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SERVICE DATE – AUGUST 18, 2010

DO

FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35400]

B. Robert DeMento, Jr., and Baggio Herman DeMento—Continuance in Control
Exemption—BDB Company and Swanson Rail Transfer, L.P.

B. Robert DeMento, Jr., and Baggio Herman DeMento (DeMento Brothers), noncarrier partners, have filed a verified notice of exemption to continue in control of BDB Company (BDB) and Swanson Rail Transfer, L.P. (SRT), upon their becoming Class III rail carriers. The DeMento Brothers do not currently control any rail carriers.

This transaction may not be consummated until September 1, 2010 (30 days after the notice of exemption was filed).

This transaction is related to two other transactions for which notices of exemption have been simultaneously filed: Docket No. FD 35398, BDB Company—Acquisition Exemption—Consolidated Rail Corporation, in which BDB seeks Board approval to acquire from Consolidated Rail Corporation certain rail property in Philadelphia, Pa.; and Docket No. FD 35399, Swanson Rail Transfer, L.P.—Lease and Operation Exemption—BDB Company, in which SRT seeks Board approval to acquire that same property by lease from BDB and to operate the property.

The DeMento Brothers state that: (i) because BDB will be a non-operating carrier and the railroads will not connect with each other, (ii) the transaction is not a part of a

series of anticipated transactions that would connect any of these railroads with one another or any other railroad, and (iii) the transaction does not involve a Class I railroad. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. § 11323. See 49 C.F.R. § 1180.2(d)(2).

Under 49 U.S.C. § 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

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. Petitions for stay must be filed no later than August 25, 2010 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35400, must be filed with the Surface Transportation Board, 395 E Street, S.W., Washington, D.C. 20423-0001. In addition, a copy of each pleading must be served on John F. McHugh, 6 Water Street, New York, N.Y. 10004.

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Decided: August 12, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.