of such alternative debt financing that are more onerous than the conditions set forth in the Debt Financing. To the extent requested in writing by the Company from time to time, Parent shall keep the Company informed on a reasonably current basis of the status of its efforts to arrange and consummate the Debt Financing. Without limiting the generality of the foregoing, Parent shall promptly notify the Company in writing if there exists any actual or threatened material breach, default, repudiation, cancellation or termination by any party to the Debt Commitment Letters or any Definitive Agreement and a copy of any written notice or other written communication from any Financing Party with respect to any actual material breach, default, repudiation, cancellation or termination by any party to the Debt Commitment Letters or any Definitive Agreement of any provision thereof. The foregoing notwithstanding, compliance by the Parent with this Section 5.13 shall not relieve Parent of its obligations to consummate the transactions contemplated by this Agreement whether or not the Debt Financing is available.

(c) None of Parent nor any of its Subsidiaries shall (without the prior written consent of the Company, such consent not to be unreasonably withheld, delayed or conditioned) consent or agree to any amendment, replacement, supplement, termination or modification to, or any waiver of any provision under, the Debt Commitment Letters or the Definitive Agreements if such amendment, replacement, supplement, modification or waiver (1) decreases the aggregate amount of the Debt Financing to an amount that would be less than an amount that would be required, when taken together with cash or cash equivalents held by the Parent and the Company on the Closing Date and the other sources of funds available to Parent on the Closing Date, to pay the Cash Consideration, the Preferred Merger Consideration and all other cash amounts payable pursuant to this Agreement by Parent at the Closing, (2) could reasonably be expected to prevent, materially delay or materially impede the consummation of the transactions contemplated by this Agreement, (3) adversely impacts the ability of Parent to enforce its rights against the other parties to the Debt Commitment Letters or the Definitive Agreements as so amended, replaced, supplemented or otherwise modified, or (4) adds new (or adversely modifies any existing) conditions to the consummation of all or any portion of the Debt Financing; provided, that Parent may amend, replace, supplement and/or modify any of the Debt Commitment Letters to add lenders, lead arrangers, bookrunners, syndication agents or similar entities as parties thereto who had not executed such Debt Commitment Letters as of the date of this Agreement, provided that (i) the addition of such parties would not be reasonably expected to delay or prevent Closing and (ii) such amendments do not (A) reduce the aggregate amount of the Debt Financing (including by changing the amount of fees to be paid or any original issue discount of the Debt Financing (or payment of fees having similar effect)) or (B) impose new or additional conditions, or otherwise amend, modify or expand any conditions, to the receipt of the Debt Financing in a manner that would reasonably be expected to delay or prevent Closing; provided, that, for the avoidance of doubt, Parent may amend, replace, supplement and/or modify any of the Debt Commitment Letters to increase the amount of commitments under the Debt Commitment Letters. Upon any amendment, supplement or modification of the Debt Commitment Letters, Parent shall provide a copy thereof to the Company (with only fee amounts

and other customary terms redacted, none of which redacted provisions would adversely affect the conditionality or enforceability of the debt financing contemplated by the Debt Commitment Letters as so amended, supplemented or modified to the knowledge of the Parent) and, to the extent such amendment, supplement or modification has been made in compliance with this Section 5.13(c), the term “Debt Commitment Letters” shall mean the applicable Debt Commitment Letters as so amended, replaced, supplemented or modified. Notwithstanding the foregoing, compliance by Parent with this Section 5.13(c) shall not relieve Parent of its obligation to consummate the transactions contemplated by this Agreement whether or not the Debt Financing is available. To the extent Parent obtains Alternative Financing pursuant to Section 5.13(b), or amends, replaces, supplements, modifies or waives any of the Debt Financing pursuant to this Section 5.13(c), references to the “Debt Financing,” “Financing Parties” and “Debt Commitment Letters” (and other like terms in this Agreement) shall be deemed to refer to such Alternative Financing, the commitments thereunder and the agreements with respect thereto, or the Debt Financing as so amended, replaced, supplemented, modified or waived.

Section 5.14 Stock Exchange De-listing; 1934 Act Deregistration; Stock Exchange Listing.

(a) The Company shall cooperate with Parent and use its reasonable best efforts to take, or cause to be taken, all actions reasonably necessary, proper or advisable on its part under applicable Laws and rules and policies of the NYSE and the SEC to enable the de-listing by the Surviving Corporation of the Company Common Stock from the NYSE and the deregistration of the Company Common Stock under the Exchange Act as promptly as practicable after the Effective Time.

(b) Parent shall use its reasonable best efforts to cause the Parent Common Shares to be issued in the Merger to be approved for listing on the NYSE, subject to official notice of issuance, and the TSX, subject to customary listing conditions prior to the Effective Time.

Section 5.15 Rule 16b-3. Prior to the Effective Time, the Company and Parent, and the Company Board and the Parent Board (or duly formed committees thereof consisting of non-employee directors (as such term is defined for the purposes of Rule 16b-3 promulgated under the Exchange Act)), shall take such actions as may be reasonably necessary or advisable to cause any dispositions of Company equity securities and any acquisition of Parent equity securities (in each case including derivative securities) pursuant to the transactions contemplated by this Agreement by each individual who is subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to the Company or Parent to be exempt under Rule 16b-3 promulgated under the Exchange Act.

Section 5.16 Stockholder Litigation. Each of the Company and Parent shall keep the other reasonably informed of, and cooperate with such party in connection with, any stockholder litigation or claim against such party and/or its directors or officers relating to the Merger or the other transactions contemplated by this Agreement. Without limiting the foregoing, the Company shall give Parent a reasonable opportunity to participate in the defense or settlement of any such litigation or claim and the Company shall not compromise or settle, or agree to compromise or settle, any stockholder litigation or claim arising or resulting from the

transactions contemplated by this Agreement without the prior written consent of Parent (which shall not be unreasonably withheld, conditioned or delayed).

Section 5.17 Certain Tax Matters.

(a) [Reserved.]

(b) [Reserved.]

(c) [Reserved.]

(d) From the date hereof until the Effective Time, the Company shall reasonably cooperate with Parent to enable Parent to determine whether the Company is (or at any time during the five-year period ending on the Closing Date has been) a “United States real property holding corporation” within the meaning of Section 897(c)(2) of the Code, and the Company shall provide Parent with such information in the Company’s possession as Parent may reasonably request for purposes of making such determination.

(e) Notwithstanding any other provision of this Agreement or any other agreement among the parties, Parent and its Affiliates shall be permitted to apply to the CRA for one or more “advance income tax rulings” and to engage with the CRA in the “pre-ruling consultation” process, both as described in CRA Information Circular IC70-6R10 Advance Income Tax Rulings and Technical Interpretations dated September 29, 2020 (or successor publication thereto), in respect of certain Canadian federal income Tax implications of the implementation of certain transactions, including the transactions contemplated by this Agreement; provided, that (i) except for information in the public domain or as disclosed in this Agreement (other than the Company Disclosure Schedules), neither Parent nor its Affiliates shall disclose any confidential information relating to the Company or any of its Subsidiaries to the CRA without the Company’s prior written consent, and (ii) the receipt of any such advance income tax ruling or completion of pre-ruling consultation shall not be a condition to Closing.

Section 5.18 Dividends. The Company shall coordinate with Parent the declaration, setting of record dates and payment dates of dividends on shares of Company Common Stock, subject to applicable Law and the approval of the Company Board and the Parent Board, as applicable, so that holders of shares of Company Common Stock do not receive dividends both on shares of Company Common Stock and Parent Common Shares received in the Merger in respect of any calendar quarter or fail to receive a dividend on one of either shares of Company Common Stock or Parent Common Shares received in the Merger for any calendar quarter.

Section 5.19 Merger Sub Stockholder Approval. Promptly following the execution of this Agreement, Parent shall cause the sole stockholder of Merger Sub to execute and deliver, in accordance with applicable Law and its certificate of incorporation and by-laws a written consent approving and adopting this Agreement and the transactions contemplated thereby.

Section 5.20 Post-Closing Cooperation. Following the Closing, in the event of a STB Denial or failure to obtain Completion of the CFIUS Process, or as may be required in

connection with obtaining STB Final Approval, Parent shall, consistently with the terms of the Voting Trust Agreement, devise and implement the process and strategy to sell or otherwise dispose of, whether directly or indirectly, the shares or assets of the Surviving Corporation (the “Post-Closing Disposition”), subject to any jurisdiction of the STB to oversee the Post-Closing Disposition. Following the Closing, the Company and its successors shall cooperate with Parent and shall (and shall cause each of its Subsidiaries to) use its reasonable best efforts to take all actions reasonably requested by Parent and do or cause to be done all things necessary, proper or advisable on its part to assist Parent in its process to effect the Post-Closing Disposition. Such reasonable best efforts following the Closing shall include the Company and its Subsidiaries using reasonable best efforts to (i) make senior management available at reasonable times and locations and upon reasonable prior notice, to participate in meetings, drafting sessions, presentations, road shows, rating agency presentations and due diligence sessions; (ii) assist Parent in the preparation and filing of any offering documents, offering memoranda, offering circulars, private placement memoranda, registration statements, prospectuses, information memoranda, lender and investor presentations, bank books and other marketing documents, and similar documents, and any customary financial statements and other information required to be provided therein; (iii) cause the Company’s independent registered accounting firm and internal and external counsel of the Company to provide assistance to Parent, including delivery of any required comfort letters and customary backup certificates; (iv) cooperate with any marketing efforts of Parent, including, to the extent applicable, obtaining representation and authorization letters and arranging for customary auditor consents for use of financial data in any marketing and offering documentation; (v) assist in the preparation and negotiation of, and executing and delivering, any credit agreement, indenture, note, purchase agreement, underwriting agreement, guarantees, hedging agreement, pay-off letters, customary closing certificates and any other certificates, exhibits, schedules, letters and documents as may be reasonably requested by Parent; and (vi) furnish all non-privileged information concerning the Company and its Subsidiaries that is required by applicable Law to be included in any filings with the SEC or the Canadian Securities Administrators; provided, that to the extent any of the foregoing requires the entry of a protective order by the STB, the Company and its successors shall be required to take such action only if such order is obtained, subject to the terms of such order.

Section 5.21 Governance and Other Matters. (a) The parties shall take all actions necessary to designate and appoint four of the directors of the Company as of immediately prior to the Effective Time to serve as directors on the Parent Board as of the Control Date, in each case until such director’s successor is elected and qualified or such director’s earlier death, resignation or removal, in each case in accordance with Parent’s Organizational Documents. In the event that after the Effective Time any of such four directors indicates that he or she plans to step down as a director of the Company and is willing to become a director of Parent, Parent shall seek the approval of the STB to allow such director to be appointed as a director of Parent as soon as practicable and prior to the Control Date.

(b) As promptly as practicable following the Control Date, in conjunction with its integration plan, Parent shall recognize Kansas City, Missouri as the location of the headquarters of Parent’s United States business and operations. Following the Control Date, Parent intends to continue to operate the business of the Company in the United States and Mexico using the name of the Company.

ARTICLE 6

CONDITIONS TO THE MERGER

Section 6.1 Conditions to Obligation of Each Party to Effect the Merger. The respective obligations of each party to effect the Merger shall be subject to the satisfaction (or waiver by Parent and the Company to the extent permitted by applicable Law) at or prior to the Closing of the following conditions:

- (a) The Company Stockholder Approval shall have been obtained.
- (b) [Reserved.]
- (c) The Form F-4 shall have become effective in accordance with the provisions of the Securities Act and no stop order suspending the effectiveness of the Form F-4 shall have been issued by the SEC and remain in effect and no proceeding to that effect shall have been commenced.
- (d) No injunction or similar Order by any court or other Governmental Entity of competent jurisdiction shall have been entered and shall continue to be in effect that prohibits or makes illegal the consummation of the Merger or the Voting Trust Transaction.
- (e) The STB Voting Trust Approval shall have been obtained.
- (f) The authorizations required to be obtained from the COFECE and the IFT with respect to the Merger and the other transactions contemplated by this Agreement shall have been obtained.
- (g) The Parent Common Shares to be issued in the Merger shall have been approved for listing on the NYSE, subject to official notice of issuance, and the TSX, subject to customary listing requirements.

Section 6.2 Conditions to Obligation of the Company to Effect the Merger. The obligation of the Company to effect the Merger is further subject to the satisfaction (or waiver by the Company to the extent permitted by applicable Law) of the following conditions:

- (a) (i) The representations and warranties of Parent and Merger Sub set forth in Section 4.2(a), Section 4.12(a) and Section 4.18 shall be true and correct, at and as of the date of this Agreement and at and as of the Closing, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date), in each case, except for *de minimis* inaccuracies; (ii) the representations and warranties of Parent and Merger Sub set forth in the first sentence of Section 4.1(a), Section 4.2(b), Section 4.3(a), Section 4.3(b) and Section 4.20 shall be true and correct in all material respects, at and as of the date of this Agreement and at and as of Closing, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date); (iii) the representations and warranties of Parent and Merger Sub set forth in Article 4 that are qualified by a “Parent Material Adverse Effect” qualification shall be true and correct in all respects as so qualified at and as of the date of this Agreement and at and as of Closing, as if made at and as of such time (except to

the extent expressly made as of an earlier date, in which case as of such date); and (iv) the other representations and warranties of Parent and Merger Sub set forth in Article 4 shall be true and correct at and as of the date of this Agreement and at and as of the Closing, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date), except with respect to this clause (iv) where the failure of such representations and warranties to be so true and correct would not have or would not reasonably be expected to have, individually or in the aggregate, a Parent Material Adverse Effect.

(b) Parent and Merger Sub shall have performed in all material respects all obligations and complied in all material respects with all covenants required by this Agreement to be performed or complied with by them prior to the Closing.

(c) Since the date of this Agreement, there shall not have occurred any event, change, occurrence, effect or development that has had, or is reasonably likely to have, a Parent Material Adverse Effect.

(d) Parent shall have delivered to the Company a certificate, dated as of the Closing Date and signed by its Chief Executive Officer or another senior officer, certifying to the effect that the conditions set forth in Section 6.2(a), Section 6.2(b) and Section 6.2(c) have been satisfied.

Section 6.3 Conditions to Obligations of Parent and Merger Sub to Effect the Merger. The obligations of Parent and Merger Sub to effect the Merger are further subject to the satisfaction (or waiver by Parent to the extent permitted by applicable Law) of the following conditions:

(a) (i) The representations and warranties of the Company set forth in Section 3.2(a) (other than the last sentence thereof) and Section 3.12(a) shall be true and correct, at and as of the date of this Agreement and at and as of Closing, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date), in each case, except for *de minimis* inaccuracies; (ii) the representations and warranties of the Company set forth in the first sentence of Section 3.1(a), Section 3.2(b), Section 3.3(a), Section 3.3(b) and Section 3.26 shall be true and correct in all material respects, at and as of the date of this Agreement and at and as of Closing, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date); (iii) the representations and warranties of the Company set forth in Article 3 that are qualified by a “Company Material Adverse Effect” qualification shall be true and correct in all respects as so qualified at and as of the date of this Agreement and at and as of the Closing, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date); and (iv) the other representations and warranties of the Company set forth in Article 3 shall be true and correct at and as of the date of this Agreement and at and as of Closing, as if made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date), except with respect to this clause (iv) where the failure of such representations and warranties to be so true and correct would not have or would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

(b) The Company shall have performed in all material respects all obligations and complied in all material respects with all covenants required by this Agreement to be performed or complied with by it prior to the Closing.

(c) Since the date of this Agreement, there shall not have occurred any event, change, occurrence, effect or development that has had, or is reasonably likely to have, a Company Material Adverse Effect.

(d) The Company shall have delivered to Parent a certificate, dated as of the Closing Date and signed by its Chief Executive Officer or another senior officer, certifying to the effect that the conditions set forth in Section 6.3(a), Section 6.3(b) and Section 6.3(c) have been satisfied.

Section 6.4 Frustration of Closing Conditions. No party hereto may rely, either as a basis for not consummating the Merger or terminating this Agreement and abandoning the Merger, on the failure of any condition set forth in Section 6.1, Section 6.2 or Section 6.3, as the case may be, to be satisfied if such failure was caused by such party's material breach of any covenant or agreement of this Agreement.

ARTICLE 7

TERMINATION

Section 7.1 Termination or Abandonment. This Agreement may be terminated and abandoned prior to the Effective Time, whether before or after any approval by the stockholders of the Company of the matters presented in connection with the Merger:

(a) by the mutual written consent of the Company and Parent;

(b) by either the Company or Parent, if:

(i) (A) the Effective Time shall not have occurred on or before the nine-month anniversary of the date of this Agreement (the "End Date") and (B) the party seeking to terminate this Agreement pursuant to this Section 7.1(b)(i) shall not have breached in any material respect its obligations under this Agreement in any manner that has been the primary cause of the failure to consummate the Merger on or before such date;

(ii) any Governmental Entity of competent jurisdiction shall have issued or entered an injunction or similar Order permanently enjoining or prohibiting the consummation of the Merger or the Voting Trust Transaction, and such injunction or Order shall have become final and non-appealable; provided, that the party seeking to terminate this Agreement pursuant to this Section 7.1(b)(ii) shall not have breached in any material respect its obligations under this Agreement in any manner that has been the primary cause of such injunction or Order; or

(iii) if the Company Stockholder Meeting (including any adjournments

or postponements thereof) shall have been held and been concluded and the Company Stockholder Approval shall not have been obtained;

(c) by the Company:

(i) if Parent or Merger Sub shall have breached or failed to perform in any material respect any of their representations, warranties, covenants or other agreements contained in this Agreement, which breach or failure to perform (A) would result in a failure of a condition set forth in Section 6.1 or Section 6.2 and (B) cannot be cured by the End Date or, if curable, is not cured within 45 Business Days following the Company's delivery of written notice to Parent stating the Company's intention to terminate this Agreement pursuant to this Section 7.1(c)(i) and the basis for such termination; provided, that the Company shall not have a right to terminate this Agreement pursuant to this Section 7.1(c)(i) if the Company is then in material breach of any representation, warranty, agreement or covenant contained in this Agreement; or

(ii) prior to receipt of the Company Stockholder Approval, in order to enter into a definitive agreement providing for a Company Superior Proposal;

(d) by Parent:

(i) if the Company shall have breached or failed to perform in any material respect any of its representations, warranties, covenants or other agreements contained in this Agreement, which breach or failure to perform (A) would result in a failure of a condition set forth in Section 6.1 or Section 6.3 and (B) cannot be cured by the End Date or, if curable, is not cured within 45 Business Days following Parent's delivery of written notice to the Company stating Parent's intention to terminate this Agreement pursuant to this Section 7.1(d)(i) and the basis for such termination; provided, that Parent shall not have a right to terminate this Agreement pursuant to this Section 7.1(d)(i) if Parent or Merger Sub is then in material breach of any representation, warranty, agreement or covenant contained in this Agreement; or

(ii) prior to receipt of the Company Stockholder Approval, if the Company Board shall have effected a Company Change of Recommendation.

Section 7.2 Effect of Termination. In the event of a valid termination of this Agreement pursuant to Section 7.1, the terminating party shall forthwith give written notice thereof to the other party or parties and this Agreement shall terminate, and the transactions contemplated hereby shall be abandoned, without further action by any of the parties hereto. In the event of a valid termination of this Agreement pursuant to Section 7.1, this Agreement shall forthwith become null and void and there shall be no liability or obligation on the part of the Company, Parent, Merger Sub or their respective Subsidiaries or Affiliates, except that: (i) no such termination shall relieve any party of its obligation to pay the Company Termination Fee, the Regulatory Termination Fee or the CP Termination Fee Refund, as applicable, if, as and when required pursuant to Section 7.3 or any of its other obligations under Section 7.3 expressly

contemplated to survive the termination of this Agreement pursuant to Section 7.3; (ii) no such termination shall relieve any party for liability for such party's fraud or willful and material breach of any covenant or obligation contained in this Agreement prior to its termination; and (iii) the Confidentiality Agreement, the provisions of the last sentence of Section 5.12(b) and the provisions of Section 5.3(d), Section 5.12(d), this Section 7.2, Section 7.3 and Article 8 shall survive the termination hereof.

Section 7.3 Termination Fees.

(a) Company Termination Fee.

(i) If (A) this Agreement is terminated by the Company pursuant to Section 7.1(c)(ii), (B) this Agreement is terminated by Parent pursuant to Section 7.1(d)(ii), or (C) (x) after the date of this Agreement, a Company Alternative Proposal (substituting in the definition thereof "50%" for "25%" and for "75%" in each place each such phrase appears) is publicly proposed or publicly disclosed prior to, and not publicly withdrawn at least two Business Days prior to, the Company Stockholder Meeting (a "Company Qualifying Transaction"), (y) this Agreement is terminated by (1) the Company or Parent pursuant to Section 7.1(b)(i) prior to the receipt of the Company Stockholder Approval or pursuant to Section 7.1(b)(iii) or (2) Parent pursuant to Section 7.1(d)(i), and (z) concurrently with or within 12 months after such termination, the Company (1) consummates a Company Qualifying Transaction or (2) enters into a definitive agreement providing for a Company Qualifying Transaction and later consummates such Company Qualifying Transaction, then the Company shall pay to Parent in consideration of the Parent disposing of its rights hereunder (other than those rights set out in Section 7.2), by wire transfer of immediately available funds to an account designated in writing by Parent, a fee of \$700,000,000 in cash (the "Company Termination Fee"), free and clear and without withholding or deduction for Taxes unless such withholding or deduction is required by Law, such payment to be made concurrently with such termination in the case of clause (A) above, within three Business Days after such termination in the case of clause (B) above, or within three Business Days after the consummation of such Company Qualifying Transaction in the case of clause (C) above; it being understood that in no event shall the Company be required to pay the Company Termination Fee on more than one occasion.

(ii) If the Company is required to withhold or deduct any amount for or on account of U.S. federal income Taxes under Section 1442 or 1445 of the Code from the Company Termination Fee, the Company shall remit the full amount so withheld and deducted to the applicable Governmental Entity and the Company shall pay additional amounts to Parent ("Parent Additional Amounts") (such additional amounts to constitute additional proceeds for the disposition by the Parent of its rights under this Agreement) as may be necessary so that the net amount received by Parent (including the Parent Additional Amounts) after such withholding or deduction is not less than the amount Parent would have received if the Taxes had not been so withheld or deducted; provided, that the Company's obligation to pay such Parent Additional Amounts shall not apply to the extent that the obligation to withhold or deduct any amount from the Company Termination Fee arises solely as the result of Parent's failure to deliver to the Company,

prior to the payment of the Company Termination Fee, a properly completed and executed IRS Form W-8BEN-E establishing an exemption from withholding under the U.S.–Canada Income Tax Treaty or IRS Form W-8ECI. Furthermore, without duplication of the foregoing sentence, the Company shall indemnify and hold harmless Parent from the full amount of any Taxes imposed on Parent under Section 881(a) the Code (together with any interest and penalties and expenses paid or payable by Parent with respect thereto) with respect to the receipt of the Company Termination Fee other than Taxes in respect of which amounts have been fully deducted and remitted and Parent Additional Amounts have been paid. The parties shall cooperate to minimize any Taxes required to be deducted or withheld in respect of the Company Termination Fee. At the Company's reasonable request and expense, Parent shall use commercially reasonable efforts to obtain a refund from the applicable U.S. Governmental Entity of any Taxes in respect of which the Company has paid a Parent Additional Amount or indemnified Parent (or, if such refund cannot be obtained, to claim a credit for such Taxes). Parent shall promptly pay the amount of any such refund or credit obtained to the Company, net of any costs, Taxes and expenses borne by Parent with respect to such refund or credit; provided that Parent shall not be obligated to make any payment otherwise required pursuant to this sentence to the extent making such payment would place Parent in a less favorable net after-Tax position than it would have been in if the Tax subject to indemnification or Parent Additional Amount and giving rise to such refund or credit had not been deducted, withheld or otherwise imposed and the indemnification payments or Parent Additional Amount with respect to such Tax had never been paid. Parent and the Company agree: (i) to treat, for U.S. federal income Tax purposes, payment of the Company Termination Fee and any Parent Additional Amounts as giving rise to gain or loss attributable to the cancellation, lapse, expiration or other termination of a right or obligation with respect to property which is (or on acquisition would be) a capital asset in the hands of Parent within the meaning of Section 1234A(1) of the Code, and (ii) not to take any position inconsistent with such treatment, in each case, except to the extent otherwise required by applicable Law. The obligations described in this paragraph shall survive any termination, defeasance or discharge of this Agreement. Except as otherwise set forth in Section 7.2 or this Section 7.3(a), on the payment by the Company of the Company Termination Fee, the CP Termination Fee Refund and the Parent Additional Amounts as and when required by this Section 7.3, neither the Company nor any of its former, current or future officers, directors, partners, stockholders, managers, members, Affiliates and Representatives shall have any further liability with respect to this Agreement or the transactions contemplated hereby to Parent or its Affiliates or Representatives.

(b) Regulatory Termination Fee.

(i) If this Agreement is terminated by the Company or Parent pursuant to (A) Section 7.1(b)(i), and at the time of such termination, (1) one or more of the conditions set forth in Section 6.1(d) (solely as a result of an injunction or Order entered or issued by a Governmental Entity pursuant to any Railroad Law or Section 721) or Section 6.1(e) has not been satisfied or waived and (2) all of the other conditions set forth in Section 6.1 and Section 6.3 have been satisfied or waived (except for those conditions that by their nature are to be satisfied at the Closing; provided, that such conditions were then capable of being satisfied if the Closing had taken place) and no breach by the

Company of its obligations under Section 5.8 has contributed materially and substantially to the failure of the condition set forth in the preceding clause (1) to be satisfied or (B) Section 7.1(b)(ii) (solely as the result of a final and non-appealable Order entered or issued by a Governmental Entity pursuant to any Railroad Law or Section 721), then Parent shall pay to the Company in consideration of the Company disposing of its rights hereunder (other than those rights set out in Section 7.2), by wire transfer of immediately available funds to an account designated in writing by the Company, a fee of \$1,000,000,000 in cash (the “Regulatory Termination Fee”), free and clear and without withholding or deduction for Taxes unless such withholding or deduction is required by Law, with such payment to be made within three Business Days of such termination; it being understood that in no event shall Parent be required to pay the Regulatory Termination Fee on more than one occasion.

(ii) [Reserved.]

(iii) If Parent is required, pursuant to the provisions of Part XIII of the CITA, to withhold or deduct any amount for or on account of Taxes from the Regulatory Termination Fee, Parent shall remit the full amount so withheld and deducted to the applicable Governmental Entity and Parent shall pay additional amounts to the Company (“Company Additional Amounts”) (such additional amounts to constitute additional proceeds for the disposition by the Company of its rights under this Agreement) as may be necessary so that the net amount received by the Company (including the Company Additional Amounts) after such withholding or deduction is not less than the amount the Company would have received if the Taxes had not been so withheld or deducted. Furthermore, without duplication of the foregoing sentence, Parent shall indemnify and hold harmless the Company from the full amount of any Taxes imposed on the Company under Part XIII of the CITA (together with any interest and penalties and expenses paid or payable by the Company with respect thereto) with respect to the receipt of the Regulatory Termination Fee, as applicable, and Company Additional Amounts, other than Taxes in respect of which amounts have been fully deducted and remitted. The parties shall cooperate to minimize any Taxes required to be deducted or withheld in respect of the Regulatory Termination Fee, including that the Company shall provide any information reasonably requested by Parent to determine whether the Company is a “resident of the United States” and a “qualifying person” and/or whether it carries on business in Canada through a “permanent establishment,” in each case, for the purposes of the U.S. – Canada Income Tax Treaty and the CITA. At Parent’s reasonable request and expense, the Company shall use commercially reasonable efforts to obtain a refund from the applicable Canadian Governmental Entity of any Taxes in respect of which Parent has paid a Company Additional Amount or indemnified the Company (or, if such refund cannot be obtained, to claim a credit from the applicable Canadian or U.S. Governmental Entity for such Taxes). The Company shall promptly pay the amount of any such refund or credit obtained to Parent, net of any costs, Taxes and expenses borne by the Company with respect to such refund or credit; provided that the Company shall not be obligated to make any payment otherwise required pursuant to this sentence to the extent making such payment would place the Company in a less favorable net after-Tax position than it would have been in if the Tax subject to indemnification or Company Additional Amount and giving rise to such refund or credit had not been deducted,

withheld or otherwise imposed and the indemnification payments or Company Additional Amount with respect to such Tax had never been paid. Parent and the Company agree: (i) to treat, for Canadian federal income Tax purposes, the payment of the Regulatory Termination Fee and any Company Additional Amounts as being proceeds of disposition for the disposition by the Company of property consisting of its rights under this Agreement, and (ii) not to take any position inconsistent with such treatment, in each case, except to the extent otherwise required by applicable Law. The obligations described in this paragraph will survive any termination, defeasance or discharge of this Agreement. Except as otherwise set forth in Section 7.2 or this Section 7.3(b), on the payment by Parent of the Regulatory Termination Fee, as applicable, and the Company Additional Amounts as and when required by this Section 7.3(b), none of Parent, Merger Sub or any of their respective former, current or future officers, directors, partners, stockholders, managers, members, Affiliates and Representatives shall have any further liability with respect to this Agreement or the transactions contemplated hereby to the Company or its Affiliates or Representatives.

(c) Refund of Canadian Pacific Agreement Termination Fee. If this Agreement is terminated (i) by the Company pursuant to Section 7.1(c)(ii) or (ii) by Parent pursuant to Section 7.1(d)(i) or Section 7.1(d)(ii), then the Company shall pay to Holdco, in return of funds paid to the Company by Holdco in connection with the termination of the Canadian Pacific Agreement pursuant to that certain binding offer letter, dated as of May 13, 2021, from Parent, Holdco and Merger Sub to the Company, by wire transfer of immediately available funds to an account designated in writing by Parent (on Holdco's behalf), an amount equal to \$700,000,000 in cash (the "CP Termination Fee Refund"), free and clear and without withholding or deduction for Taxes, unless (A) Holdco has failed to deliver to the Company a properly completed and duly executed IRS Form W-9 or (B) such withholding or deduction is required by a change in Law after the date hereof (in which case the parties shall reasonably cooperate to minimize any such required withholding or deduction), with such payment to be made within three Business Days of such termination; it being understood that in no event shall the Company be required to pay the CP Termination Fee Refund on more than one occasion.

(d) Acknowledgements. Each party acknowledges that the agreements contained in this Section 7.3 are an integral part of this Agreement and that, without Section 7.3(a) and Section 7.3(c), Parent would not have entered into this Agreement and that, without Section 7.3(b), the Company would not have entered into this Agreement. Accordingly, if the Company or Parent fails to promptly pay any amount due pursuant to this Section 7.3, the Company or Parent, as applicable, shall pay to Parent (or, in the case of the CP Termination Fee Refund, Holdco) or the Company, respectively, all fees, costs and expenses of enforcement (including attorneys' fees as well as expenses incurred in connection with any action initiated seeking such payment), together with interest on the amount of the Company Termination Fee, the Regulatory Termination Fee or the CP Termination Fee Refund, as applicable, at the prime lending rate as published in the *Wall Street Journal*, in effect on the date such payment is required to be made. Notwithstanding anything to the contrary in this Agreement, the parties hereby acknowledge that in the event that the Company Termination Fee and/or the CP Termination Fee Refund (the "Company Termination Payments") or the Regulatory Termination Fee, as applicable, become payable by, and are paid by, the Company to Parent or Parent to the Company, as applicable, such Company Termination Payments or Regulatory Termination Fee,

as applicable, shall be the receiving party's sole and exclusive remedy pursuant to this Agreement. The parties further acknowledge that none of the Company Termination Fee or the Regulatory Termination Fee shall constitute a penalty but is in consideration for a disposition of the rights of the recipient under this Agreement and represents liquidated damages, in a reasonable amount that will compensate Parent or the Company, as applicable, in the circumstances (which do not involve fraud or willful and material breach by the other party of this Agreement) in which the Company Termination Fee or the Regulatory Termination Fee, as applicable, is payable for the efforts and resources expended and opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the Merger, which amount would otherwise be impossible to calculate with precision. The parties further acknowledge that the CP Termination Fee Refund shall not constitute a penalty but is a refund of amounts previously paid by Holdco to the Company. The parties further acknowledge that the right to receive the Company Termination Payments or the Regulatory Termination Fee, as applicable, shall not limit or otherwise affect any such party's right to specific performance as provided in Section 8.5.

ARTICLE 8

MISCELLANEOUS

Section 8.1 No Survival of Representations and Warranties. None of the representations, warranties, covenants and agreements in this Agreement or in any instrument delivered pursuant to this Agreement shall survive the consummation of the Merger, except for covenants and agreements that contemplate performance after the Effective Time or otherwise expressly by their terms survive the Effective Time.

Section 8.2 Expenses. Except as set forth in Section 5.11, Section 5.12 or Section 7.3, whether or not the Merger is consummated, all costs and expenses incurred in connection with the Merger, this Agreement and the transactions contemplated hereby shall be paid by the party incurring or required to incur such expenses, except that all filing fees paid by any party in respect of any regulatory filing (including any and all filings under the Antitrust Laws and/or in respect of the Company Approvals or Parent Approvals) shall be borne by Parent. Except as otherwise provided in Section 2.2(b)(ii), all transfer, documentary, sales, use, stamp, registration and other similar Taxes and fees imposed with respect to, or as a result of, the Merger shall be borne by Parent or the Surviving Corporation, and expressly shall not be a liability of holders of Company Common Stock or Company Preferred Stock.

Section 8.3 Counterparts; Effectiveness. This Agreement may be executed in counterparts (including by facsimile, by electronic mail in "portable document format" (.pdf) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document), each of which shall be an original, with the same effect as if the signatures thereto and hereto were on the same instrument. This Agreement shall become effective when one or more counterparts have been signed by each of the parties and delivered (by telecopy, facsimile, electronic mail or otherwise as authorized by the prior sentence) to the other parties.

Section 8.4 Governing Law; Jurisdiction. This Agreement shall be deemed to be made in and in all respects shall be governed by, interpreted and construed in accordance with the laws of the State of Delaware, without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware. In addition, each of the parties hereto irrevocably agrees that any legal action or proceeding with respect to this Agreement and the rights and obligations arising hereunder, or for recognition and enforcement of any judgment in respect of this Agreement and the rights and obligations arising hereunder brought by the other party hereto or its successors or assigns, shall be brought and determined exclusively in the Delaware Court of Chancery or (and only if) such court finds it lacks subject matter jurisdiction, the Superior Court of the State of Delaware (Complex Commercial Division) provided that if the subject matter over the matter is the subject of the action or proceeding is vested exclusively in the United States federal courts, such action or proceeding shall be heard in the United States District Court for the District of Delaware (the “Chosen Courts”). Each of the parties hereto hereby irrevocably submits with regard to any such action or proceeding for itself and in respect of its property, generally and unconditionally, to the personal jurisdiction of the Chosen Courts and agrees that it shall not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than the Chosen Courts. Each of the parties hereto hereby irrevocably waives, and agrees not to assert as a defense, counterclaim or otherwise, in any action or proceeding with respect to this Agreement, (a) any claim that it is not personally subject to the jurisdiction of the Chosen Courts, (b) any claim that it or its property is exempt or immune from the jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) to the fullest extent permitted by the applicable Law, any claim that (i) the Action in such court is brought in an inconvenient forum, (ii) the venue of such Action is improper or (iii) this Agreement, or the subject matter hereof, may not be enforced in or by such courts. Each party hereto irrevocably consents to service of process inside or outside the territorial jurisdiction of the courts referred to in this Section 8.4 in the manner provided for notices in Section 8.7. Nothing in this Agreement shall affect the right of any party hereto to serve process in any other manner permitted by applicable Law.

Section 8.5 Specific Enforcement.

(a) The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Each party agrees that, in the event of any breach or threatened breach by any other party of any covenant or obligation contained in this Agreement, the non-breaching party shall be entitled (in addition to any other remedy that may be available to it whether in law or equity, including monetary damages) to obtain (i) a decree or order of specific performance to enforce the observance and performance of such covenant or obligation and (ii) an injunction restraining such breach or threatened breach.

(b) In circumstances where Parent is obligated to consummate the Merger and the Merger has not been consummated, Parent and Merger Sub expressly acknowledge and agree that the Company and its stockholders shall have suffered irreparable harm, that monetary damages will be inadequate to compensate the Company and its stockholders, and that the

Company on behalf of itself and its stockholders shall be entitled (in addition to any other remedy that may be available to it whether in law or equity, including monetary damages) to enforce specifically Parent's and Merger Sub's obligations to consummate the Merger.

(c) Each party further agrees that no other party or any other Person shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 8.5, and each party irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument.

Section 8.6 WAIVER OF JURY TRIAL. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY MAKES THIS WAIVER VOLUNTARILY AND SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS CONTAINED IN THIS SECTION 8.6.

Section 8.7 Notices. Any notice required to be given hereunder shall be sufficient if in writing, and sent by email or by reliable overnight delivery service (with proof of service), hand delivery or certified or registered mail (return receipt requested and first-class postage prepaid), addressed as follows:

To Parent or Merger Sub:

Canadian National Railway Company
935 de La Gauchetiere Street West
Montreal, Quebec, Canada H3B 2M9
Attention: Executive VP, Corporate Services and Chief Legal Officer
E-mail: Sean.Finn@cn.ca

with a copy (which shall not constitute notice) to:

Cravath, Swaine & Moore LLP
Worldwide Plaza
825 Eighth Avenue
New York City, NY 10019
Attention: Robert I. Townsend, III
Damien R. Zoubek
Jenny Hochenberg
Email: rtownsend@cravath.com
dzoubek@cravath.com
jhochenberg@cravath.com

and a copy (which shall not constitute notice) to:

Norton Rose Fulbright Canada LLP
1 Place Ville Marie, Suite 2500
Montreal, Quebec, Canada
H3B 1R1
Attention: Stephen J. Kelly
Email: stephen.kelly@nortonrosefulbright.com

To the Company:

Kansas City Southern
427 West 12th Street
Kansas City, MO 64105
Attention: Chief Legal Officer & Corporate Secretary
E-mail: agodderz@kcsouthern.com

with a copy (which shall not constitute notice) to:

Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019
Attention: Steven A. Rosenblum
Elina Tetelbaum
Email: SARosenblum@wlrk.com
ETetelbaum@wlrk.com

or to such other address as a party shall specify by written notice so given, and such notice shall be deemed to have been delivered (a) when received when sent by email; provided, that the recipient confirms in writing its receipt thereof, (b) on proof of service when sent by reliable overnight delivery service, (c) on personal delivery in the case of hand delivery or (d) on receipt of the return receipt when sent by certified or registered mail. Any party to this Agreement may notify any other party of any changes to the address or any of the other details specified in this Section 8.7; provided, that such notification shall only be effective on the date specified in such

notice or two Business Days after the notice is given, whichever is later. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

Section 8.8 Assignment; Binding Effect. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto (whether by operation of law or otherwise) without the prior written consent of the other parties. Subject to the preceding sentence, this Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective successors and assigns.

Section 8.9 Severability. Any term or provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the sole extent of such invalidity or unenforceability without rendering invalid or unenforceable the remainder of such term or provision or the remaining terms and provisions of this Agreement in any jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable.

Section 8.10 Entire Agreement; No Third-Party Beneficiaries. This Agreement (including the exhibits and schedules hereto), the Confidentiality Agreement and the Clean Team Agreement constitute the entire agreement, and supersede all other prior agreements and understandings, both written and oral, between the parties, or any of them, with respect to the subject matter hereof and thereof. Except for the provisions of Article 2 (which, from and after the Effective Time, shall be for the benefit of holders of the Company Common Stock (including Company Equity Awards) as of immediately prior to the Effective Time), Section 5.11 (which, from and after the Effective Time, shall be for the benefit of the Indemnified Parties), and the provisions of the last sentence of Section 5.12(b) (which shall be for the benefit of the express beneficiaries thereof), this Agreement is for the sole benefit of the parties hereto and their permitted assigns and nothing herein is intended to and shall not confer on any Person other than the parties hereto any rights or remedies hereunder. The representations and warranties in this Agreement are the product of negotiations among the parties. Any inaccuracies in such representations and warranties are subject to waiver by the parties in accordance with Section 8.11 without notice or liability to any other Person. In some instances, the representations and warranties in this Agreement may represent an allocation among the parties of risks associated with particular matters regardless of the knowledge of any of the parties. Consequently, Persons other than the parties may not rely upon the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the date of this Agreement or as of any other date.

Section 8.11 Amendments; Waivers. At any time prior to the Effective Time, whether before or after receipt of the Company Stockholder Approval, any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by the Company, Parent and Merger Sub, or in the case of a waiver, by the party against whom the waiver is to be effective; provided, that after receipt of the Company Stockholder Approval, if any such amendment or waiver shall by applicable Law or in accordance with the rules and regulations of the NYSE require further approval of the stockholders of the Company, the effectiveness of such amendment or waiver shall be subject to

the approval of the stockholders of the Company. The foregoing notwithstanding, no failure or delay by any party in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any other right hereunder. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Law.

Section 8.12 Headings. Headings of the Articles and Sections of this Agreement are for convenience of the parties only and shall be given no substantive or interpretive effect whatsoever. The table of contents to this Agreement is for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 8.13 Financing Provisions. Notwithstanding anything in this Agreement to the contrary (including any other provisions of this Article 8): the Company, on behalf of itself, its Subsidiaries and each of its controlled Affiliates, and each other party hereto, on behalf of itself, its Subsidiaries and each of its controlled Affiliates, hereby: (a) agrees that any legal action, whether in law or in equity, whether in contract or in tort or otherwise, involving the Financing Parties, arising out of or relating to, this Agreement, the Debt Financing or any of the agreements entered into in connection with the Debt Financing (including the Debt Commitment Letters) or any of the transactions contemplated hereby or thereby or the performance of any services thereunder, shall be subject to the exclusive jurisdiction of any federal or state court in the Borough of Manhattan, New York, New York, and any appellate court thereof and each party hereto irrevocably submits itself and its property with respect to any such legal action to the exclusive jurisdiction of such court, and agrees not to bring or support any such legal action against any Financing Party in any forum other than such courts, (b) agrees that any such legal action shall be governed by the laws of the State of New York (without giving effect to any conflicts of law principles that would result in the application of the laws of another state), except as otherwise provided in any agreement relating to the Debt Financing, (c) knowingly, intentionally and voluntarily waives to the fullest extent permitted by applicable law trial by jury in any such legal action brought against the Financing Parties in any way arising out of or relating to, this Agreement or the Debt Financing, (d) agrees that none of the Financing Parties shall have any liability to the Company or any of its subsidiaries or any of their respective controlled affiliates or representatives relating to or arising out of this Agreement, the Debt Commitment Letters or the Debt Financing (e) agrees that only Parent (including its permitted successors and assigns under the Debt Commitment Letters) shall be permitted to bring any claim (including any claim for specific performance) against a Financing Party for failing to satisfy any obligation to fund the Debt Financing pursuant to the terms of the Debt Commitment Letter and that neither the Company nor any of its Subsidiaries or controlled Affiliates shall be entitled to seek the remedy of specific performance with respect to Parent's rights under the Debt Commitment Letter against the Financing Parties party thereto, (f) agrees in no event will any Financing Party be liable for consequential, special, exemplary, punitive or indirect damages (including any loss of profits, business, or anticipated savings), or damages of a tortious nature in connection with the Debt Financing, and (g) agrees that the Financing Parties are express third party beneficiaries of, and may enforce, any of the provisions of this Section 8.13 and that this Section 8.13 may not be amended, modified or waived without the written consent of the Financing Entities; provided, that the foregoing shall not limit the Company's rights or recourse under the Debt Commitment Letter in respect of the Company Credit Agreement after the Company has assumed the same on the Closing Date. Notwithstanding the foregoing, nothing in

this Section 8.13 shall in any way limit or modify the rights and obligations of Parent under this Agreement or any Financing Party's obligations to Parent under the Debt Commitment Letters.

Section 8.14 Interpretation. When a reference is made in this Agreement to an Article or Section, such reference shall be to an Article or Section of this Agreement unless otherwise indicated. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The words "hereof," "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise specified, all references herein to "\$" or "dollars" shall be to U.S. dollars. Except as otherwise indicated, all references herein to the Subsidiaries of a Person shall be deemed to include all direct and indirect Subsidiaries of such Person unless otherwise indicated or the context otherwise requires. All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant thereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. Any agreement defined or referred to herein or in any schedule that is referred to herein means such agreement as from time to time amended, modified or supplemented, including by waiver or consent, together with any addenda, schedules or exhibits to, any purchase orders or statements of work governed by, and any "terms of services" or similar conditions applicable to, such agreement. Any specific law defined or referred to herein or in any schedule that is referred to herein means such law as from time to time amended and to any rules or regulations promulgated thereunder. Each of the parties has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement must be construed as if it is drafted by all the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement.

Section 8.15 Obligations of Subsidiaries. Whenever this Agreement requires Merger Sub or any other Subsidiary of Parent to take any action, such requirement shall be deemed to include an undertaking on the part of Parent to cause Merger Sub or such Subsidiary, as applicable, to take such action. Whenever this Agreement requires a Subsidiary of the Company to take any action, such requirement shall be deemed to include an undertaking on the part of the Company to cause such Subsidiary to take such action, and after the Effective Time, on the part of the Surviving Corporation, as applicable, to cause such Subsidiary to take such action.

Section 8.16 Definitions. For purposes of this Agreement, the following terms (as capitalized below) shall have the following meanings when used herein:

"Action" means a claim, action, suit, or proceeding, whether civil, criminal, or administrative.

"Affiliates" means, with respect to any Person, any other Person that, directly or indirectly, controls, or is controlled by, or is under common control with, such Person. As used in this definition, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the power to direct or

cause the direction of management or policies of a Person, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise.

“Antitrust Laws” means the Sherman Antitrust Act of 1890, the Clayton Antitrust Act of 1914, the HSR Act, the Federal Trade Commission Act of 1914, and all other applicable supranational, national, federal, state, county, local or foreign antitrust, competition or trade statutes, rules, regulation, Orders, decrees, administrative and judicial doctrines and other Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening competition through merger or acquisition, regulate foreign investments.

“ARTF” means the Mexican Agencia Reguladora del Transporte Ferroviario (the Regulatory Agency of Rail Transportation of Mexico).

“beneficial owner” means, with respect to any securities, any Person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares (a) voting power, which includes the power to vote, or to direct the voting of, such security; and/or (b) investment power, which includes the power to dispose, or to direct the disposition, of such security; and shall otherwise be interpreted in accordance with the term “beneficial owner” as defined in Rule 13d-3 adopted by the SEC under the Exchange Act. The terms “beneficial ownership,” “beneficially own” and “beneficially owned” shall have a correlative meaning.

“Book-Entry Shares” means, collectively, the Common Book-Entry Shares and the Preferred Book-Entry Shares.

“Business Day” means any day other than a Saturday, Sunday or a day on which the banks in New York, New York or Montreal, Quebec, are authorized by law or executive order to be closed.

“Canadian Securities Administrators” means the Autorité des marchés financiers (Quebec) and any other applicable securities commission or securities regulatory authority of a province or territory of Canada.

“Canadian Securities Laws” means the *Securities Act* (Quebec) and all other applicable securities Laws, rules and regulations and published policies thereunder or under the securities laws of any other province or territory of Canada, and the rules and policies of the TSX.

“Cause” means (a) for any individual with an agreement with the Company or any of the Company’s Subsidiaries that defines “Cause”, Cause as defined in such agreement and (b) for any other individual, the definition of “Cause” as set forth in the Company’s 2017 Equity Incentive Plan.

“Certificates” means, collectively, the Common Certificates and the Preferred Certificates.

“CFIUS” means the Committee on Foreign Investment in the United States.

“CFIUS Declaration” means a declaration submitted to CFIUS pursuant to either 31 C.F.R. Section 800.401 or 31 C.F.R. 800.402.

“CFIUS Joint Voluntary Notice” means a voluntary notification submitted to CFIUS pursuant to 31 C.F.R. Section 800.501.

“CITA” means the *Income Tax Act* (Canada).

“COFECE” means the Comisión Federal de Competencia Económica (the Mexican Antitrust Commission).

“Company Benefit Plans” means all employee or director compensation and/or pension or other benefit plans, programs, policies, agreements or other arrangements, including any “employee welfare plan” within the meaning of Section 3(1) of ERISA, any “employee pension benefit plan” within the meaning of Section 3(2) of ERISA (whether or not such plan is subject to ERISA), and any bonus, incentive, deferred compensation, vacation, stock purchase, stock option, severance, employment, change of control or fringe benefit plan, program or agreement (other than any Multiemployer Plan), in each case that are sponsored, maintained or contributed to by the Company or any of its Subsidiaries for the benefit of current or former employees or directors of the Company or its Subsidiaries and are not otherwise required to be sponsored, maintained or contributed to by applicable Law.

“Company Common Stock” means the common stock, par value \$0.01 per share, of the Company.

“Company Credit Agreement” means that certain Credit Agreement, dated as of March 8, 2019, among the Company, as borrower, the guarantors from time to time party thereto, the lenders and issuing banks from time to time party thereto and Bank of America, N.A., as administrative agent, as amended, amended and restated, or otherwise modified from time to time (so long as any such amendment, restatement or modification made on or after the date hereof is not made in violation of this Agreement).

“Company Equity Awards” means Company Options, Company Restricted Share Awards, Company Performance Share Awards and Director Deferred Shares.

“Company ESPP” means the Company’s 2009 Employee Stock Purchase Plan.

“Company Intellectual Property” means all Intellectual Property owned or purported to be owned by the Company or any of its Subsidiaries.

“Company IT Assets” means all IT Assets owned or purported to be owned by the Company or any of its Subsidiaries.

“Company Labor Agreement” means any collective bargaining agreement or other agreement with a labor or trade union, works council or like organization that the Company or any of its Subsidiaries is a party to or otherwise bound by.

“Company Material Adverse Effect” means an event, change, occurrence, effect or development that has (x) a material adverse effect on the business, operations or financial condition of the Company and its Subsidiaries, taken as a whole, or (y) would prevent, materially delay or materially impair the ability of the Company to consummate the transactions contemplated by this Agreement (including the Merger), but, solely in the case of clause (x), shall not include events, changes, occurrences, effects or developments relating to or resulting from (a) changes in general economic or political conditions or the securities, equity, credit or financial markets in general, or changes in or affecting domestic or foreign interest or exchange rates, (b) any decline in the market price or trading volume of the Company Common Stock or the Company Preferred Stock or any change in the credit rating of the Company or any of its securities (provided, that the facts and circumstances underlying any such decline or change may be taken into account in determining whether a Company Material Adverse Effect has occurred to the extent not otherwise excluded by the definition thereof), (c) changes or developments in the industries in which the Company or its Subsidiaries operate, (d) changes in Law or the interpretation or enforcement thereof after the date of this Agreement, (e) the execution, delivery or performance of this Agreement or the public announcement or pendency or consummation of the Merger or other transactions contemplated hereby, including the impact thereof on the relationships, contractual or otherwise, of the Company or any of its Subsidiaries with employees, partnerships, customers or suppliers or Governmental Entities, (f) the identity of Parent or any of its Affiliates as the acquiror of the Company, (g) compliance with the terms of, or the taking or omission of any action required by, this Agreement or consented to (after disclosure to Parent of all material and relevant facts and information) or requested by Parent in writing, (h) any act of civil unrest, civil disobedience, war, terrorism, cyberterrorism, military activity, sabotage or cybercrime, including an outbreak or escalation of hostilities involving the United States or any other Governmental Entity or the declaration by the United States or any other Governmental Entity of a national emergency or war, or any worsening or escalation of any such conditions threatened or existing on the date of this Agreement, (i) any hurricane, tornado, flood, earthquake, natural disasters, acts of God or other comparable events, (j) any pandemic, epidemic or disease outbreak (including COVID-19) or other comparable events, (k) changes in generally accepted accounting principles or the interpretation or enforcement thereof after the date of this Agreement, (l) any litigation relating to or resulting from this Agreement or the transactions contemplated hereby or (m) any failure to meet internal or published projections, forecasts, guidance or revenue or earning predictions (provided, that the facts and circumstances underlying any such failure may be taken into account in determining whether a Company Material Adverse Effect has occurred to the extent not otherwise excluded by the definition thereof); except, with respect to clauses (a), (c), (h), (i), (j) and (k), if the impact thereof is materially and disproportionately adverse to the Company and its Subsidiaries, taken as a whole, relative to the impact thereof on the operations in the railroad industry of other participants in such industry, the incremental material disproportionate impact may be taken into account in determining whether there has been a Company Material Adverse Effect.

“Company Voting Stock” means, collectively, the Company Common Stock and the Company Preferred Stock.

“Completion of the CFIUS Process” means that any of the following shall have occurred: (a) CFIUS shall have determined that there are no unresolved national security concerns with respect to the transactions contemplated by this Agreement, and the Company and

Parent shall have received written notice from CFIUS that action under Section 721 has been concluded; (b) the Company and Parent shall have received written notice from CFIUS that the transactions contemplated by this Agreement are not “covered transactions” pursuant to Section 721; or (c) CFIUS shall have sent a report to the President of the United States requesting the decision of the President of the United States on the CFIUS Joint Voluntary Notice and (i) the period under Section 721 during which the President may announce his decision to take action to suspend, prohibit or place any limitations on the transactions contemplated by this Agreement shall have expired without any such action being threatened, announced or taken or (ii) the President of the United States shall have announced a decision not to, or otherwise declined to, take any action to suspend or prohibit the transactions contemplated by this Agreement.

“Contract” means any legally binding, written or oral contract, note, bond, mortgage, indenture, deed of trust, lease, commitment, agreement, concession, arrangement or other obligation; provided, that “Contracts” shall not include any Company Benefit Plan or Parent Benefit Plan.

“Control Date” means the date on which Parent is lawfully permitted to assume control over the Company’s railroad operations pursuant to STB Final Approval and following Completion of the CFIUS Process.

“COVID-19” means SARS-CoV-2 or COVID-19, and any evolutions or variants thereof or related or associated epidemics, pandemic or disease outbreaks.

“COVID-19 Measures” means any quarantine, “shelter in place,” “stay at home,” workforce reduction, social distancing, shut down, closure, sequester or any other Law, decree, judgment, injunction or other Order, directive, guidelines or recommendations by any Governmental Entity or industry group in connection with or in response to COVID-19, including the Coronavirus Aid, Relief, and Economic Security Act (CARES Act).

“Environmental Law” means any Law relating to (a) the protection, preservation or restoration of the environment (including air, water vapor, surface water, groundwater, drinking water supply, surface land, subsurface land, plant and animal life or any other natural resource) or (b) the exposure to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release, discharge or disposal of Hazardous Substances, in each case as in effect at the date of this Agreement.

“CRA” means the Canada Revenue Agency, or any successor Canadian taxing authority thereto.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means all employers (whether or not incorporated) that would be treated together with the Company or Parent or any of their respective Subsidiaries, as applicable, as a “single employer” within the meaning of Section 414 of the Code.

“Exchange Act” means the Securities Exchange Act of 1934.

“Exchange Ratio” means 1.129.

“Financing Information” shall mean: (a) audited consolidated balance sheets of the Company and its Subsidiaries and the related audited consolidated statements of income, cash flows and changes in equity of the Company and its Subsidiaries for the three most recent fiscal years ended at least 60 days prior to the Closing Date (which Parent hereby acknowledges receiving for the fiscal years ended December 31, 2018, December 31, 2019 and December 31, 2020) and the unqualified audit report of the Company’s independent auditors related thereto (which Parent hereby acknowledges receiving for the three fiscal years ended December 31, 2020), (b) an unaudited consolidated balance sheet and related consolidated statements of income, cash flows and changes in equity of the Company and its Subsidiaries for any subsequent fiscal quarter (other than, in each case, the fourth quarter of any fiscal year) ended at least 40 days prior to the Closing Date and for the comparable period of the prior fiscal year, reviewed by the Company’s independent auditor, in the case of each of clauses (a) and (b), prepared in accordance with GAAP and in compliance with Regulation S-X (subject to the limitations set forth in the definition of Excluded Information), (c) other information as otherwise reasonably necessary in order to assist in receiving customary “comfort” (including as to “negative assurance” and change period comfort) from the Company’s independent accountants, and (d) all other historical financial information regarding the Company required by Parent to permit Parent to prepare pro forma financial statements required by paragraph 4 of Annex D of the Debt Commitment Letters; provided, that notwithstanding anything to the contrary in this definition or otherwise, nothing herein shall require the Company or its Affiliates to provide (or be deemed to require the Company or its Affiliates to prepare) any (i) description of all or any portion of the Debt Financing, including any “description of notes”, “plan of distribution” and information customarily provided by investment banks or their counsel or advisors in the preparation of a prospectus for registered offerings or an offering memorandum for private placements of non-convertible bonds pursuant to Rule 144A, as the case may be, (ii) risk factors relating to, or any description of, all or any component of the financing contemplated thereby, (iii) any compensation discussion and analysis or other information required by Item 10, Item 402 and Item 601 of Regulation S-K; or any information regarding executive compensation or related persons related to SEC Release Nos. 33-8732A, 34-54302A and IC-27444A, (iv) consolidating financial statements, separate Subsidiary financial statements, related party disclosures, or any segment information, in each case which are prepared on a basis not consistent with the Company’s reporting practices for the periods presented pursuant to clauses (a) and (b) above, (v) financial statements or other financial data (including selected financial data) for any period earlier than the year ended December 31, 2018, (vi) financial information that the Company or its Affiliates does not maintain in the ordinary course of business or (vii) information not reasonably available to the Company or its Affiliates under their respective current reporting systems, in the case of clauses (vi) and (vii), unless any such information would be required in order for the Financing Information provided to Parent by the Company in accordance with this definition to not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made in such Financing Information, in the light of the circumstances under which they were made, not misleading. In addition, for the avoidance of doubt, “Financing Information” shall not include (x) pro forma financial information or (y) projections. For purposes of this Agreement, the information described in clauses (i)-(vii) of this definition, and in clauses (x) and (y) of the penultimate sentence of this paragraph, is collectively be referred to as the “Excluded Information”.

If the Company shall in good faith reasonably believe that the Financing Information has been delivered to Parent, the Company may deliver to Parent a written notice to that effect (stating when it believes the delivery of the Financing Information to Parent was completed), in which case the Company shall be deemed to have complied with such obligation to furnish the Financing Information and Parent shall be deemed to have received the Financing Information, unless Parent in good faith reasonably believes that the Company has not completed delivery of the Financing Information and not later than 5:00 p.m. (New York City time) two Business Days after the delivery of such notice by the Company, delivers a written notice to the Company to that effect (stating with specificity which such Financing Information the Company has not delivered); provided, that notwithstanding the foregoing, the delivery of the Financing Information shall be satisfied at any time which (and so long as) Parent shall have actually received the Financing Information, regardless of whether or when any such notice is delivered by the Company.

The Company's or its Affiliates' filing with the SEC pursuant to the Securities Act of 1933, the Securities Exchange Act of 1934 and the rules and regulations of the SEC promulgated thereunder of any required audited financial statements with respect to it that is publicly available on Form 10-K or required unaudited financial statements with respect to it that is publicly available on Form 10-Q, in each case, will satisfy the requirements under clauses (a) or (b), as applicable, of this definition.

"Financing Parties" means each debt provider (including each agent and arranger) that commits to provide Debt Financing to Parent or any of its Subsidiaries (the "Financing Entities") pursuant to the Debt Commitment Letters, as may be amended, supplemented or replaced, and their respective Representatives and other Affiliates; provided, that neither Parent nor any Affiliate thereof shall be a Financing Party.

"GAAP" means United States generally accepted accounting principles.

"Good Reason" means, for an individual who is a party to an agreement with the Company that defines Good Reason, Good Reason as defined in such agreement, or, for any other individual, the occurrence of any of the following events without the individual's prior written consent: (a) a material reduction in base salary (other than a general reduction that affects all similarly situated executives in substantially the same proportion due to a material deterioration in the financial condition of the Company) or (b) a relocation of the individual's principal place of employment by more than 50 miles, if such change increases the individual's commute from the individual's principal residence by more than 50 miles. An individual may not terminate employment for Good Reason unless the individual has provided written notice to the Company of the existence of the circumstances providing grounds for termination for Good Reason within 90 days of the initial existence of such grounds and the Company has had at least 30 days from the date on which such notice is provided to cure such circumstances. If the individual does not terminate employment for Good Reason within 60 days of providing the Company written notice of the circumstances providing grounds for termination for Good Reasons, then the individual will be deemed to have waived the right to terminate for Good Reason with respect to such grounds.

“Government Official” means any official, officer, employee, or representative of, or any Person acting in an official capacity for or on behalf of, any Governmental Entity.

“Hazardous Substance” means any substance presently listed, defined, regulated, designated or classified as hazardous, toxic, radioactive or dangerous under any Environmental Law, including any substance to which exposure is regulated by any Governmental Entity or any Environmental Law, including any toxic waste, pollutant, contaminant, hazardous substance, toxic substance, hazardous waste, special waste, industrial substance or petroleum or any derivative or byproduct thereof, radon, radioactive material, asbestos or asbestos-containing material, urea formaldehyde, foam insulation or polychlorinated biphenyls.

“Holdco” means Brooklyn US Holding, Inc., a Delaware corporation and wholly owned subsidiary of Parent.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

“IFT”, means the Instituto Federal de Telecomunicaciones, the Mexican Federal Telecommunications Institute.

“Intellectual Property” means all intellectual property rights or other proprietary rights arising under the Laws of any jurisdiction or existing anywhere in the world associated with: (a) patents and patent applications and industrial design registrations and applications, and all continuations, divisionals, continuations-in-part, reissues or reexaminations and patents issuing thereon; (b) trademarks, service marks, trade dress, logos, corporate names, trade names, symbols, Internet domain names, and other similar identifiers of origin, in each case, whether or not registered and any and all applications and registrations therefor and the good will associated therewith and symbolized thereby; (c) copyrights, copyright registrations and applications, published and unpublished works of authorship, whether or not copyrightable, copyrights in and to the foregoing, together with all common law rights and moral rights therein, and any applications and registrations therefor; (d) domain names, uniform resource locators, Internet Protocol addresses, social media accounts or user names (including handles), and other names, identifiers and locators associated with any of the foregoing or other Internet addresses, sites and services; and (e) trade secrets, know-how, industrial secrets, inventions (whether or not patentable), data and confidential or proprietary business or technical information (“Trade Secrets”).

“IT Assets” means all of the technology devices, computers, computer systems, software and software platforms, databases, websites, servers, routers, hubs, switches, circuits, networks, data communications lines and all other information technology infrastructure and equipment used by the Company and its Subsidiaries in connection with the operation of the business of the Company and its Subsidiaries and all data stored therein or processed thereby and all associated documentation.

“Joint Notice” means a CFIUS Declaration or a CFIUS Joint Voluntary Notice.

“Knowledge” means (a) with respect to Parent, the actual knowledge of the individuals listed on Section 8.16(a) of the Parent Disclosure Schedule and (b) with respect to the Company, the actual knowledge of the individuals listed on Section 8.16(b) of the Company

Disclosure Schedules, in each of case (a) and (b); provided, however, that each such individual charged with responsibility for the aspect of the business relevant or related to the matter at issue shall be deemed to have knowledge of a particular matter if, in the prudent exercise of his or her duties and responsibilities in the ordinary course of business, such individual should have known of such matter.

“Liabilities” means all debts, liabilities, guarantees, assurances, commitments and obligations of any kind, whether fixed, contingent or absolute, matured or unmatured, liquidated or unliquidated, accrued or not accrued, known or unknown, due or to become due, whenever or however arising (including whether arising out of any Contract or tort based on negligence or strict liability).

“Lien” means a lien, mortgage, pledge, security interest, charge, title defect, adverse claims and interests, option to purchase or other encumbrance of any kind or nature whatsoever, but excluding any license of Intellectual Property or any transfer restrictions of general applicability as may be provided under the Securities Act, the “blue sky” Laws of the various States of the United States or similar Law of other applicable jurisdictions.

“made available to Parent” means provided by the Company or its Representatives to Parent or its Representatives (A) in the virtual data room maintained by Donnelley Financial Solutions Venue prior to the date of this Agreement (including in any “clean room” or as otherwise provided on an “outside counsel” only basis), (B) via electronic mail or in person prior to the date of this Agreement (including materials provided to outside counsel), or (C) filed or furnished with the SEC prior to the date of this Agreement, except where reference is made to an item being made available to Parent prior to Closing in which case, the term means provided by the Company or its Representatives to Parent or its Representatives prior to Closing.

“Merger Consideration Value” means (a) the Cash Consideration *plus* (b) (i) the Parent Share Price *multiplied by* (ii) the Exchange Ratio.

“Multiemployer Plan” means any “multiemployer plan” within the meaning of Section 4001(a)(3) of ERISA.

“NYSE” means the New York Stock Exchange.

“Order” means any order, writ, decree, judgment, award, injunction, ruling, settlement, notice or stipulation issued, promulgated, made, rendered or entered into by or with any Governmental Entity.

“Ordinary Course of Business” means, with respect to an action taken by any Person, that such action is consistent with the ordinary course of business of such Person, acting in its own interest as an independent enterprise, taking into account any changes to such practices as may have occurred prior to the date of this Agreement as a result of the outbreak of COVID-19, including compliance with any COVID-19 Measures, and any actions reasonably taken or not taken in response to exigent circumstances.

“Organizational Documents” means (i) with respect to any Person that is a corporation, its articles or certificate of incorporation, memorandum and articles of association,

as applicable, and bylaws, or comparable documents, (ii) with respect to any Person that is a partnership, its certificate of partnership and partnership agreement, or comparable documents, (iii) with respect to any Person that is a limited liability company, its certificate of formation and limited liability company or operating agreement, or comparable documents, (iv) with respect to any Person that is a trust or other entity, its declaration or agreement of trust or other constituent document or comparable documents and (v) with respect to any other Person that is not an individual, its comparable organizational documents.

“Parent Benefit Plans” means all employee or director compensation and/or pension or other benefit plans, programs, policies, agreements or other arrangements, including any “employee welfare plan” within the meaning of Section 3(1) of ERISA, any “employee pension benefit plan” within the meaning of Section 3(2) of ERISA (whether or not such plan is subject to ERISA), and any bonus, incentive, deferred compensation, vacation, stock purchase, stock option, severance, employment, change of control or fringe benefit plan, program or agreement (other than any Multiemployer Plan), in each case that are sponsored, maintained or contributed to by Parent or any of its Subsidiaries for the benefit of current or former employees or directors of Parent or its Subsidiaries and are not otherwise required to be sponsored, maintained or contributed to by applicable Law.

“Parent Common Shares” means the common shares of Parent.

“Parent DSU Award” means a deferred share unit award in respect of Parent Common Shares (whether such award may be settled in cash or in Parent Common Shares that are purchased on the market, newly issued or held in trust for purposes of the applicable Parent Share Plan).

“Parent Equity Awards” means Parent Options, Parent DSU Awards and Parent PSU Awards.

“Parent Labor Agreement” means any collective bargaining agreement or other agreement with a labor or trade union, works council or like organization that Parent or any of its Subsidiaries is a party to or otherwise bound by.

“Parent Material Adverse Effect” means an event, change, occurrence, effect or development that (x) has a material adverse effect on the business, operations or financial condition of Parent and its Subsidiaries, taken as a whole, or (y) would prevent, materially delay or materially impair the ability of Parent or Merger Sub to consummate the transactions contemplated by this Agreement (including the Merger) or to obtain the Debt Financing, but, solely in the case of clause (x), shall not include events, changes, occurrences, effects or developments relating to or resulting from (a) changes in general economic or political conditions or the securities, equity, credit or financial markets in general, or changes in or affecting domestic or foreign interest or exchange rates, (b) any decline in the market price or trading volume of the Parent Common Shares or any change in the credit rating of Parent or any of its securities (provided, that the facts and circumstances underlying any such decline or change may be taken into account in determining whether a Parent Material Adverse Effect has occurred to the extent not otherwise excluded by the definition thereof), (c) changes or developments in the industries in which Parent or its Subsidiaries operate, (d) changes in Law or

the interpretation or enforcement thereof after the date of this Agreement, (e) the execution, delivery or performance of this Agreement or the public announcement or pendency or consummation of the Merger or other transactions contemplated hereby, including the impact thereof on the relationships, contractual or otherwise, of Parent or any of its Subsidiaries with employees, partnerships, customers or suppliers or Governmental Entities, (f) compliance with the terms of, or the taking or omission of any action required by, this Agreement or consented to (after disclosure to the Company of all material and relevant facts and information) or requested by the Company in writing, (g) any act of civil unrest, civil disobedience, war, terrorism, cyberterrorism, military activity, sabotage or cybercrime, including an outbreak or escalation of hostilities involving Canada or any other Governmental Entity or the declaration by Canada or any other Governmental Entity of a national emergency or war, or any worsening or escalation of any such conditions threatened or existing on the date of this Agreement, (h) any hurricane, tornado, flood, earthquake, natural disasters, acts of God or other comparable events, (i) any pandemic, epidemic or disease outbreak (including COVID-19) or other comparable events, (j) changes in generally accepted accounting principles or the interpretation or enforcement thereof after the date of this Agreement, (k) any litigation relating to or resulting from this Agreement or the transactions contemplated hereby or (l) any failure to meet internal or published projections, forecasts, guidance or revenue or earning predictions (provided, that the facts and circumstances underlying any such failure may be taken into account in determining whether a Parent Material Adverse Effect has occurred to the extent not otherwise excluded by the definition thereof); except, with respect to clauses (a), (c), (g), (h), (i) and (j), if the impact thereof is materially and disproportionately adverse to Parent and its Subsidiaries, taken as a whole, relative to the impact thereof on the operations in the railroad industry of other participants in such industry, the incremental material disproportionate impact may be taken into account in determining whether there has been a Parent Material Adverse Effect.

“Parent Option” means a compensatory option to purchase Parent Common Shares.

“Parent PSU Award” means a performance-based restricted share unit award in respect of Parent Common Shares (whether such award may be settled in Parent Common Shares that are purchased on the market, newly issued or held in trust for purposes of the applicable Parent Share Plan).

“Parent Share Plan” means any Parent Benefit Plan providing for equity or equity-based compensation.

“Parent Share Price” means the average of the volume weighted averages of the trading prices of Parent Common Shares on NYSE (as reported by Bloomberg L.P. or, if not reported therein, in another authoritative source mutually selected by Parent and the Company in good faith) on each of the 20 consecutive trading days ending on (and including) the trading day that is two trading days prior to the Closing Date.

“Permitted Lien” means (a) any Lien for Taxes or governmental assessments, charges or claims of payment not yet due or payable, being contested in good faith or for which adequate accruals or reserves have been established, (b) any Lien that is a carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s or other similar lien arising in the

Ordinary Course of Business that do not materially detract from the value of or materially interfere with the use of any of the assets, (c) any Lien that is a zoning, entitlement or other land use or environmental regulation by any Governmental Entity, (d) any Lien that is disclosed on the most recent consolidated balance sheet of the Company or Parent, as applicable, or the notes thereto (or securing liabilities reflected on such balance sheet), (e) any Lien that secures indebtedness (i) in existence on the date of this Agreement or (ii) in the case of the Company, not prohibited by Section 5.1(b)(viii), (f) any Lien that is a statutory or common law Lien to secure landlords, lessors or renters under leases or rental agreements, including any purchase money Lien or other Lien securing rental payments under capital lease arrangements, (g) any Lien that is imposed on the underlying fee interest in real property subject to a real property lease, (h) any Lien that was incurred in the Ordinary Course of Business since the date of the most recent consolidated balance sheet of the Company or Parent, as applicable, (i) any Lien that will be released in connection with the Closing, (j) any Lien that is an easement, declaration, covenant, condition, reservation, restriction, other charge, instrument or encumbrance or any other rights-of-way affecting title to real estate (other than those constituting Liens for the payment of indebtedness), (k) any Lien arising in the Ordinary Course of Business under worker's compensation, unemployment insurance, social security, retirement and similar legislation, (l) any condition that is a matter of public record or that would be disclosed by a current, accurate survey, a railroad valuation map or physical inspection of the assets to which such condition relates, (m) any Lien created under federal, state or foreign securities Laws, (n) any Lien that is deemed to be created by this Agreement or any other document executed in connection herewith or (o) any other Lien that does not materially impair the existing use of the assets or property of the Company or Parent, as applicable, or any of its Subsidiaries affected by such Lien.

“Person” means an individual, a corporation, a partnership, a limited liability company, an association, a trust or any other entity, group (as such term is used in Section 13 of the Exchange Act) or organization, including a Governmental Entity, and any permitted successors and assigns of such person.

“Privacy Laws” means all Laws concerning the privacy, security or processing of personal information or data, and all rules and regulations promulgated thereunder, including, the Federal Trade Commission Act, the Privacy Act of 1974, the CAN-SPAM Act, the Telephone Consumer Protection Act, the Telemarketing and Consumer Fraud and Abuse Prevention Act, data breach notification Laws, the California Consumer Privacy Act, and the European General Data Protection Regulation.

“Qualifying Termination” means (a) a termination by Parent, the Company or any of their respective Subsidiaries, without Cause, other than as a result of death or disability, or (b) a termination of employment for Good Reason, in each case during the period commencing on the date of the Effective Time and ending on the second anniversary of the Control Date.

“Railroad Law” means the Interstate Commerce Commission Termination Act of 1995, the Surface Transportation Board Reauthorization Act of 2015 or any other Law relating to the regulation of the railroad industry.

“Registered” means, with respect to Intellectual Property, issued by, registered with or the subject of a pending application before any Governmental Entity or Internet domain name registrar.

“Sanctioned Country” means any country or region that is the target of a comprehensive embargo under Export and Sanctions Regulations (as of the date hereof, Cuba, Iran, North Korea, Syria, and the Crimea region of Ukraine).

“Sanctioned Person” means any Person that is the target of sanctions or restrictions under Export and Sanctions Regulations, including: (i) any Person listed on any applicable U.S. or non-U.S. sanctions- or export-related restricted party list, including OFAC’s Specially Designated Nationals and Blocked Persons List or (ii) any Person that is, in the aggregate, 50 percent or greater owned, directly or indirectly, or otherwise controlled by, or acting for the benefit or on behalf of, a Person or Persons described in clause (i).

“Sarbanes-Oxley Act” means the Sarbanes-Oxley Act of 2002.

“SCT” means the Secretaría de Comunicaciones y Transportes (the Secretary of Communications and Transportation of Mexico).

“SEC” means the Securities and Exchange Commission.

“Section 721” means Section 721 of the United States Defense Production Act of 1950 (codified at 50 U.S.C. § 4565), and the regulations promulgated thereunder (31 C.F.R. Parts 800-802).

“Securities Act” means the Securities Act of 1933.

“Sensitive Data” means cardholder data and sensitive authentication data that must be protected in accordance with the requirements of the Payment Card Industry Data Security Standard.

“Significant Subsidiary” means, with respect to any Person, a Subsidiary of such Person that would constitute a “significant subsidiary” of such Person within the meaning of Rule 1-02(w) of Regulation S-X as promulgated by the SEC.

“STB Denial” means (i) STB Final Approval shall not have been obtained by December 31, 2023, or (ii) the STB shall have, by an Order which shall have become final and non-appealable, refused to provide STB Final Approval.

“Subsidiaries” means, with respect to any Person, any corporation, limited liability company, partnership or other organization, whether incorporated or unincorporated, of which (a) at least a majority of the outstanding shares of capital stock of, or other equity interests, having by their terms ordinary voting power to elect a majority of the board of directors or others performing similar functions with respect to such corporation, limited liability company, partnership or other organization is directly or indirectly owned or controlled by such Person or by any one or more of its Subsidiaries, or by such Person and one or more of its

Subsidiaries, or (b) with respect to a partnership, such Person or any other Subsidiary of such Person is a general partner of such partnership.

“Tax Return” means any return, report or similar filing made or required to be made with respect to Taxes, including any information return, claim for refund, amended return or declaration of estimated Taxes.

“Taxes” means any and all federal, state, provincial or local (in each case, whether U.S. or non-U.S.) taxes of any kind (together with any and all interest, penalties, additions to tax, inflationary adjustment, and additional amounts imposed with respect thereto) imposed by any Governmental Entity, including income, branch, capital gains, franchise, windfall or other profits, gross receipts, property, sales, use, capital stock, payroll, employment, unemployment, social security, workers’ compensation, net worth, excise, withholding, ad valorem, value added and goods and services taxes, whether imposed directly or through a collection or withholding mechanism.

“TSX” means the Toronto Stock Exchange.

“U.S.-Canada Income Tax Treaty” means the Convention Between the United States of America and Canada with Respect to Taxes on Income and Capital, dated as of September 26, 1980, as amended.

“willful and material breach” means a material breach that is a consequence of an act undertaken by the breaching party or the failure by the breaching party to take an act it is required to take under this Agreement, with knowledge that the taking of or failure to take such act would, or would reasonably be expected to, result in, constitute or cause a breach of this Agreement.

Section 8.17 Certain Defined Terms. The following terms are defined elsewhere in this Agreement, as indicated below:

<u>Term</u>	<u>Section</u>
Agreement.....	Preamble
Alternative Financing.....	5.13(b)
Anti-Corruption Laws.....	3.8(a)
Canadian Pacific	3.28
Canadian Pacific Agreement.....	3.28
Cancelled Shares	2.1(a)(ii)
Cash Consideration	2.1(a)(i)
Chosen Courts	8.4
Clean Team Agreement	5.3(d)
Clearance Date	5.6(a)
Closing	1.2
Closing Date.....	1.2
Code	2.2(b)(iii)
Common Book-Entry Shares	2.1(a)(i)
Common Certificate.....	2.1(a)(i)

Company	Preamble
Company Additional Amounts	7.3(b)(iii)
Company Alternative Proposal	5.4(g)
Company Approvals	3.3(c)
Company Balance Sheet Date.....	3.6
Company Board	Recitals
Company Capital Allocation Policy	5.1(b)(i)
Company Change of Recommendation	5.4(c)
Company Disclosure Schedules.....	Article 3
Company Employees	5.7(a)
Company Intervening Event	5.4(i)
Company Intervening Event Notice.....	5.4(d)
Company Intervening Event Notice Period	5.4(d)
Company Leased Real Property.....	3.18(a)
Company Material Contract.....	3.21(a)
Company New Series Preferred Stock.....	3.2(a)
Company Option.....	2.3(a)
Company Performance Share Award.....	2.3(c)
Company Permits.....	3.7(b)
Company Preferred Stock	3.2(a)
Company Qualifying Transaction.....	7.3(a)(i)
Company Real Property Lease.....	3.18(a)
Company Recommendation.....	3.3(b)
Company Restricted Share Award.....	2.3(b)
Company SEC Documents	3.4(a)
Company Severance Plans.....	5.7(a)
Company Stockholder Approval.....	3.20
Company Stockholder Meeting	5.6(c)
Company Superior Proposal	5.4(h)
Company Superior Proposal Notice.....	5.4(c)
Company Superior Proposal Notice Period	5.4(c)
Company Tax Counsel.....	6.2(e)
Company Termination Fee	7.3(a)(i)
Company Termination Payments.....	7.3(d)
Company Top Customer	3.22(a)
Company Top Supplier	3.22(a)
Confidentiality Agreement.....	5.3(d)
Consents	5.8(a)
CP Termination Fee Refund	7.3(c)
Debt Commitment Letters.....	4.17(a)
Debt Financing.....	4.17(a)
Definitive Agreements	5.13(a)
DGCL.....	Recitals
Director Deferred Share	2.3(d)
Dissenting Shares.....	2.1(c)
Effective Time	1.3

End Date.....	7.1(b)(i)
Enforceability Exceptions	3.3(a)
Exchange Agent.....	2.2(a)
Exchange Fund.....	2.2(a)
Excluded Shares.....	2.1(a)(ii)
Export and Sanctions Regulations	3.9(a)
Fair Value.....	4.23(d)
FCC	3.3(c)
FCPA.....	3.8(a)
Financing Amounts.....	4.17(d)
Financing Entities	8.16
Form F-4	3.14
Fractional Share Cash Amount	2.1(e)(i)
Governmental Entity.....	3.3(c)
Indemnified Party.....	5.11(b)
Law	3.7(a)
Laws.....	3.7(a)
Merger Consideration	2.1(a)(i)
Merger Sub.....	Preamble
Merger Sub Common Shares	4.18
Merger.....	Recitals
New Plans	5.7(a)
Old Plans.....	5.7(a)
Owned Real Property.....	3.18(b)
Parent	Preamble
Parent Additional Amounts.....	7.3(a)(ii)
Parent Balance Sheet Date	4.6
Parent Board.....	Recitals
Parent Disclosure Schedules	Article 4
Parent Class A Preferred Shares	4.2(a)
Parent Class B Preferred Shares	4.2(a)
Parent Permits	4.7(b)
Parent Public Documents.....	4.4(a)
Parent SEC Documents.....	4.4(a)
Permits	3.7(b)
Post-Closing Disposition	5.20
Preferred Book-Entry Shares	2.1(a)(iv)
Preferred Certificate.....	2.1(a)(iv)
Preferred Merger Consideration	2.1(a)(iv)
Proceeding.....	5.11(b)
Proxy Statement/Prospectus.....	3.14
Regulatory Termination Fee	7.3(b)(i)
Representatives	5.3(a)
Share Consideration	2.1(a)(i)
STB	3.3(c)
STB Approval Application	5.8(c)(ii)

STB Final Approval.....	5.8(c)(iii)
STB Voting Trust Approval.....	5.8(c)(i)
Surviving Corporation	1.1
Termination Date	5.1(a)
Voting Trust.....	5.8(c)(i)
Voting Trust Agreement	5.8(c)(i)
Voting Trust Transaction	5.8(c)(i)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the date first above written.

CANADIAN NATIONAL RAILWAY COMPANY

By: 
Name: Jean-Jacques Ruest
Title: President and Chief Executive Officer

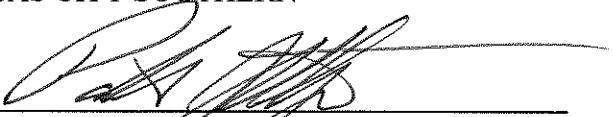
BROOKLYN MERGER SUB, INC.

By: 
Name: Jean-Jacques Ruest
Title: President

[Signature pages to Agreement and Plan of Merger]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered as of the date first above written.

KANSAS CITY SOUTHERN

By: 

Name: Patrick Ottensmeyer

Title: President and Chief Executive Officer

EXHIBIT A

This VOTING TRUST AGREEMENT (“**Trust Agreement**”), dated as of [•], 2021, by and among Canadian National Railway Company, a Canadian corporation (“**Parent**”), Brooklyn US Holding, Inc., a Delaware corporation and wholly owned subsidiary of Parent (“**Holdco**”), and David L. Starling (“**Trustee**” and, together with the Parent and Holdco, the “**Parties**” and each, a “**Party**”).

WITNESSETH:

WHEREAS, it is intended that pursuant to, and upon the terms and conditions set forth in, the Agreement and Plan of Merger, dated as of May 21, 2021 (the “**Merger Agreement**”) (a copy of which is attached hereto as Exhibit A), by and among Parent, Brooklyn Merger Sub, Inc., a Delaware corporation and a direct wholly owned subsidiary of Holdco and an indirect wholly owned subsidiary of Parent (“**Merger Sub**”), and Kansas City Southern, a Delaware corporation (“**KCS**”), Merger Sub will merge with and into KCS (the “**Merger**”), with the entity surviving the Merger being referred to herein as the “**Company**”;

WHEREAS, it is intended that the consummation of the Merger will occur prior to any issuance by the Surface Transportation Board (the “**STB**”) of any required approval for, or exemption of, Parent’s control of the Company;

WHEREAS, Parent intends, contemporaneously with the consummation of the Merger, to cause the deposit of all of the outstanding common shares of the Company in an independent, irrevocable voting trust (the “**Trust**”) pursuant to 49 C.F.R. Part 1013 and STB precedent, in order to avoid any allegation or assertion that Parent or any affiliate of Parent is controlling or has the power to control the Company prior to the receipt of any required STB approval or exemption;

WHEREAS, the deposit of all of the outstanding common shares of the Company with the Trust is for the purpose of providing assurance that each of Holdco and Parent will satisfy its absolute or contingent obligation under ICCTA and STB rules and precedents to avoid premature control of the Company pending STB review and approval of such control;

WHEREAS, neither the Trustee nor any of its affiliates has any officers or board members in common or any direct or indirect business arrangements or dealings (as described in Paragraph 10 hereof) with Parent, Holdco, the Company or any of their affiliates;

WHEREAS, the Trustee is willing to act as voting trustee pursuant to the terms of this Trust Agreement and the rules of the STB; and

WHEREAS, Parent, Holdco and the Trustee intend that the Trust formed herein be a trust described in subsection 248(25.2) of the *Income Tax Act* (Canada).

NOW, THEREFORE, the Parties hereto agree as follows:

1. **Appointment of Trustee.** Parent and Holdco hereby appoint David L. Starling as Trustee hereunder, and David L. Starling hereby accepts said appointment and agrees to act as Trustee under this Trust Agreement as provided herein.

2. **Deposit of Company Trust Stock.**

(a) Immediately upon the completion of the Merger, Parent and Holdco agree that Holdco will deposit or cause to be deposited with the Trustee the certificate or certificates for all outstanding common shares of the Company ("**Shares**"). All such certificates shall be duly endorsed or accompanied by proper instruments duly executed for transfer thereof to the Trustee, and shall be exchanged for one or more Voting Trust Certificates substantially in the form attached hereto as Attachment B (the "**Trust Certificates**"), with the blanks therein appropriately filled and showing Holdco (or such wholly owned subsidiary of Parent that holds the Shares immediately prior to the deposit of the Shares with the Trustee, as applicable) as the registered holder of the Trust Certificates. All Shares at any time delivered to the Trustee hereunder are hereinafter called the "**Trust Stock**." The Trustee shall present to the Company all certificates representing Trust Stock for surrender and cancellation of such certificates and for the issuance and delivery to the Trustee of new certificates registered in the name of the Trustee or its nominee. Parent, Holdco and the Trustee agree that the deposit of the Trust Stock with the Trustee pursuant to this Section 2 shall not result in a change in the beneficial ownership of the Shares and shall not result in a sale, disposition, lease or exchange with the Trustee of the Trust Stock.

(b) The Parties agree (i) to treat, for U.S. federal income tax purposes, each beneficial owner of Trust Certificates as the beneficial owner of the underlying Trust Stock, (ii) not to take any position inconsistent with the treatment described in (i) on any tax return, in any tax proceeding or otherwise except to the extent required by a "determination" within the meaning of Section 1313(a) of the Internal Revenue Code of 1986, as amended; and (iii) to treat, for Canadian federal income tax purposes, the trust created by this Trust Agreement as a trust described in subsection 248(25.2) of the *Income Tax Act* (Canada) and to not take any position inconsistent with such treatment on any tax return, in any tax proceeding or otherwise.

3. **Acquisition of Additional Shares or Securities.** Parent agrees that immediately upon receipt, acquisition or purchase by it or any of its affiliates of any additional Shares, or any other voting securities of the Company, it will deposit or cause to be deposited to the Trustee the certificate or certificates representing such additional Shares or securities.

4. **The Trustee's Powers.**

(a) The Trustee shall be present, in person or represented by proxy, at all annual and special meetings of shareholders of the Company so that all Trust Stock may be counted for the purposes of determining the presence of a quorum at such meetings. The Trustee shall be entitled and it shall be its duty to exercise any and all voting rights in respect of the Trust Stock either in person or by proxy or consent, as hereinafter provided, unless otherwise directed by an order of the STB or a court of competent jurisdiction. Parent and Holdco agree, and the

Trustee acknowledges, that the Trustee shall not participate in or interfere with the management of the Company and shall take no other actions with respect to the Company except in accordance with the terms hereof, the terms of the Merger Agreement, the certificate of incorporation and bylaws of the Company or any orders of the STB. The Trustee shall exercise all voting rights in respect of the Trust Stock in favor of any proposal or action necessary or desirable to effect, or consistent with the effectuation of, the acquisition of the Company by Parent pursuant to the Merger Agreement. In exercising the Trustee's voting rights with respect to the Trust Stock, the Trustee shall vote in accordance with, and to maintain in effect, the terms and intent of the Merger Agreement and the certificate of incorporation and bylaws of the Company, including, but not limited to, the following: the Trustee shall not sell, lease, assign, transfer, alienate, pledge, encumber or hypothecate the Trust Stock or any major assets of the Company or any right or interest therein, whether voluntarily or by operation of law or by gift or otherwise, nor shall the Trustee cause the Company to merge or consolidate with or into any other entity, without the prior written authorization of Parent (other than in connection with a disposition pursuant to Paragraph 9). In addition, until the STB has issued a final order approving the Merger and common control of the Company by Parent, the Trustee shall vote all shares of Trust Stock to cause any other proposed merger, business combination or similar transaction (including, without limitation, any consolidation, sale of all or substantially all the assets, reorganization, recapitalization, liquidation or winding up of or by the Company) involving the Company, but not involving Parent or one of its affiliates (other than in connection with a disposition pursuant to Paragraph 9), not to be effected. The Trustee shall vote all shares of Trust Stock in favor of any proposal or action necessary or desirable to dispose of Trust Stock in accordance with Paragraph 9 hereof.

(b) Except as otherwise expressly provided herein, the Trustee shall vote all shares of Trust Stock with respect to all matters, including, without limitation, the election or removal of directors, voted on by the stockholders of the Company (whether at a regular or special meeting or pursuant to a unanimous written consent) in the Trustee's sole discretion, having due regard for the interests of the holders of the Trust Certificates as investors in the Company, determined without reference to such holders' interests in railroads other than the Company or its subsidiaries; provided that the Trustee shall not vote the Trust Stock in favor of taking or doing any act which would violate any provision of the Merger Agreement (or impede the Company's performance thereunder) or violate any provision of the certificate of incorporation and by-laws of the Company, or which if taken or done prior to the consummation of the Merger would have been a violation of the Merger Agreement or the certificate of incorporation and by-laws of KCS. Notwithstanding the foregoing provisions of this Paragraph 4 or any other provision of this Agreement, the registered holder of a Trust Certificate may at any time — but only with the prior written approval of the STB — instruct the Trustee in writing to vote the Trust Stock represented by such Trust Certificate in any manner, in which case the Trustee shall vote such shares in accordance with such instructions. In exercising its voting rights in accordance with this Paragraph 4, the Trustee shall take such actions at all annual, special or other meetings of stockholders of the Company or in connection with any action by consent in lieu of a meeting.

5. **Irrevocable Trust.** This Agreement and the nomination of the Trustee during the term of the trust shall be irrevocable by Parent and its affiliates and shall terminate only in accordance with the provisions of Paragraphs 9 and 15 hereof.

6. Subject to Paragraphs 4(a) and 4(b), the Trustee shall not exercise the voting powers of the Trust Stock in any way so as to create any dependence or intercorporate relationship between (i) Parent and its affiliates, on the one hand, and (ii) the Company or its affiliates, on the other hand. The term “affiliate” or “affiliates” wherever used in this Trust Agreement shall have the meaning specified in Section 11323(c) of Title 49 of the United States Code, as amended. The Trustee shall not, without the prior approval of the STB, vote the Trust Stock to elect any officer, director, nominee or representative of Parent or any of its affiliates as an officer or director of the Company or of any affiliate of the Company. The Trustee shall be kept informed with respect to the business operations of the Company by means of the financial statements prepared by the Company and any reports and other information when and as the Company would be required to file with the SEC by Sections 13(a) or 15(d) under the Securities Exchange Act of 1934, as amended, if the Company were subject thereto, any other information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act of 1933, as amended and other public disclosure documents periodically filed by the Company and affiliates of the Company with the STB, copies of which shall be promptly furnished to the Trustee by the Company, and such other periodic reports as the Trustee may request from time to time, and the Trustee shall be fully protected in relying upon such information. The Trustee shall not be liable for any mistakes of fact or law or any error of judgment, or for any act or omission, except as a result of the Trustee’s willful misconduct or gross negligence.

7. **Transfer of Trust Certificates.** All Trust Certificates shall be transferable on the books of the Trustee by the registered holder upon the surrender thereof properly assigned, in accordance with rules from time to time established for the purpose by the Trustee. Until so transferred, the Trustee may treat the registered holder as owner of the applicable Trust Certificates for all purposes. Each transferee of a Trust Certificate issued hereunder shall, by acceptance thereof, assent to and become a party to this Trust Agreement, and shall assume all attendant rights and obligations.

8. **Dividends and Distributions.** Pending the termination of this Trust as hereinafter provided, the Trustee shall, immediately following the receipt of each cash dividend or cash distribution as may be declared and paid upon the Trust Stock, pay the same over to or as directed the registered holder(s) of Trust Certificates hereunder as then known to the Trustee. The Trustee shall receive and hold dividends and distributions other than cash upon the same terms and conditions as the Trust Stock and shall issue Trust Certificates representing any new or additional securities that may be paid as dividends upon the Trust Stock or otherwise distributed upon the Trust Stock to the registered holder(s) of Trust Certificates in proportion to their respective interests.

9. **Disposition of Trust Stock; Termination of Trust.**

(a) This Trust is accepted by the Trustee subject to the right hereby reserved in Parent at any time to cause Holdco to sell or make any other disposition of the whole or any part of the Trust Stock, whether or not an event described in subparagraph (b) below has occurred. The Trustee shall take all actions reasonably requested by Parent with respect to (including, without limitation, exercising all voting rights in respect of Trust Stock in favor of any proposal or action necessary or desirable to effect, or consistent with the effectuation of) any proposed direct or indirect sale or other disposition of the whole or any part of the Trust Stock by

Parent. The Trustee shall at any time upon the receipt of a direction from Parent signed by its President and Chief Executive Officer or one of its authorized officers designating the person or entity to whom Parent has directly or indirectly sold or otherwise disposed of the whole or any part of the Trust Stock and certifying that such person or entity is not an affiliate of Parent and has all necessary regulatory authority, if any be required, to purchase the Trust Stock (upon which certification the Trustee shall be entitled to rely), immediately transfer to the person or entity therein named all the Trustee's right, title and interest in such amount of the Trust Stock as may be set forth in said direction. If any regulatory authority or approval, including STB approval, is required for such transfer, Parent will not give any such direction unless and until such regulatory authority or approval is obtained. If the foregoing direction shall specify all of the Trust Stock, then following transfer of the Trustee's right, title and interest therein, and in the event of a sale thereof, upon delivery to or upon the order of the registered holder(s) of the Trust Certificates of the proceeds of such sale, this Trust shall cease and come to an end. If the foregoing direction is as to only a part of the Trust Stock, then this Trust shall cease as to said part upon such transfer, and distribution of the net proceeds therefrom in the event of sale, but shall remain in full force and effect as to the remaining part of the Trust Stock. In the event of a direct or indirect sale of Trust Stock by Parent, the Trustee shall, to the extent the consideration therefor is payable to or controllable by the Trustee, promptly pay, or cause to be paid upon the order of Parent the net proceeds of such sale on a pro rata basis to the registered holder(s) of the Trust Certificates. It is the intention of this paragraph that no violations of 49 U.S.C. Section 11323 will result from a termination of this Trust.

(b) In the event the STB Approval (as defined below) shall have been granted, then immediately upon the direction of Parent and the delivery of a certified copy of such order of the STB or other governmental authority with respect thereof, or, in the event that Subtitle IV of Title 49 of the United States Code, or other controlling law, is amended to allow Parent or its affiliates to acquire control of the Company without obtaining STB or other governmental approval, upon delivery of an opinion of independent counsel selected by the Trustee that no order of the STB or other governmental authority is required, the Trustee shall transfer to or upon the order of the registered holder(s) of Trust Certificates hereunder as then known to the Trustee, its right, title and interest in and to all of the Trust Stock then held by it in accordance with the terms, conditions and agreements of this Trust Agreement and not theretofore transferred by it as provided in subparagraph (a) hereof, and upon such transfer this Trust shall cease and come to an end.

(c) In the event that there shall have been an STB Denial (as defined below), Parent shall use its reasonable best efforts to, directly or indirectly, (i) sell the Trust Stock to one or more eligible purchasers, or (ii) otherwise dispose of the Trust Stock, during a period of two years after such STB Denial or such extension of that period as the STB shall approve. Any such disposition shall be subject to any jurisdiction of the STB to oversee Parent's direct or indirect divestiture of Trust Stock. At all times, the Trustee shall continue to perform its duties under this Trust Agreement and, should Parent be unsuccessful in its efforts to directly or indirectly sell or distribute the Trust Stock during the period referred to, the Trustee shall as soon as practicable sell the Trust Stock for cash to one or more eligible purchasers in such manner and for such price as the Trustee in its discretion shall deem reasonable after consultation with the Parent. (An **"eligible purchaser"** hereunder shall be a person or entity that is not affiliated with the Parent and which has all necessary regulatory authority, if any be required, to purchase the Trust Stock.)

Parent agrees to cooperate with the Trustee in effecting such disposition, and the Trustee agrees to act in accordance with any direction made by Parent as to any specific terms or method of disposition, to the extent not inconsistent with the requirements of the terms of any STB or court order. The proceeds of the sale shall be distributed on a pro rata basis to or upon the order of the registered holder(s) of the Trust Certificates hereunder as then known to the Trustee. The Trustee may, in its reasonable discretion, require the surrender to it of the Trust Certificates hereunder before paying to the holder its share of the proceeds. Upon disposition of the Trust Stock pursuant to this Paragraph 9(c), this Trust shall cease and come to an end.

(d) Unless sooner terminated pursuant to any other provision herein contained, this Trust Agreement shall terminate on December 31, 2025, and may be extended by the Parties hereto, so long as no violation of 49 U.S.C. Sections 11323 will result from such termination or extension. All Trust Stock and any other property held by the Trustee hereunder upon such termination shall be distributed on a pro rata basis to or upon the order of the registered holder(s) of Trust Certificates hereunder as then known to the Trustee. The Trustee may, in its reasonable discretion, require the surrender to it of the Trust Certificates hereunder before the release or transfer of the stock interests evidenced thereby.

(e) The Trustee shall promptly inform the STB of any transfer or disposition of Trust Stock pursuant to this Paragraph 9.

(f) Except as provided in this Paragraph 9, the Trustee shall not dispose of, or in any way encumber, the Trust Stock.

(g) Notwithstanding the foregoing, if the STB issues a declaratory order that the termination of the Trust will not cause Parent or its affiliates to have control of the Company, the Trustee shall transfer on a pro rata basis to or upon the order of the registered holder(s) of Trust Certificates hereunder as then known to the Trustee, its right, title and interest in and to all of the Trust Stock then held by it in accordance with the terms and conditions of this Trust Agreement and not theretofore transferred by it as provided in subparagraph (a) hereof, and this Trust shall cease and come to an end. The Trustee may, in its reasonable discretion, require the surrender to it of the Trust Certificates hereunder before the release or transfer of the Trust Stock evidenced thereby.

(h) As used in this Paragraph 9, the terms “STB Approval” and “STB Denial” shall have the following meanings:

(i) “STB Approval” means the issuance by the STB of a decision, which decision shall become effective and which decision shall not have been stayed or enjoined, that (A) constitutes a final agency action approving, exempting or otherwise authorizing the acquisition of control over the Company’s railroad operations by Parent and its affiliates, without the imposition of conditions that Parent, by written notice to the Trustee, has deemed to be unacceptable, and (B) does not require any change in the consideration paid or to be paid pursuant to the Merger Agreement or other material provisions thereof, or any change to the certificate of incorporation or by-laws of the Company, unless Parent, by written notice to the Trustee, has determined any such change to be acceptable to Parent.

(ii) “STB Denial” means (A) STB Approval shall not have been obtained by December 31, 2023, or (B) the STB shall have, by an order which shall have become final and no longer subject to review by the courts, refused to approve the control referred to in clause (A) of the definition of STB Approval.

10. **Independence of Trustee.** Neither the Trustee nor any affiliate of the Trustee may have (a) any officers, or members of their respective boards or directors, in common with Parent or any of its affiliates, or (b) any direct or indirect business arrangements or dealings, financial or otherwise, with Parent or any of its affiliates, other than dealings pertaining to establishment and carrying out of this Trust. The Trustee hereby agrees that during the term of the Trust, the Trustee shall not own any stock or securities of Parent or any of its affiliates; provided, that, for the avoidance of doubt, the foregoing shall not prohibit the Trustee from owning any interests in any independently-managed diversified mutual fund that owns stock or securities of Parent and/or any of its affiliates. Neither Parent nor its affiliates shall purchase the stock or securities of the Trustee or any affiliate of the Trustee.

11. **Compensation for Trustee.** The Trustee shall be entitled to receive reasonable and customary compensation for all services rendered by it as Trustee under the terms hereof, and said compensation to the Trustee, together with all counsel fees, taxes, or other expenses reasonably incurred hereunder, shall be promptly paid by Parent.

12. **Trustee May Act Through Agents.** The Trustee may at any time or from time to time appoint an agent or agents and may delegate to such agent or agents the performance of any administrative duty of the Trustee and be entitled to reimbursement for the fees and expenses of such agents.

13. **Responsibilities and Indemnification of the Trustee.** The Trustee shall not be answerable for the default or misconduct of any agent or attorney appointed by it in pursuance hereof if such agent or attorney shall have been selected with reasonable care. The duties and responsibilities of the Trustee shall be limited to those expressly set forth in this Trust Agreement. The Trustee shall be fully protected by acting in reliance upon any notice, advice, direction or other document or signature reasonably believed by the Trustee to be genuine. The Trustee shall not be responsible for the sufficiency or accuracy of the form, execution, validity or genuineness of the Trust Stock, or of any other documents, or of any endorsement thereon, or for any lack of endorsement thereon, or for any description therein, nor shall the Trustee be responsible or liable in any respect on account of the identity, authority or rights of the persons executing or delivering or purporting to execute or deliver any such Trust Stock or other document or endorsement or this Trust Agreement, except for the execution and delivery of this Trust Agreement by this Trustee. Parent agrees that it will at all times protect, indemnify and save harmless the Trustee from any loss, damages, liability, cost or expense of any kind or character whatsoever in connection with this Trust, except those, if any, resulting from the gross negligence or willful misconduct of the Trustee, and will at all times undertake, assume full responsibility for, and pay on a current basis, but at least quarterly, all cost and expense of any suit or litigation of any character, whether or not involving a third party, including any proceedings before the STB, with respect to the Trust Stock or this Trust Agreement, and if the Trustee shall be made a party thereto, or be the subject of any investigation or proceeding (whether formal or informal), the Parent will pay all costs, damages and expenses, including

reasonable counsel fees, to which the Trustee may be subject by reason thereof; provided, however, that Parent shall not be responsible for the cost and expense of any suit that the Trustee shall settle without first obtaining Parent's written consent. The indemnification obligations of Parent shall survive any termination of this Trust Agreement or the removal, resignation or other replacement of the Trustee. The Trustee may consult with counsel selected by it and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or omitted or suffered by the Trustee hereunder in good faith and in accordance with such opinion.

14. **Trustee to Give Account to Holders.** To the extent requested to do so by Parent, Holdco or any other registered holder of a Trust Certificate, the Trustee shall furnish to the Party making such request full information with respect to (a) all property theretofore delivered to it as Trustee, (b) all property then held by it as Trustee, and (c) all action theretofore taken by it as Trustee.

15. **Resignation, Succession, Disqualification of Trustee.** The Trustee, or any trustee hereafter appointed, may at any time resign by giving sixty days' written notice of resignation to Parent, Holdco and the STB. Parent shall at least fifteen days prior to the effective date of such notice appoint a successor trustee which shall satisfy the requirements of Paragraph 10 hereof. If no successor trustee shall have been appointed and shall have accepted appointment at least fifteen days prior to the effective date of such notice of resignation, the resigning Trustee may petition any authority or court of competent jurisdiction for the appointment of a successor trustee. Upon written assumption by the successor trustee of the Trustee's powers and duties hereunder a copy of the assumption shall be delivered by the Trustee to Parent and to Holdco, and the STB and all registered holders of Trust Certificates shall be notified of such assumption, whereupon the Trustee shall be discharged of its powers and duties hereunder and the successor trustee shall become vested therewith. In the event of any material violation by the Trustee of the terms and conditions of this Trust Agreement, the Trustee shall become disqualified from acting as trustee hereunder as soon as a successor trustee shall have been selected in the manner provided by this paragraph.

16. **Amendment.** This Trust Agreement may from time to time be modified or amended by agreement executed by the Trustee, Parent, Holdco and any other registered holder(s) of the Trust Certificates (a) pursuant to an order of the STB, (b) with the prior approval of the STB, (c) in order to comply with any order of the STB, or (d) upon receipt of an opinion of counsel satisfactory to the Trustee and the registered holder(s) of Trust Certificates that an order of the STB approving such modification or amendment is not required and that the amendment is authorized under the Merger Agreement and is consistent with the regulations of the STB regarding voting trusts.

17. **Governing Law; Powers of the STB.**

(a) THIS AGREEMENT SHALL BE DEEMED TO BE MADE IN AND IN ALL RESPECTS SHALL BE INTERPRETED, CONSTRUED AND GOVERNED BY AND IN ACCORDANCE WITH THE LAW OF THE STATE OF DELAWARE WITHOUT REGARD TO THE CONFLICT OF LAW PRINCIPLES THEREOF (OR ANY OTHER JURISDICTION) TO THE EXTENT THAT SUCH PRINCIPLES WOULD DIRECT A

MATTER TO ANOTHER JURISDICTION, except that, to the extent any provision hereof may be found inconsistent with the ICC Termination Act of 1995, as amended, (the “Act”) or regulation or decisions promulgated thereunder by the STB, such Act, decisions, and regulations shall control and such provision hereof shall be given effect only to the extent permitted by such Act and regulations. In the event that the STB shall, at any time hereafter by final order, find that compliance with law requires any other or different action by the Trustee than is provided herein, the Trustee shall act in accordance with such final order instead of the provisions of this Trust Agreement.

(b) Unless provided otherwise in the Act, each of the Parties agrees that: (i) it shall bring any action or proceeding in respect of any action or proceeding in respect of any claim arising out of or otherwise relating to this Agreement or the transactions contemplated hereby (the “Transactions”) exclusively in the Court of Chancery of the State of Delaware, or (and only if) such court finds it lacks subject matter jurisdiction, the Superior Court of the State of Delaware (Complex Commercial Division); provided that if the subject matter over the matter is the subject of the proceeding is vested exclusively in the United States federal courts, such proceeding shall be heard in the United States District Court for the District of Delaware (the “Chosen Courts”) and (ii) solely in connection with such proceedings, such Party (A) irrevocably and unconditionally submits to the exclusive jurisdiction of the Chosen Courts, (B) waives any objection to the laying of venue in any such action or proceeding in the Chosen Courts, (C) waives any objection that the Chosen Courts are an inconvenient forum or do not have jurisdiction over any Party, (D) consents to mailing of process or other papers in connection with any such action or proceeding in the manner provided in Paragraph 22 or in such other manner as may be permitted by applicable law shall be valid and sufficient service thereof and (E) shall not assert as a defense, any matter or claim waived by the foregoing clauses (A) through (D) of this Section 17(b) or that any order issued by the Chosen Courts may not be enforced in or by the Chosen Courts.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY BE IN CONNECTION WITH, ARISE OUT OF OR OTHERWISE RELATE TO THIS AGREEMENT, ANY INSTRUMENT OR OTHER DOCUMENT DELIVERED PURSUANT TO THIS AGREEMENT OR OTHER DOCUMENT DELIVERED PURSUANT TO THIS AGREEMENT OR THE TRANSACTIONS, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY PROCEEDING DIRECTLY OR INDIRECTLY, IN CONNECTION WITH, ARISING OUT OF OR OTHERWISE RELATING TO THIS AGREEMENT, ANY INSTRUMENT OR OTHER DOCUMENT DELIVERED PURSUANT TO THIS AGREEMENT OR THE TRANSACTIONS. EACH PARTY HEREBY ACKNOWLEDGES AND CERTIFIES (i) THAT NO REPRESENTATIVE OF THE OTHER PARTIES HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTIES WOULD NOT, IN THE EVENT OF ANY ACTION OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) IT UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) IT MAKES THIS WAIVER VOLUNTARILY AND (iv) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE TRANSACTIONS, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS,

ACKNOWLEDGMENTS AND CERTIFICATIONS CONTAINED IN THIS PARAGRAPH 17(c).

18. **Counterparts.** This Trust Agreement is executed in three counterparts, each of which shall constitute an original, and one of which shall be retained by Parent, one by Holdco, and the other by the Trustee.

19. **Filing with the STB.** A copy of this Agreement and any amendments or modifications thereto shall be filed with the STB by Parent.

20. **Successors and Assigns.** This Trust Agreement shall be binding upon the successors and assigns to the Parties hereto, including without limitation successors to Parent by merger, consolidation or otherwise.

21. **Successions of Functions.** For purposes of this Trust Agreement, the term “Surface Transportation Board” or “STB”, includes any successor agency or governmental department that is authorized to carry out the responsibilities now carried out by the STB with respect to voting trusts and control of common carriers.

22. **Notices.** All notices, requests, instructions, consents, claims, demands, waivers, approvals and other communications to be given or made hereunder by one or more Parties to one or more of the other Parties shall be in writing and shall be deemed to have been duly given or made on the date of receipt by the recipient thereof if received prior to 5:00 p.m. in the place of receipt and such day is a Business Day, as defined in the Merger Agreement (or otherwise on the next succeeding Business Day) if (a) served by personal delivery or by a nationally recognized overnight courier service upon the Party or Parties for whom it is intended, (b) delivered by registered or certified mail, return receipt requested or (c) sent by email; provided that the email transmission is promptly confirmed by telephone or otherwise. Such communications shall be sent to the respective Parties at the following street addresses or email addresses or at such other street address, facsimile number or email address for a Party as shall be specified for such purpose in a notice given in accordance with this Paragraph 22:

If to Parent or Holdco:

Canadian National Railway Company
935 de La Gauchetiere Street West
Montreal, Quebec, Canada H3B 2M9
Attention: Executive VP, Corporate Services and Chief Legal Officer
E-mail: Sean.Finn@cn.ca

With a copy (which shall not constitute notice) to:

Sidley Austin LLP
1501 K Street, N.W.
Washington, D.C. 20005
Attention: Raymond A. Atkins
Terence M. Hynes
E-mail: ratkins@sidley.com
thynes@sidley.com

And a copy (which shall not constitute notice) to:

Cravath, Swaine & Moore LLP
Worldwide Plaza
825 Eighth Avenue
New York City, NY 10019
Attention: Robert I. Townsend, III
Damien R. Zoubek
Jenny Hochenberg
E-mail: rtownsend@cravath.com
dzoubek@cravath.com
jhochenberg@cravath.com

If to the Trustee:

[Trustee]
[Address]
Attention: [•]
Telephone: [•]
E-mail: [•]

With a copy (which shall not constitute notice) to:

[Legal Counsel]
[Address Line 1]
[Address Line 2]
Attention: [•]
Telephone: [•]
Email: [•]

23. **Specific Performance.** Each of the Parties acknowledges and agrees that the rights of each Party to consummate the Merger and the other Transactions are special, unique and of extraordinary character and that if for any reason any of the provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached, immediate and irreparable harm or damage would be caused for which money damages would not be an adequate remedy. Accordingly, each Party agrees that, in addition to any other available remedies a Party may have in equity or at law, each Party shall be entitled to enforce specifically

the terms and provisions of this Agreement and to obtain an injunction restraining any breach or violation or threatened breach or violation of the provisions of this Agreement in the Court of Chancery of the State of Delaware without necessity of posting a bond or other form of security. In the event that any action or proceeding should be brought in equity to enforce the provisions of this Agreement, no Party shall allege, and each Party hereby waives the defense, that there is an adequate remedy at law.

IN WITNESS WHEREOF, Canadian National Railway Company and Brooklyn US Holding, Inc. have caused this Trust Agreement to be executed by their respective authorized officers, and their corporate seals to be affixed, attested by their respective Corporate Secretaries or Assistant Corporate Secretaries, and David L. Starling has caused this Trust Agreement to be executed by one of its duly authorized corporate officers and its corporate seal to be affixed, attested to by its Corporate Secretary or one of its Assistant Corporate Secretaries, all as of the day and year first above written.

Attest:

Canadian National Railway Company

By

[Name]

[Title]

Attest:

Brooklyn US Holding, Inc.

By

[Name]

[Title]

Attest:

David L. Starling

By

[Name]

[Title]

EXHIBIT A
TO VOTING TRUST AGREEMENT

Merger Agreement

ATTACHMENT B
TO VOTING TRUST AGREEMENT

No.

Shares

VOTING TRUST CERTIFICATE

for COMMON STOCK

[\$0.01] PER SHARE PAR VALUE

of

KANSAS CITY SOUTHERN

INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE

THIS IS TO CERTIFY that _____ will be entitled to receive, on the surrender of

this Certificate, on the termination of the Voting Trust Agreement hereinafter referred to, or otherwise as provided in Paragraph 9 of said Voting Trust Agreement, (i) a certificate or certificates, as the case may be, for [•] shares of the Common Stock, \$[0.01] per share par value, of the Company (as defined in said Voting Trust Agreement). This Certificate is issued pursuant to, and the rights of the holder hereof are subject to and limited by, the terms of a Voting Trust Agreement, dated as of [•], 2021, executed by Canadian National Railway Company, a Canadian corporation, Brooklyn US Holding Inc., a Delaware corporation, and [Trustee], as trustee (the “**Voting Trustee**”), a copy of which Voting Trust Agreement is on file in the registered office of the Company at [•], and open to inspection of any stockholder of the Company and the holder hereof. The Voting Trust Agreement, unless earlier terminated (or extended) pursuant to the terms thereof, will terminate on December 31, 2025, so long as no violation of 49 U.S.C. Sections 11323 will result from such termination.

The holder of this Certificate shall be entitled to the benefits of said Voting Trust Agreement, including the right to receive payment equal to the cash dividends, if any, paid by the Company with respect to the [number of shares] represented by this Certificate.

This Certificate shall be transferable only on the books of the undersigned Voting Trustee or any successor, to be kept by it, on surrender hereof by the registered holder in person or by attorney duly authorized in accordance with the provisions of said Voting Trust Agreement, and until so transferred, the Voting Trustee may treat the registered holder as the owner of this Voting Trust Certificate for all purposes whatsoever, unaffected by any notice to the contrary.

By accepting this Certificate, the holder hereof assents to all the provisions of, and becomes a party to, said Voting Trust Agreement.

IN WITNESS WHEREOF, the Voting Trustee has caused this Certificate to be signed by its officer duly authorized.

Dated:

By _____
Authorized Officer

ATTACHMENT B
TO VOTING TRUST AGREEMENT

[FORM OF BACK OF VOTING TRUST CERTIFICATE]

FOR VALUE RECEIVED _____ hereby sells, assigns, and transfers unto _____ the within Voting Trust Certificate and all rights and interests represented thereby, and does hereby irrevocably constitute and appoint _____ Attorney to transfer said Voting Trust Certificate on the books of the within mentioned Voting Trust Certificate on the books of the within mentioned Voting Trustee, with full power of substitution in the premises.

Dated:

In the Presence of:
