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SERVICE DATE – DECEMBER 7, 2006

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34953]

Midtown TDR Ventures LLC – Acquisition Exemption – American Premier

Underwriters, Inc., The Owasco River Railway, Inc., and American Financial Group, Inc.

Midtown TDR Ventures LLC, a noncarrier, filed a notice of exemption under 49 CFR 1150.31 to acquire 156 miles of rail line and certain assets related to Grand Central Terminal in New York City (collectively, Properties) from American Premier Underwriters, Inc. (APU), a noncarrier, APU's wholly owned subsidiary, The Owasco River Railway, Inc., a noncarrier, and APU's parent, American Financial Group, Inc., a noncarrier, (collectively, Sellers). The acquired rail line, referred to as the "Harlem-Hudson Line," extends from milepost 0.0 at Grand Central Terminal in New York City to milepost 5.2 at Mott Junction, thereafter, diverging in two directions, with one line running north to milepost 75.7 at Poughkeepsie, NY, and a second line proceeding east to milepost 11.8 at Woodlawn Junction, then north to milepost 82.0 at Wassaic, NY.

Midtown will acquire a fee simple interest in the Properties, subject to an existing long-term lease to Metropolitan Transportation Authority (MTA), which grants MTA exclusive control over the Harlem-Hudson Line (MTA lease).<sup>1</sup> Midtown indicates that it

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<sup>1</sup> The MTA lease term expires on February 28, 2274. MTA uses the Harlem-Hudson Line to provide commuter service through its subsidiary, Metro-North Commuter Railroad Company.

will not provide any transportation services or acquire a common carrier obligation to provide freight rail service on the Properties.<sup>2</sup>

Freight rail service over the Harlem-Hudson Line is provided pursuant to trackage rights agreements MTA has entered into with CSX Transportation, Inc. (CSXT), and the Delaware and Hudson Railway Company, Inc. (D&H). Midtown indicates that, like the MTA lease, the CSXT and D&H trackage rights agreements will remain in place following the consummation of the proposed transaction, and will be unaffected by this transaction.

Midtown certifies that its projected annual freight revenues as a result of this transaction will not exceed \$5 million, and will not result in the creation of a Class II or Class I rail carrier.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34953, must be filed with the Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of each pleading must be served on George W. Mayo, Jr., Hogan & Hartson LLP, 555 Thirteenth Street, N.W., Washington, DC 20004-1109.

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<sup>2</sup> Simultaneously with the filing of this notice, Midtown has filed a motion to dismiss the notice of exemption in this proceeding, arguing that the Board lacks jurisdiction over the proposal. The motion will be addressed in a subsequent Board decision.

Board decisions and notices are available on our website at  
WWW.STB.DOT.GOV.”

Decided: November 30, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams

Secretary