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SERVICE DATE – NOVEMBER 21, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. MCF 21056

TEDESCO FAMILY ESB TRUST, ET AL.—PURCHASE OF CERTAIN ASSETS AND  
MEMBERSHIP INTERESTS—EVERGREEN TRAILS, INC. D/B/A HORIZON COACH  
LINES, ET AL.

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Authorizing Finance Transaction.

SUMMARY: On October 22, 2013, the Tedesco Family ESB Trust (Family Trust), on behalf of Franmar Leasing, Inc. (Franmar), together with the Francis Tedesco Revocable Trust and the Mark Tedesco Revocable Trust (collectively, Applicants), all noncarriers, filed an application under 49 U.S.C. § 14303 for approval of two companion transactions. The first transaction involves Franmar's purchase of certain motor coach and non-motor coach assets of Evergreen Trails, Inc. d/b/a Horizon Coach Lines (Evergreen) from three garage and terminal facility locations in Florida. The second transaction involves the purchase by the Francis Tedesco Revocable Trust and the Mark Tedesco Revocable Trust of FSCS Corporation's (FSCS) membership interest in Cabana Coaches, LLC (Cabana). The Board is tentatively approving and authorizing the transactions, and, if no opposing comments are timely filed, this notice will be the final Board action. Persons wishing to oppose the application must follow the rules set forth at 49 C.F.R. §§ 1182.5 and 1182.8.

DATES: Comments must be filed by January 6, 2014. Applicants may file a reply by January 21, 2014. If no comments are filed by January 6, 2014, the notice shall be effective on January 7, 2014.

ADDRESSES: Send an original and 10 copies of any comments referring to Docket No. MCF 21056 to: Surface Transportation Board, 395 E Street, S.W., Washington, DC 20423-0001. In addition, send one copy of comments to Applicants' representative: Fritz R. Kahn, 1919 M Street, N.W., 7th Floor, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Jonathon Binet, (202) 245-0368. [Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.]

SUPPLEMENTARY INFORMATION: Family Trust owns and controls three motor carriers of passengers, Academy Express, L.L.C. (MC-413682), Academy Lines, L.L.C. (MC-41016), and Number 22 Hillside, L.L.C. (MC-413631) (collectively, Academy Companies), through Academy Bus, L.L.C., a noncarrier. Francis Tedesco is the sole manager of the individual Academy Companies. According to Applicants, Academy Lines, L.L.C. and Number 22 Hillside, L.L.C. are leading commuter regular route transportation companies operating in the New York metropolitan area and in New Jersey, respectively. Academy Express, L.L.C. operates primarily in the Northeast.

Family Trust also owns and controls Franmar through two noncarriers, Franmar Logistics, Inc. and Academy Services, Inc. Franmar is primarily engaged in the purchase and leasing of motor coaches to the Academy Companies. The persons who own and control the Academy Companies are the trustees of the Francis Tedesco Revocable Trust (Francis Tedesco,

sole trustee) and the Mark Tedesco Revocable Trust (Mark Tedesco, sole trustee), noncarriers, through Family Trust.<sup>1</sup>

Francis W. Sherman owns and controls Cabana (MC-646780) through FSCS. Evergreen, a charter bus operator, (MC-107638) is under the common control of Francis W. Sherman through TMS West Coast, Inc., a noncarrier, and operates in California, Maryland, and Florida, among other states. Cabana is a charter bus operator in Florida, serving Florida ports (including Port Everglades) and Florida airports (including Fort Lauderdale-Hollywood International Airport).

Applicants propose that Franmar will purchase certain motor coach and non-motor coach business assets of Evergreen from three garage and terminal facilities located in Jacksonville, Fla., West Palm Beach, Fla., and Miami, Fla., respectively. Applicants also propose a separate transaction in which the Francis Tedesco Revocable Trust and the Mark Tedesco Revocable Trust purchase 100 percent of FSCS's limited liability membership interest in Cabana. If this transaction is approved, Francis Tedesco, who is the current manager of the Academy Companies, will become the sole manager of Cabana. This transaction will, according to Applicants, permit Cabana to continue passenger transportation services in Florida.

Under 49 U.S.C. § 14303(b), the Board must approve and authorize a transaction that it finds consistent with the public interest, taking into consideration at least: (1) the effect of the proposed transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees. Applicants have submitted information, as required by 49 C.F.R. § 1182.2, including the information to demonstrate that the

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<sup>1</sup> Francis Tedesco and Mark Tedesco are the settlors of Family Trust.

proposed transactions are consistent with the public interest under 49 U.S.C. § 14303(b), and a statement that the combined 12-month aggregate gross operating revenues of the motor carriers of passengers directly or indirectly owned and controlled by Francis W. Sherman, and those directly or indirectly owned and controlled by Applicants, exceeded \$2 million. See 49 U.S.C. § 14303(g).

Applicants assert that the proposed transactions are in the public interest because Evergreen will be selling vehicles it no longer desires to operate and the public will lose no service as a result of the Franmar-Evergreen transaction because the same number of buses will continue to operate. Applicants also assert that Francis Tedesco is a “recognized leader in the motorbus industry”<sup>2</sup> and will be able to procure equipment and fuel at lower prices thereby allowing Academy Companies to maintain a high level of service while lowering rates on charter bus operations to and from Port Everglades and Florida ports and Florida airports. Applicants further state that the proposed transactions would have no effect on total fixed charges and no effect on the quality of the human environment and the conservation of energy resources. Finally, Applicants state that the transaction would have no adverse effect on Evergreen and Cabana’s employees as Cabana will retain its employees and will interview and offer employment to Evergreen employees.

On the basis of the application, the Board finds that the proposed transactions are consistent with the public interest and should be tentatively approved and authorized. If any opposing comments are timely filed, these findings will be deemed vacated, and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to

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<sup>2</sup> Id. at 7.

reconsider the application. See 49 C.F.R. § 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this notice will take effect automatically and will be the final Board action.

The application and Board decisions and notices are available on our website at [WWW.STB.DOT.GOV](http://WWW.STB.DOT.GOV).

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed transactions are approved and authorized, subject to the filing of opposing comments.
2. If opposing comments are timely filed, the findings made in this notice will be deemed vacated.
3. This notice will be effective on January 7, 2014, unless opposing comments are filed by January 6, 2014.
4. A copy of this decision will be served on: (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, S.E., Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 1200 New Jersey Avenue, S.E., Washington, DC 20590.

Decided: November 18, 2013.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.