

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36004

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CANADIAN PACIFIC RAILWAY LIMITED

**REPLY TO PETITION OF CANADIAN PACIFIC RAILWAY
FOR DECLARATORY ORDER FILED BY BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYES DIVISION/IBT, BROTHERHOOD OF RAILROAD SIGNALMEN,
AND INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL AND
TRANSPORTATION WORKERS/MECHANICAL DIVISION**

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I. INTRODUCTION

Unable to convince the Board of Directors and major shareholders of Norfolk Southern Corp. (“NSC”) that Canadian Pacific Railway Ltd.’s (“CPRL”) acquisition of NSC is in their best interests, CPRL now seeks to enlist the Board in its so far futile efforts. To achieve that end, CPRL seeks a declaratory order that it might be “possible” that the Board would permit CPRL’s plan to: 1) acquire control of NSC and thus its rail subsidiaries, 2) place the railroad CPRL currently owns (Canadian Pacific (“CP”)) in a voting trust, and 3) install CP’s CEO and other managers at the top of the Norfolk Southern Railway (“NSR”) while the rest of the CP management team remains behind. CPRL claims that such a declaratory order is necessary because it accuses NSC of using uncertainty about how the STB will respond to CPRL’s plan as a shield against CPRL’s overtures. CPRL asserts that “NS’s stockholders can be free to make their own decisions, however, only if the Board removes the claimed uncertainty” by issuing a declaration that the concept of the voting trust/executive replacement/executive retention plan would not violate the Act if CPRL acquired control of “NS”. CPRL contends that such a declaration is mandated by an asserted federal policy of agency neutrality in corporate control battles. CPRL Petition at 1, 8-10.

The Brotherhood of Maintenance of Way Employes Division/IBT (“BMWED”), Brotherhood of Railroad Signalmen (“BRS”), and International Association of Sheet Metal, Air, Rail and Transportation Workers/Mechanical Division (“SMART MD”) (collectively “Unions”), respectfully submit that CPRL’s petition should be denied because the petition is not supported by the facts, and its legal arguments are without merit. Among other things, the Unions submit that: 1) CPRL is improperly attempting to inject the Board into its hostile takeover effort by using the agency as a sword in its fight to control NSC by seeking a ruling on an inchoate plan to use a voting trust and to embed some CP executives in NSC management, while leaving other

members of the CP management team behind at CP; 2) the plan presented by CPRL will not insulate it from a violation of Section 11323(a)(5) by acquiring control of additional carriers without prior Board approval; 3) even if CPRL's plan could shield it from a violation of Section 11323(a)(5), it cannot shield CPRL from a violation of Section 11323(a)(4) if it acquires control of NSC and its subsidiary carriers (even with CP in a voting trust) without prior Board approval; and 4) the CPRL plan is contrary to the public interest,

Besides being wrong on the facts and the law, CPRL's petition is predicated on a number of fundamentally erroneous assumptions.

The Act expressly and unambiguously provides that a person that is not rail carrier (such as CPRL), that already controls a carrier (CP), cannot acquire control of another carrier without prior approval of the Board; and that a non-carrier cannot acquire control of two or more carriers without prior approval by the Board. 49 U.S.C. §11323(a)(5) and (4). In arguing that its scheme is permissible because other [very different] voting trusts have been allowed, CPRL begins from the erroneous premise that all voting trusts are valid and the burden is on opponents to prove otherwise. But the reverse is true. Voting trusts are a policy-based exception to the clear statutory rule; the burden is on the proponent of the trust to prove its validity; especially when, as here, there is no precedent for the CPRL arrangement. Additionally, in assuming that its scheme is permissible because other voting trusts were allowed, and in asserting that the role of the Board is to facilitate mergers, CPRL also fails to acknowledge that the reason for enactment of Section 11323 (and its predecessors) was to regulate transactions between and among carriers and entities that control carriers that created monopolies and oligopolies, degraded rail service, damaged the financial health of essential enterprises, reduced the ability of carriers to invest necessary capital in the railroads; and that the Act was amended to ensure that regulation of these transactions is not evaded by use elaborate corporate devices. *United States v. Marshall*

Transport Co., 322 U.S. 31, 36-40 (1943); *Schwabacher v. United States*, 334 U.S. 958 (1948); *St Joe Paper v. Atlantic Coast Line Railroad*, 347 U.S. 298, 312 (1954).

While CPRL has focused on two of the general transportation policies of the Act—maximizing competition, and minimizing regulation (Petition at 18) it ignores the most relevant and controlling policies contained in Section 11323 (the statutory provision directly involved here)—for close agency regulation of the enumerated transactions, particularly common control transactions. CPRL has also ignored other policy mandates of the Act such as promoting safe and efficient transportation, ensuring development of a sound transportation system, operation without detriment to public health and safety, and encouragement of fair wages and safe and suitable working conditions. 49 U.S.C. §10101. All of those other policies will be imperiled by the planned transaction—that would extract resources from one or both rail systems in order to cover the premium CPRL seeks to pay to persuade NS shareholders to accept the scheme, burden the railroads with debt, and emphasize payouts to the new holding company’s major shareholders like Pershing Square Capital (which is in dire need of a boost in earnings after the Valeant Pharmaceutical debacle. New York Times March 1, 2016 (*Bill Ackman Bets Again On Valeant, Taking A Seat On The Board*)). Exhibit 1 to this Reply Brief.

CPRL asks the Board to assume that all will go not only well, but perfectly, that the share price premium will not require raids on assets, assumption of ruinous debt, deferral of infrastructure investment, furloughs of essential workers, and dramatic concessions by employees because Hunter Harrison (immodestly described by CP as the “greatest railroader of all time”) will sprinkle his magic dust on NS which will result in quick cost savings and revenue growth that will cover the new costs. The “Hunter Harrison effect” is also proffered as the rebuttal to concerns about what will happen to NS if the ultimate transaction is not approved; it is asserted that NS would not be harmed if that occurred because NS will have had the benefit of

the guidance of the great man. CPRL Petition at 14-15. A cult of personality is not a business plan and the presence of CPRL's self-proclaimed rail "demigod" will not be enough to insulate NS, its employees and its customers from the risks of leverage, under-investment in the railroad and ultimate denial of the merger application. At issue is not merely whether Mr. Harrison can successfully run a railroad, but whether the post-transaction carriers can produce the returns needed to cover new debt, pay back cash paid by CP, and buoy the fortunes of Pershing Square without damaging the railroads, their customers and their employees; and whether Mr. Harrison gracing NS with his presence will protect the NSC carriers from harm in the likely event that the transaction is not ultimately approved.

CPRL also argues that the Board should not consider the potential downstream effects of a CP-NS combination— the possibility that a CP-NS combination will lead to follow-on combinations involving the other Class I railroads, possibly to a final consolidation of North American Class I's into two or three railroads— even though consideration of that possibility is a major element of the Board's revised (post-1990s consolidation) merger rules. *Major Rail Consolidation Procedures*, Ex parte No. 582 (Sub No. 1) (June 11, 2001) at 3-5, 43, 2001 WL 648944 *3-*5., *43. CPRL asserts that downstream effects should only be dealt with later when it presents an actual voting trust. But it is CPRL that has injected the Board into this contest, and CPRL has no right to circumscribe the scope of the inquiry, especially given the Board's formalization of the voting trust review process, addition of an express public interest component to that decision and the new mandate to consider downstream effects as a factor in Class I mergers. Further, the mere creation of a voting trust is likely to start NS and CP on a path to combination that may not be reversible, and the possibility of approval or disapproval of the transaction—including approval that will lead inexorably to other transactions involving Class I's (see the late 1990s rail industry and the 2008-2013 airline industry), or disapproval and a

languishing NS. Indeed, the mere prospect of a CP-NS merger might lead to other bids, an inconsistent application, or other Class I consolidation attempts.

Accordingly, CPRL's attempt circumscribe the scope of the Board's decision is not only presumptuous, it is misguided. And to the extent that CPRL thinks the issue should not be addressed before it provides an actual voting trust plan, CPRL is the party that opened the question; CPRL has the option to withdraw its petition, but as long as it seeks a ruling, the downstream effects are necessary considerations.

As the representatives of NS employees— a) whose numbers will surely be reduced by Mr. Harrison, and who will be asked for wage and rules concessions to finance the transaction (especially if the magic dust does not produce the hoped-for results); b) who have been with the railroad for decades, and plan to be there long after Mr. Harrison rides off into the sunset and Mr. Ackman moves on to another financial host—BMWED, BRS and SMART/MD dispute the assumptions on which the CPRL petition are premised. But, more specifically, the Unions submit that the Board should reject CPRL's petition for a declaratory order because its request for help CPRL persuade reluctant NSC shareholders is improper; and the factual allegations and legal arguments on which the petition is premised are fundamentally flawed.

II. FACTS

A. INITIATION OF THE CPRL TAKEOVER EFFORT AND NS'S RESPONSE

Citing NS's recent increased operating ratio, and CP's reduction of its own operating ratio, CPRL approached NS management with a merger proposal. NS management found CPRL's offer uninviting (and it apparently was not awed by the mere prospect of Hunter Harrison deigning to take the helm at NSR). CPRL then tried to sway NS's shareholders with offers of cash and the promise of increased share value in the future, providing what CPRL described as a "sizable premium". CPRL Petition at 3. NS management remained unpersuaded

and raised a number of concerns, including the questions of whether the Board would allow the transaction to occur, what would happen to NS if the transaction proceeded and was not ultimately approved, and whether the voting trust arrangement planned by CPRL would pass muster with the Board. *Id.* at 3. With respect to the voting trust plan, NS requested and then released a paper from former Board Members Mulvey and Nottingham that opined that it would be highly unlikely that the Board would approve either a voting trust or an ultimate CP-NS merger.

B. CPRL's ANSWER TO NS

Not dissuaded by the reluctance of NS's management, CPRL issued a response to the Mulvey/Nottingham paper, engaged in a public relations campaign in support of its effort, and increased the premium it was offering NS shareholders. As part of its public relations campaign CP held a series of conference calls with financial and industry analysts.

In a December 8, 2015 call CPRL officials described the purported public and investor benefits of the proposed merger. A transcript of the call is Exhibit 2 to this Reply Brief. CPRL Executive Vice President and Chief Financial Officer Mark Erceg described the goal of CPRL as creating "an integrated transcontinental railroad", and discussed purported improvements such as "work force optimization" (presumably a corporate euphemism for reducing the work force). *Id.* at 4. Mr. Harrison responded to a question about the plan for "\$550 million in workforce productivity" enhancements and how the work force reductions were handled at CP by stating that change is difficult and sometimes resisted, but "headcount" had been reduced at CN by "close to a third, and that's just fact, I'm not bragging, it is just fact"; and that "we sit down and tell them [the workers] what we are going to do and why we are going to do it, they get it and

they will run for you. If they don't then you have other issues". *Id* at 36.¹ CPRL Special Counsel to the CEO, Paul Guthrie, said that "Hunter Harrison going to NS as the CEO is greatly in the public interest". *Id.* at 5. Bill Ackman (a CP director and principal at CP's largest shareholder) described Hunter Harrison as "the greatest railroader of all time", and made it clear that the move of Mr. Harrison to NS was an inextricable part of the CPRL voting trust plan; that the voting trust and embedding of Mr. Harrison (as well as some other CP executives to be named later) with NS were "connected". *Id* at 13, 33-34. Mr. Harrison was dismissive of public interest concerns, and the Board itself, stating: "[w]hat's in one public's interest is not in another's public interest. So that's just a way of, in my view, it is a way of removing the rules and let the bureaucrats deal with it, which is dumb". *Id* at 29.

In a December 16, 2015 call with analysts (a transcript is Exhibit 3 to this Reply Brief), Mr. Erceg said that the value of NSC stock prior to the CPRL effort was \$79 per share, that it had increased to \$91 per share after the CPRL bid, and that the latest CPRL offer (mixed cash, shares and contingent rights) would be worth "between \$125 and \$140 per share versus their undisturbed value of \$79 or their current share price of approximately \$91". *Id.* at 3. In other words, CPRL would offer \$45 to \$60 per share over the NSC share price before the takeover effort, about a 60%-75% premium. Mr. Ackman explained the premium as follows: "What is presumed in these numbers is that Hunter is running the company. Hunter executes his plan, the operational improvements are exercised; there are no merger synergies, just operational improvements. You just— all you have done here is put in a new CEO, borrow some money, and

¹ See also March 25, 2013 Financial Post article - "*CP Rail may cut as many as 6,000 jobs*", quoting Mr. Harrison as saying "I kind of went through Canada maybe like Sherman went through Atlanta...."; and January 21, 2016 Toronto Star article "*Canadian Pacific to cut 1,000 jobs through attrition*", citing Mr. Harrison as stating that he had cut between 6,000 and 7,000 jobs and would cut 1,000 more. Copies of these articles are Exhibits 4 and 5 to this Reply Brief.

paid out cash to shareholders. And you also own, of course, CP, which is then run by Keith Creel, and that executes its plan”. *Id.* at 6. Mr. Ackman again described Mr. Harrison as “the greatest railroad executive of all time”, and again said that the premium would be covered by the “management change transaction”, and that CPRL would be buying the railroad based on its existing earnings, adding leverage to pay shareholders and adding cash from CPRL and putting Mr Harrison in charge who will institute changes that will cover the costs. *Id.* at 24. In short, the acquisition premium is purportedly to be paid for by the operating genius that is Hunter Harrison, debt, and the performance of Mr. Harrison’s disciple Mr. Creel and other members of the Harrison team who would remain behind at CP.

Regarding the paper produced by former Board Members Mulvey and Nottingham, Mr. Harrison described them as: “the two hired guns, who by the way aren’t very good marksmen either way, who are typical people that have been inside the beltway too long”. *Id.* at 10. Regarding the voting trust generally and the possibility of seeking a declaratory order from the Board, Mr. Ackman stated that “The STB is not going to give you a pretend answer. When you are in a position to apply for a trust, you apply for a trust. They evaluate it and give you an answer”. *Id.* at 16. And Mr. Harrison stated that “we are willing to submit our application and play by the rules and whatever they say we’ll deal with”. *Id.* at 20. However, two months later, after CPRL was unable to persuade NS shareholders that the voting trust and executive embedding plan would pass muster with the Board, CPRL filed its petition seeking a Board opinion regarding a theoretical voting trust/executive replacement plan.

C. CPRL’s Proposed Voting Trust Arrangement

CPRL seeks a declaration from the STB on two issues: (1) whether a voting trust structure pursuant to which CPRL would “hold[] its current rail carrier subsidiaries in an independent, irrevocable voting trust while it acquires control of NS and seeks STB merger

authority potentially could be used to avoid the exercise of unlawful premature control;” and (2) whether it would be “potentially permissible for the chief executive officer of CP [Hunter Harrison,] to terminate his position at CP entities in trust and then to take the comparable position at NS pending merger approval.” CPRL Petition at 2. CPRL also seeks clarification from the STB on a related issue that, to the extent there are any legitimate premature control concerns with this trust structure, such concerns could be adequately addressed through “conditions related to executive compensation and conduct, together with the [STB’s] oversight and enforcement authority.” CPRL Petition at 17-18.

In the Petition, CPRL also describes in more detail what it has previously referred to as the Management Change Transaction. CPRL states that “the CP rail carriers held in trust would continue to be led by CP’s current President and Chief Operating Officer, Keith Creel together with many of the key managers that have overseen CP’s dramatic transformation since 2012. This continuity provides stockholders comfort that CP will continue on its trajectory and continue to be an industry leader in service, efficiency, asset utilization, cost control, and safety.” CPRL Petition at 9. Previous public statements confirm that Mr. Creel will continue Mr. Harrison’s strategy for CP, even after Mr. Harrison departs for NS pursuant to the CP Trust. For example, on the December 16 Call, Mr. Ackman stated that Mr. Creel is “our designee CEO; Hunter has only got a year and a half left on his contract anyway, so we are obviously preparing for that business to be run without Hunter.”

Not only will Mr. Harrison’s strategy continue to be implemented at CP under Mr. Creel, but it also will expand to NS during the pendency of the CP Trust. CPRL notes that the CP Trust “would allow Mr. Harrison to apply the precision railroading model at NS with the expectation of significantly increasing the likelihood that NS will be a more efficient and more valuable asset regardless of the regulatory outcome.” CPRL Petition at 8-9. CPRL further states that “Mr.

Harrison can start the process of developing similar corporate cultures and operational practices [between CP and NS] during the approval process.” CPRL Petition at 15. And as extensively explained in the December 8 Call and the December 16 Call, upon arrival, Mr. Harrison will begin to implement immediately at NS alleged “pre-merger operational improvements” related to efficiency, asset utilization, service, fuel consumption, and competition. On the December 16 call, Mark Erceg, CP’s CFO, emphasized that these operational improvements “are not contingent upon final STB approval.”

III. REVISED VOTING TRUST REGULATIONS

The 2001 revisions to the Board’s rules on major rail mergers created a heightened standard for agency approval of voting trusts in major rail mergers. Under the new regulations (at 1180.4(b)(4)(iv)), a proposed voting trust must be approved in advance by the STB, subject to a formal public review and comment period. Under the new regulations, the STB will approve a voting trust only if: (1) the voting trustee is independent; (2) the voting trust insulates the parties from an illegal control violation; and (3) the voting trust is in the public interest.

When the STB revised its regulations in 2001 it cautioned that “voting trusts should not be used routinely, but rather should be available only for those rare occasions when their use would be beneficial.” *Major Rail Consolidation Procedures*, EP No. 582 (Sub-No. 1) at 36, 2001 WL 648944 *36. And in a January 7, 2016 letter from the STB to the House Judiciary Committee, the Board advised the Committee that “there has been a change in the [STB’s] policy with regard to voting trusts in major mergers” since 2001, and that it will “take a more cautious approach” with respect to the use of voting trusts in major mergers. The trust proposed by CPRL will be the *first* voting trust considered under the STB’s revised regulations. Moreover, it will be structured in a manner that is the opposite of all former voting trusts. In those earlier cases, the acquiring entity placed the acquired carrier in an independent voting trust while seeking Board or

Commission approval of the acquisition. Here, CPRL proposes to acquire NS, fully exercise control from day one while putting its current rail carrier, CP, in a voting trust, while CPRL's designated managers remain in charge of CP. As we show below, that type of arrangement is contrary to law regardless of the merger procedures applicable to the transaction.

IV. STB REGULATION OF CONSOLIDATION AND CONTROL TRANSACTIONS AND RELATIONSHIPS

Section 11323 governs transactions between carriers, and transactions by which non-carrier entities that control carriers may acquire the property of another carrier or acquire control of another carrier. Section 11323(a) provides that specified transactions may be carried-out only with Board approval. Among those transactions are “consolidation or merger of the properties or franchises of at least 2 rail carriers”(subsection (a)(1)); “acquisition of control of at least 2 rail carriers by a person that is not a rail carrier” (subsection (a)(4); and “acquisition of control of a rail carrier” by a “person that is not a rail carrier but that controls any number of carriers” (subsection (a)(5). Section 11323(b) provides that “[a] person may carry out a transaction referred to in Section (a)” or “participate in achieving control or management, including the power to exercise control or management, in a common interest of more than one of those rail carriers, regardless of how that result is achieved, only with the approval and authorization of the Board under this subchapter”. Section 11323(b) further provides that certain transactions are deemed “achievement of control or management”, including:

- (1) A transaction by a rail carrier that has the effect of putting that rail carrier and person affiliated with it, taken together, in control of another rail carrier.
- (2) A transaction by a person affiliated with a rail carrier that has the effect of putting that rail carrier and persons affiliated with it, taken together, in control of another rail carrier.
- (3) A transaction by at least 2 persons acting together (one of whom is a rail carrier or is affiliated with a rail carrier) that has the effect of putting those persons and rail carriers and persons affiliated with any of them, or with any of those affiliated rail carriers, taken together, in control of another rail carrier.

Section 11323 (c) defines a person as “affiliated with a rail carrier”, “if, because of the

relationship between that person and a rail carrier, it is reasonable to believe that the affairs of another rail carrier, control of which may be acquired by that person, will be managed in the interest of the other rail carrier”. Section 10102(3) of the Act defines “control” as including “actual control, legal control, and the power to exercise control, through or by (A) common directors, officers, stockholders, a voting trust, or a holding or investment company, or (B) any other means”.

In *United States v. Marshall Transport Co.*, 322 U.S. 31, 36-40 (1943), the Supreme Court said that former Section 5 (predecessor to current Section 11323) governed acquisitions of control of rail carriers and the purchase of the property of rail carriers by companies that control rail carriers, and specifically acquisitions of property of a rail carrier by a rail carrier controlled by a holding company (322 U.S. 31, 37-40). The Court in *Schwabacher v. United States*, 334 U.S. 182 (1948), observed that ICC authority over rail carrier consolidation and control transactions was a result of frustration with the piecemeal and disjointed nature of rail transportation due to minimal or only local regulation prior to World War I; and that former Section 5 was intended to “insure adequate transportation service by means of securing a fair return on capital devoted to the service, restoration of impaired railroad credit, and regulation of rates, security issues, consolidations and mergers in the interest of the public” to promote “an efficient national transportation system”. *Id.* at 191-192. The Court also noted that Congress has made “the maintenance and development of an economical and efficient railroad system a primary concern. Its legislation must be read with this purpose in mind”. *Id.* at 194. *See also St Joe Paper v. Atlantic Coast Line Railroad*, 347 U.S. 298, 312 (1954) , quoting a Senate report that stated that “Consolidations, mergers, and pooling of traffic have long been regarded as dangerous, if not carefully regulated and supervised; Congress has long had those evils in mind and sought to prevent excesses, while saving what is good in such transactions....” The 1980 and

1996 amendments to the Act that reduced the role of the agency and deregulated certain practices and actions left what is now Section 11323 virtually unchanged from its predecessor provisions (former Sections 5 and 11343) first enacted in 1940.

The Supreme Court has also repeatedly held that the regulatory regime of what is now Section 11323, cannot be evaded by use of holding companies or subsidiaries or other corporate devices. The *Marshall Transport* Court held that a holding company cannot avoid obtaining authorization for acquisition of a carrier's property by use of a subsidiary (322 U.S. at 36, 40). The Court observed that the ICA had adopted a very broad definition of control, "as embracing every type of control in fact" based on the "actualities of intercorporate relationships", including "the power to exercise control or management", and "actual as well as legal control". *Id* at 38-39. *See also Allegheny Corp. v. Breswick & Co.*, 353 U.S. 151, 162-169 (1957))-holding that intra-corporate transactions and transactions involving officers and directors with regard to an already controlled entity that increased the control relationship required prior ICC approval- a transaction that provides an increased voice in management or operation, or ability to accomplish financial transactions or operational changes can be an acquisition of control.

In *Gilbertville Trucking Co. v. United States*, 371 U.S. 115, 123, 124 (1962) the Court held that two carriers had been commonly controlled and were managed in a common interest by virtue of family and management relationships. *Id* at 120-122. The Court stated that "Although Congress had intended the Transportation Act of 1920 to provide complete supervision, the Act proved inadequate to reach the holding company system", and that Congress had amended former Section 5 because transactions had been carried-out through "elaborate corporate devices" "without Commission supervision and in defiance of the will of Congress"; that Section 5 covered "not just corporate and legal devices but control effectuated in any other manner whatsoever"; and that it "encompass[ed] every type of control in fact". *Id.* at 124-125. The Court

stated:

On its face, § 5(4) proscribes not just corporate and legal devices, but control effectuated “in any other manner whatsoever.” Any doubt as to the scope of this phrase was removed when Congress added the definition of “control” to § 1(3)(b) of the Act in the Transportation Act of 1940, 54 Stat. 899-900. This section states that for purposes of § 5 and other sections, “control” “shall be construed to include actual control as well as legal control, whether maintained or exercised through or by reason of the method of or circumstances surrounding organization or operation” We have construed this language to encompass every type of control in fact and have left to the agency charged with enforcement the determination from the facts whether “control” exists, subject to normal standards of review. In this manner, the Commission may adapt § 5(4) to the actualities and current practices of the industry involved and apply it to the extent it feels necessary to protect its jurisdiction under § 5(2) without having to return to Congress for additional authority every time industry practices change.

Id at 223. The Court then rejected the contention that the “informal relationships” among the individuals in the *Gilbertville* case were not enough to constitute control under the Act. *Id.* at 126. And in *County of Marin v. United States*, 356 U.S. 412, 416-419 (1958), the Court held that Commission jurisdiction could not be manipulated by transactions between commonly controlled entities designed to give the appearance of a transaction different from what was actually occurring.

In accordance with this line of precedent the ICC held that an application by an individual who controlled carriers to manage another carrier would involve control of a carrier by a person that controlled carriers because “Control is frequently said to be synonymous with manage”. *John Colletti—Control—Comet Freight Lines*, 38 M.C.C. 95, 97 (1942). And in *East Texas Motor Freight—Control—Consolidated*, 109 M.C.C. 213 (1969), the Commission held that a voting trust did not protect against an illegal control violation “because it is entirely reasonable to believe that [the trustee] was influenced [by an applicant]” in selecting the officers and a manager for the entity to be acquired while it was in trust. *See also Fast Interstate Express Inc. —Purchase (Portion)— Harper Truck Line*, 127 M.C.C. 279 (1976), holding that acquisition of a portion of a carrier by employees of a carrier and nephew of the owner of a carrier was an

acquisition of control governed by former Section 5. The Commission stated that “[c]ontrol can be accomplished by reason of the relationship of the carriers, their officers, directors, and stockholders, business dealings with each other, or other circumstances bearing upon intercorporate relationships”; that “[w]e cannot ignore the effect that an employer has on his employee” notwithstanding disclaimers of intention to control because it is “ability to control” that matters, and that a family relationship creates a “presumption that the carriers will be controlled in a common interest”.

As is noted above, Section 11323 also requires Board approval of transactions that involve acquisition of control of two (or more) carriers by an entity that is not carrier and does not control carriers. Section 11323(a)(4). In *Fox Valley & Western Ltd. – Exemption, Acquisition, and Operation–Certain Lines of Green Bay and Western R.R Co., Fox River Valley R.R. Corp. And the Anhapee & Western Ry. Co.*, 9 ICC 2d 209, 218-219 (1992), the ICC—relying on the *Marshall Transport* explanation of “control”, Section 5’s coverage of all forms of control, and its application to holding companies—held that acquisition of the railroad assets of two rail carriers by a newly formed non-carrier was governed by Section 11323(a)(4). The Commission’s decision was affirmed by the Seventh Circuit in *Fox Valley & Western v. I.C.C.*, 15 F. 3d 641 (7th Cir. 1994), also relying on *Marshall Transport*.

V. ARGUMENT

A. CPRL’s Petition Is an Improper Effort to Use the Board to Enhance its Position and it Should Therefore Be Dismissed

The Unions respectfully submit that the CPRL petition should be denied because it is an improper use of Board proceedings and an unseemly effort to enlist the Board in its effort to persuade NSC shareholders that CPRL’s unprecedented plan will pass muster under Section 11323 and the revised merger procedures.

CPRL has already provided shareholders and the public with a paper asserting the

lawfulness of its plan, has engaged in an extensive public relations effort to promote its scheme and devoted multiple hours to conference calls in which Mr. Harrison, Special Counsel Guthrie, other officers and Mr. Ackman himself attempted to persuade financial and industry analysts that approval of its plan would be a slam-dunk. They dismissed concerns about agency approval of the voting trust/executive replacement and executive retention plan as fanciful, disparaged the integrity of former Board Members Mulvey and Nottingham, and they cited the opinion of their counsel. December 16 conference call at 10–11, 14-15, 16, 19-20. None of that worked because investors remained apprehensive about approval of an unprecedented plan especially in light of the new merger and voting trust rules. Having failed on its own to persuade dubious investors, CPRL is trying to invoke the Board’s aid under the guise of removing regulatory “uncertainty” so the market can be unencumbered by so-called “ersatz regulatory concerns”. CPRL Petition at 2. In doing so, CPRL has referred to Supreme Court precedent stating generally that the government does not take sides in stock fights. *Id* at 10-11. But these are specious arguments.

CPRL’s reliance on precedent stating that the government should not intervene in corporate takeover fights is a red herring. The Board has taken no action that would tilt the scales against CPRL because the agency has taken no action at all. All that has happened is that NSC has cited the plainly applicable statutory provisions, regulations and merger rules, obtained and published an assessment of two former Board Members that STB approval of the conceptual voting trust and the proposed CP-NS merger is dubious at best. Conversely, CPRL has attempted to allay concerns among NSR shareholders through its own pronouncements of counsel and those of Messrs. Ackman and Harrison. There is no agency created impediment to NSC shareholders making their own decisions because the agency has done nothing. The specter of Board impairment of the market and partiality in a corporate takeover fight is merely a canard purveyed by CPRL.

Additionally, there is no more regulatory uncertainty about the CPRL plan than there is about any new theory or model. When there is an effort to change existing law, push the boundaries of existing law or apply existing law to new situations there is always a first case; the Board does not issue advance rulings on every novel theory. While posturing itself as a free-market advocate, CPRL has hypocritically asked for agency action to insulate itself and others from the risk that its confidence in its novel scheme is misplaced.

There is also no distortion of the market as a result of the uncertainty as to the outcome of agency review of the CPRL scheme. CPRL is engaged in a high stakes transaction in a highly regulated industry; and the particular regulatory arrangement and requirement of prior Board approval applicable here was expressly enacted and amended to respond to corporate shenanigans and creative schemes to circumvent effective administrative review. With respect to consolidations in particular, the overriding policies are those expressed in Section 11323. This regulatory regime was adopted, and retained through two generally deregulatory amendments in 1976 and 1980 and survived the termination of the former Interstate Commerce Commission in 1996, in order to protect the integrity of the interstate rail system, shippers, rail workers and the public generally from damage caused by speculative, imprudent and financially risky transactions that would damage the financial soundness of essential transportation companies, diminish the ability to make necessary investment in rail infrastructure, and hinder reliable and effective rail transportation. CPRL is promoting an unprecedented scheme in support of the first proposed transaction involving two Class I railroads after the Board announced that such transactions would be subject to closer scrutiny and that voting trusts would be reviewed more formally and with consideration of the public interest. In short, regulatory uncertainty comes with the territory here, investor skittishness about the scheme is unsurprising, there is no reason for the agency to intervene here to boost CPRL's momentum, and it is indeed hypocritical for

CPRL to ask the agency to do so in the name of “leveling the playing field” and supposedly facilitating working of the market without agency intervention.

B. CPRL’s Voting Trust/NSR Executive Replacement and CP Executive Retention Plan Will Not Insulate CPRL from a Violation of Section 11323(a)(5)

In the event the Board decides to rule on the CPRL petition, the petition should be denied on the merits because CPRL’s acquisition of control of NSC without prior approval of the Board would violate Section 11323, and the voting trust/NSR executive replacement and CP executive retention plan will not eliminate that violation.

1. By Acquiring Control of NSC, CPRL Will Be Acquiring Control of an Additional Carrier, and the Plan to Place CP in a Voting Trust While Moving Mr. Harrison and Other CP Executives to NSR While the Remaining CP Executives Stay at Home Will Not Negate CP’s Violation of the Act

The CPRL acquisition is exactly the type of transaction that Section 11323 was designed to address. And this voting trust/NSR executive replacement and CP executive retention scheme is the type of “elaborate corporate device” that Congress did not want to be used to evade agency review of carrier control transactions. Indeed, Congress went to great lengths to deal with the use of holding companies and subsidiaries and use of agents to evade regulation. The Act was amended to apply to every type of control in fact, including through persons affiliated with a carrier or person that controls a carrier. The Courts and the agency have said this regulation of control was designed to be broad, and that “control” was defined as expansively as possible. As a result, schemes that involve holding companies, subsidiaries, intra-corporate restructuring that increases control, use of employees and use of relatives have all been held to be acquisitions of control.

Here, CPRL plans to acquire control of NSC (and thus its carrier subsidiaries) by stock ownership and put Mr. Harrison, the current CEO of CP, in charge of NSC (along with other former CP managers), while retaining Keith Creel, Mr. Harrison’s longtime collaborator and

designated successor as well as other current CP managers in charge of CP. That constitutes control of two carriers by CPRL. CPRL does not dispute that it will control NSC and its carrier subsidiaries by its planned acquisition of NSC stock and by making Mr. Harrison the CEO of NSC; so it will have acquired control of NSC and its carrier subsidiaries without prior Board approval. But it will also retain de facto control of CP by keeping CPRL designated managers in charge of CP. As is established by *Gilbertville Trucking, Colletti, and Fast Interstate Express*, putting employees (and relatives) of a person that control carriers is putting that person in control of another carrier. CPRL would be putting its chosen manager in charge of NSC and would retain at CP a chief executive and other managers who are career-long followers and proteges of the executive CPRL would install at NSR. Since the Board is charged with addressing control exercised in any form, including by common management, this aspect of the arrangement must be recognized as involving acquisition of a second carrier by CPRL which already controls a carrier. So when CP would file for STB approval of the proposed CP-NS Merger, CP already would already have de facto common control over CP and NS in direct violation of the Act.

CPRL denies this because CP would be put in a trust, and CPRL states that “CP and NS would continue to operate as separate and independent carriers during the voting trust.” CPRL Petition at 22. But this misses the fundamental point that CPRL will have acquired control of another carrier and placed its man in charge of that carrier while CPRL’s chosen executives remain in charge of CP. Just because CP will be put in a trust, does not negate the fact that CP will have acquired control of another carrier without prior approval by the Board.

2. Precedent Concerning Prior Voting Trusts Does Not Support A Declaratory Order In Favor of CPRL

In support of its petition CPRL has relied on past voting trust arrangements. But those arrangements are readily distinguishable from the CPRL plan.

The voting trusts relied on by CPRL were in transactions that preceded the new rules for

mergers of Class I railroads which both heightened the standards for approval of Class I mergers and created a formal review process for voting trusts which includes consideration of the public interest.

Furthermore none of the prior voting trust cases involved putting the already controlled entity in trust while the target entity was acquired; they all involved putting the target entity in trust. That is significant because Section 11323 concerns acquisition of control of another carrier. Putting the to-be-acquired carrier in trust means it never comes under effective control of the acquiring entity, so actual control is not effectuated before Board approval, even if the financial part of the acquisition is accomplished. Additionally, there is less change to the status quo when the target is trusteeed because only ownership of stock has changed and it cannot be used to institute changes at the target carrier. Also, if the transaction is not approved, the target carrier can exit the trust and move on. By contrast, a reverse voting trust which puts the already controlled entity in trust means that the applicant actually acquires control of another carrier without Board approval; and there is a major change in the status quo because the target is immediately controlled by the applicant. Putting the already controlled carrier in trust merely temporarily isolates it from its parent corporation. And when the applicant-appointed managers remain in place, the trust is more form than substance. Additionally, under the reverse voting trust there is a major change in the status quo as to the target carrier; and if the transaction is not approved it is much harder to restore the status quo ante. Ownership and control of two carriers is affected in a reverse voting trust, whereas only one carrier is affected by the normal voting trust; and changes would have been made at the target carrier that might not be reversible, or easily reversed. And in that situation, the result would not merely be dissolution of the trust but also either a sale of the already acquired target or a sale of the trusteeed formerly controlled carrier—in either event probably on disadvantageous terms since the sale would be involuntary

and timed to comply with a Board order as opposed to when optimum value would be received.

The plan espoused by CPRL also differs from prior voting trusts in that an essential part of the plan involves CPRL putting its chosen managers in charge of the target carrier while the trustee carrier continues to be run by its pre-transaction managers who were proteges of the manager who would be put in charge of the target. CPRL has cited no prior voting trust where the acquiring entity's manager was put in charge of the target. CPRL has cited a case where the acquiring entity put a manager from the target in charge of the already controlled carrier—but that did not involve any action to assume control or management of the target carrier. As the Supreme Court held in *Gilbertville Trucking*, and as the ICC held in *Colletti* and *Fast Interstate*, management of a carrier by executives controlled by a carrier or by an entity that controls carrier through employment or by familial relationship is control under the Act.

CPRL rejects any concern about its plan to designate the executives of both carriers claiming that the trust will keep them separate and the two carriers will be separately managed. But CPRL's characterizations of the planned arrangement belie the facile assertion that the two carriers would not actually be commonly controlled because of the voting trust. On the December 16 call with analysts, Mr. Ackman tried to persuade them that both railroads would suffer no harm, and NSR would improve because "Hunter would become CEO of NS, Keith would run CP, and we'd follow the path as I described before." And in a February 4, 2016 interview with *Trains Magazine*, Mr. Harrison said that the plan depends on CP "hav[ing] the players, which includes me, to run both organizations." CPRL has also said that Mr. Creel will continue to manage CP strictly in accordance with its current business philosophy. CPRL Petition at 9 (describing how CP will continue on its current trajectory). And in an August 2014 profile of Mr. Creel in *Progressive Railroading*, Mr. Creel was described as serving as Mr. "Harrison's right-hand man at CP in trying to instill reliable operational performance, forge an

operating-focused management team, and engage employees in performing tasks more consistently.” Meanwhile, Mr. Harrison will personally implement that same business philosophy at NS through “precision railroading” and the “pre-merger operational improvements” —alleged operational improvements which CP’s current management team (including Mr. Harrison and Mr. Creel) developed as part of CP’s strategic plan for the proposed CP-NS Merger. *See also* Verified Statement of E. Hunter Harrison at 3 -- “I have successfully implemented [the precision railroading model] at IC, CN, and CP, and propose to employ [it] at NS”. But NSR had no plans to adopt the precision railroading model, and there is no indication that it would do so in the absence of a CPRL takeover. And CPRL affirmatively states that “similar corporate cultures and operational practices” will be developed across CP and NS during the pendency of the CP Trust. CPRL Petition at 15. Thus, CPRL would be dictating the management and operation of both CP and NS during the pendency of the CP Trust.² So, even if putting CP in a trust might in the abstract insulate CPRL from a violation of the Act, the full plan outlined by CPRL would not prevent an unlawful acquisition of control of NSC even if the voting trust might otherwise be effective.

Moreover, CPRL has cited no prior case that remotely fits its plan here- where the already controlled carrier is put in trust, and the target is acquired, and the acquiring entity puts its managers in charge of the target, and the acquiring entity’s managers remain in charge of the

² The coordination of management of two carriers when one was in a voting trust was found to be improper in the proposed SFSP merger. In that case, the two holding companies were merged and one of the carriers was put in a voting trust. The ICC required that the voting trust be “independent” and that no communication, other than that needed to proceed with the control application occur between ATSF and the trustee SP. However, a subsequent investigation revealed a number of violations of that requirement; that efforts were made to coordinate the management, planning and cultures of the two railroads. Here, CP’s premise is that the CP and the NSC carriers will operate symbiotically because management will essentially be in synch in thought and deed- that would only occur through CPRL’s acquisition of control of NSC with its designated manager implementing the CP way at NSR.

trusteed previously controlled carrier. While CPRL's Petition has cited various prior voting trust cases, and while it publicly cited 144 prior voting trusts that were allowed, there are no prior cases where an arrangement like the one described by CPRL was allowed. CPRL's argument is essentially that voting trusts where the target is trusteed have been allowed, a voting trust where a manager was moved from the target to the previously controlled carrier was allowed, and the STB does not normally regulate appointments of managers, so that means that a scheme where the target is actually acquired and the previously controlled carrier is trusteed with the acquiring entity replacing the management of the target and the existing management remains at the trusteed carrier must also be permissible.

But it is readily apparent that CPRL's plan is nothing like any prior authorized voting trust arrangement, and its argument is a house of cards. Not only are the prior cases factually distinguishable, the factual differences are material because in the instant case, the acquiring entity would actually be acquiring control of the target without Board approval. Additionally, CPRL has ignored the cumulative effect of the differences. The Unions submit that a stand-alone acquisition of the target and reverse trust without replacement of the management at the target would not be permissible under the Act and prior precedent, that replacement of the management at the target without a reverse trust would not be permissible under the Act and prior precedent, but an acquisition of the target with replacement of the management with a reverse trust while the current management of the trusteed previously controlled carrier is retained is patently violative of the Act. And CPRL has been clear that both aspects of its plan are "connected" and interdependent. It is simply specious for CPRL to contend that because some individual aspects of its plan were allowed before in isolation, that somehow means that they are permissible when done together.

The only trust arrangement previously presented to the agency that resembles the CPRL

plan is the trust proposed for the 1994 proposed acquisition by Illinois Central Railroad Co. (“ICRR”) of Kansas City Southern Railway (“KCS”), where the holding company (“IC Corp.”) intended to place its ownership of ICRR in trust; IC Corp. would acquire control of KCS; and members of IC Corp.’s and ICRR’s management team would resign and assume equivalent positions with KCS, pending merger approval. Because of the “uniqueness of [the proposed IC-KCS Trust] and the important issues surrounding it,” the ICC initiated a formal review process and solicited public comment, even though neither step was required under then-existing regulations. *Illinois Central– Common Control–Illinois Central Railroad Co. and the Kansas City Southern Ry. Co.*, F.D. No. 32566 (October 21, 1994) at 4. The Unions, as part of the “Allied Rail Unions”, opposed the proposed arrangement. Exhibit 6 to this Reply Brief. Although IC and KCS abandoned the transaction before a formal decision was issued, the ICC’s order seeking public comment expressed serious concerns about the legality of the IC-KCS Trust. After noting that an independent trustee would have a fiduciary duty to protect ICRR which would include “maintaining the present competitive posture of the two carriers (wherever they compete)”, the Commission observed that:

On the other hand, this tendency to continue to maintain present operations also suggests that there may be continued control of ICRR by IC Corp. notwithstanding the creation of the voting trust. ICRR has been under the control of IC Corp., and the managers of the railroad presumably know and understand IC Corp. management. Tuned into IC Corp.’s business philosophy and plans, ICRR’s management could anticipate IC Corp.’s desires. The trustee may be unable to alter this force of habit. The railroad’s management might act, not in the interest of ICRR, but in the interest of the carrier’s past and potentially future corporate parent, IC Corp. Thus it is conceivable that IC Corp. may continue its control of ICRR during the trust period. We seek comments as to the impact of this relationship on the “control” issue.

Id. at 5. Thus, the only prior actual or proposed trust that looked anything like the CPRL plan was never approved and it raised red flags for the ICC; and that was before the new merger regulations.

None of the other decisions cited by CPRL supports its position. CPRL cited *Water*

Transport Ass'n. v. I.C.C., 715 F. 2d 581 (D.C. Cir. 1983), after asserting that the ICC allowed voting trusts in “hundreds of transactions”. CPRL Petition at 7. Not only does that decision fail to support the assertion that voting trusts were allowed in hundreds of transactions, the trust in that case was distinguishable from CPRL’s plan, and the rationale for permitting the trusts described by the court does not fit this plan. In *Water Transport*, the acquiring entity put the target carrier in trust, not the carriers it already controlled; and the applicant did not divide the management of a previously controlled carrier between that carrier and the target carrier. And the court explained the policy basis for the exception to the statutory exception to acquisition of another carrier without prior approval as a response to the long delays involved in ICC approvals of mergers and the need to execute the financial part of the transaction quickly, so the ICC allowed acquisitions without prior approval when the target carriers were put in trust such that the acquiring entity “does not ‘control’ the acquired carrier”. *Id* at 108. That is not the situation here where the acquiring entity would fully control NSC and the acquiring entity would put its man in charge of NSR.

CPRL also cited *B.F. Goodrich Co. v. Northwest Industries*, 303 F. Supp. 53 (D. DE 1969) (Petition at 14), but that case too involved putting the target carrier, not the previously owned carrier, in trust (and did not involve replacement of executives at the target) and was not a decision on the merits, but a denial of a preliminary injunction on the basis that the ICC had primary jurisdiction of the matter in dispute. CPRL also cited *Canadian National Ry. –Control– Illinois Central Group*, F.D. 33556, Decision No. 6 because Mr. Harrison was moved from the target carrier to the carrier controlled by the acquiring entity during the trust, he made operational changes and no control violation was found. CPRL Petition at 15). But, again, in that situation the target carrier was placed in trust, not the previously controlled carrier; and the

question was not whether there had been unlawful control of the to-be-acquired carrier.³ CPRL quoted a passage from *Reliance Group Holdings, Inc.*, 366 ICC, 446 452 (1982) which CPRL implies supports the CPRL plan because the ICC said that either of two carriers could be put in a voting trust to prevent a violation of the Act. CPRL Petition at 16-17. But, that case involved acquisition of control of two carriers by a non-carrier that did not control any carriers, so both carriers were target carriers, acquisition of control one of them would not have acquired ICC approval and it was therefore up to the acquiring entity to decide which of the two target carriers to put in trust. That decision does not support the proposition that an entity that controls a carrier can avoid a violation when acquiring an additional carrier by putting the already controlled carrier in trust.

Bizarrely, the other decision cited by CPRL is the SFSP transaction-- which is odd because that transaction exemplified what can go wrong with a voting trust, the target carrier was irrevocably weakened by the trust and the terms of the trust approved by the Commission were violated to the detriment of the acquired carrier. Thus, none of the decisions cited by CPRL supports its position.

Because implementation of the arrangement planned by CPRL without prior approval of the Board is contrary to the language of the Act and governing precedent, and because none of

³ CPRL asserts that putting Mr. Harrison in charge of NSR is consistent with the new merger rules because he could “start the process of developing similar corporate cultures and operational practices during the approval process, thus reducing the risk of transitional problems if the merger is approved and the two companies are ultimately combined”. CPRL Petition at 15. This is entirely speculative and depends on the Hunter Harrison magic dust. But it also demonstrates the problems with the CPRL plan. Mr. Harrison will not only assume control of NSR he will begin to implement changes actually implementing the control obtained by CPRL without Board approval. And the changes will involve harmonizing NSR with the operating culture and practices of CP which remain the culture and practices developed under Mr. Harrison’s but implemented by his protégé Mr. Creel – illustrating common control of the two carriers by affiliated managements.

the authorities cited by CPRL support its position, if the Board does rule on the request for a declaratory order, the Unions respectfully submit that the petition should be denied.

C. EVEN IF PLACING CP IN A VOTING TRUST COULD SHIELD CPRL FROM A VIOLATION OF SECTION 11323(A)(5), ITS ACQUISITION OF CONTROL OF NSC WOULD STILL VIOLATE SECTION 11323(A)(4)

As is explained above, Section 11323(a)(5) prohibits a non-carrier from acquiring control of two or more carriers without prior approval by the Board. CPRL is attempting (unsuccessfully) to avoid a violation of Section 11323(a) (5) by simultaneously controlling CP and NSC and therefore NSR. But NSC also has ownership interests in other carriers and it effectively controls at least two carriers in addition to NSR: the Norfolk and Portsmouth Belt Railroad and Conrail Shared Assets Area. NSC also has significant ownership interests in other separate terminal and switching carriers. See also Norfolk Southern Corp. Combined Railroad Subsidiaries Class I Annual Report (R-1) at 26. According to the Norfolk and Portsmouth website (Exhibit 7 to this Reply Brief), NSC has 57% of the equity of the Norfolk and Portsmouth; the remainder is held by CSXT. In *E.I. DuPont De Nemours and Co. v. Norfolk Southern Ry. Co.*, Docket NOR 42125 (March 14, 2014), the Board found that NSC has a 58% ownership interest in Conrail Shared Assets Area, a 29.58% ownership interest in the Indiana Harbor Belt Ry., a 25% ownership interest in the Belt Ry. of Chicago and a 14.29% ownership interest in the Terminal Railroad of St Louis. The Board held that it would not require DuPont to account for construction costs of Conrail SAA and the IHB because “these partially owned subsidiaries are subsidiaries of NSC and not of NS... NSC elected to set up its ownership interests in SAA and IHB as separate legal entities from its railroad subsidiaries....”. Additionally, in its 2014 Annual Report NSC stated that “Through a limited liability company, we and CSX Corp. (“CSX”) jointly own Conrail, Inc. (“Conrail”) whose primary subsidiary is Consolidated Rail Corporation (“CRC”). We have a 58% economic interest and a 50% voting

rights in the jointly owned entity, and CSX has the remainder of the economic and voting interests”. Exhibit 8 to this Reply Brief. NSC clearly has control of Norfolk and Portsmouth by ownership of a majority of the equity and NSC effectively controls Conrail through its majority ownership and 50% voting rights-since NSC can effectively veto any decision or action by Conrail, NSC has effective control of Conrail. And as noted in *Dupont, supra.*, NSC also has ownership stakes in other terminal and switching carriers; since it does not have a majority of the equity of those other carriers NSC may or may not control them; but it does control Norfolk and Portsmouth and Conrail.

Section 11323(a)(4) provides that the “Acquisition of control of at least 2 rail carriers by a person that is not a rail carrier” “may be carried out only with the approval and authorization of the Board. As is noted above, in *Fox Valley & Western Ltd., supra.*, the ICC held that the acquisition of the railroad lines of the Green Bay Green Bay and Western R.R Co., Fox River Valley R.R. Corp. and the Anhapee & Western Ry. Co. by Fox Valley Western Ltd. was acquisition of control of two carriers by a non-carrier and therefore could be accomplished only by prior ICC approval under Section 11323(a)(4). 9 ICC 2d at 216. The ICC said that “[w]hile §11323(a)(4) is normally acquisition of control of carriers by stock ownership or lease, the term ‘control’ is broadly defined in [former] §10102(7) as embracing ‘actual control, legal control and the power to exercise control, through or by (A) common directors, officer, stockholders, a voting trust or a holding or investment company, or (B) by any other means’”; that *Marshall Transport* had in turn defined “control” in this context very expansively; and that Fox Valley would effectively acquire control of two carriers by acquiring all the railroad assets of FRVR and GB&W. The Commission’s decision was affirmed by the Seventh Circuit in *Fox Valley & Western, supra.* 15 F. 3d 641. See also *CSX Corp. And CSX Transp., Inc., Norfolk Southern Corp. And Norfolk Southern Ry. Co.– Control and Operating Leases/Agreements– Conrail, Inc.*

And Consolidated Rail Corp., 3 STB 196 (1998), 1998 WL 456510- approving “(d) the continued control by CSX, NS, and CRR of NYC and PRR, subsequent to the transfer of CRC assets to NYC and PRR, and the common control by CSXC, CSXT, NSC, NSR, CRR, and CRC of NYC and PRR, and the carriers each of them controls” because Consolidated Rail Corp.(CRC) would divide its assets among the newly formed NYC and PRR, with other assets retained by CRC, and “CRC, NYC, and PRR will not be part of a “single system” of rail carriers, and therefore authorization to control CRC will not in and of itself imply authorization to control NYC and PRR; and, although CSX will exercise day-to-day control of NYC and NS will exercise day-to-day control of PRR, the fact that certain major actions concerning NYC and PRR will remain under the control of CRC will result in an ongoing common control relationship involving CSXC, NSC, and CRR, and the subsidiaries of each.” 1998 WL 456510 at *8, 19 114. Thus, by acquisition of control of NSC, CPRL would acquire control of at least two carriers, which it could only accomplish after Board approval under Section 11323(a)(4).

Accordingly, even if CPRL’s voting trust scheme could insulate it from a violation of Section 11323(a)(5), its acquisition of control of NSC without prior Board approval would violate Section 11323(a)(4).⁴

⁴ While the Unions submit that Section 11323(a)(4) is clearly applicable to a CPRL acquisition of NSC, even if it was not, CPRL still could not acquire control of the NSC carriers without authorization from the Board. Section 10901(a)(4) provides that “A person...in the case of a person other than a rail carrier acquire a railroad line or acquire or operate an extended or additional railroad line” “only if the Board issues a certificate authorizing such activity. Simply put, no one, whether carrier or non-carrier, may control, acquire or operate a piece of the interstate rail system without Board authorization. Indeed, non-carriers that seek to acquire just several miles of rail line must seek Board authorization for the acquisition. E.g. *Rochester and Southern Railroad, Inc. And Genesee and Wyoming Industries, Inc. Exemption from 49 U.S.C. §1090, 11301 and 11343*, F.D. 30779 (July 15, 1986); *Pacific Sun RR LLC—Lease and Operation—BNSF Ry. Co.*, FD 35173 (May 27, 29009)-concerning a lease of 21.5 miles of rail line. It would be plainly contrary to the language of the Act, and patently illogical that a non-carrier could acquire control of a Class I carrier without some form of Board approval. Since

D. PUBLIC INTEREST CONSIDERATIONS MILITATE AGAINST ISSUANCE OF AN ORDER APPROVING THE CPRL PLAN IN CONCEPT

The Board's revised rules for mergers of Class I railroads made the public interest a consideration in rulings on voting trusts. The agency's main concern in doing so was the risk of serious financial harm to the carriers, and associated risks for shippers and for railroad workers, from divestiture in the event the STB ultimately denied the proposed merger or the carriers abandoned the proposed merger. CPRL has argued that the Board should not consider the public interest in ruling on CPRL's voting trust plan, saying that it would be "premature" to do so. CPRL Petition at 12. But CPRL had no obligation to seek a declaratory ruling on its voting trust plan, but it chose to do so in order to gain advantage or minimize a disadvantage in its pitch to NSC shareholders. Having voluntarily sought a ruling on its voting trust plan, CPRL cannot dictate the scope of proceedings on its petition, or seriously contend that the Board should ignore one of the principal new components of its revised rules regarding mergers of Class I railroads. Furthermore, after arguing that the Board should not consider the public interest in ruling on the CPRL Petition, CPRL later asserted that its plan would be consistent with the public interest because there would be no risk of serious financial harm to CP or NSR, and NSR would be strengthened by Mr. Harrison's leadership. *Id* at 14-15. So CPRL is in no position to argue that opponents of its plan should not present public interest arguments and that the Board should not consider such arguments.

Consideration of the public interest is especially important with regard to this reverse voting trust/management replacement/management retention plan because CPRL would be in a

here CPRL would acquire control of multiple carriers, approval under Section 11323(a)(4) is required; but if just one carrier was involved, approval under Section 10901 would at least be necessary for CPRL to acquire control of the one carrier (and Section 11323 would then apply to a next step merger).

position to immediately implement changes at the target carrier that would not be possible when there is a conventional voting trust. Indeed, Mr. Harrison has made it quite clear that he would install his so-called “precision railroading” model from CP at NSR. Because the CPRL plan involves its assumption of control of NSC and dramatic changes by Mr. Harrison, it may be impossible or extremely difficult to undo what Mr. Harrison has done which might persuade certain participants in a merger proceeding to support a merger they would not otherwise have supported, and it might as a practical matter influence the Board’s decision on an ultimate merger in a way that would not have occurred with a conventional voting trust. The Board may be presented with a *fait accompli* or a situation where allowing the merger to proceed would be the least bad alternative, when the best alternative of no merger would no longer be possible. So if the Board is going to address CPRL’s Petition on the merits, it should consider the public interest. And public interest considerations militate against CP’s plan.

The Board should consider the effect the voting trust will have on the employees of the NSC carriers and CP because Section 11324(b)(4) requires the STB to consider “the interest of rail carrier employees affected by the proposed transaction” involving the merger or control of at least two Class I carriers; and because, in any decision, the Board must consider the national rail transportation policy supporting fair wages and safe and adequate working conditions for railroad workers. 49 U.S.C. §10101(11). Since Mr. Harrison has announced that he would implement his “precision railroading” concept at NSR, there will clearly be changes in operations and management of the railroad and NSR employees will necessarily be adversely affected by those changes. Under Mr. Harrison’s regime, the workforce of CP was cut by approximately 30% (he analogized his own actions at CP to the way General Sherman went through Atlanta). Will Mr. Harrison take a similar axe to the NSR workforce? In a conventional voting trust nothing like that could happen until after approval of the transaction. But with a

reverse voting trust he could immediately implement the types of changes he implemented at CP; and CPRL's major pitch in support of the reverse voting trust is that Mr. Harrison would change NSR as he did CP. While *New York Dock* employee protections are applicable once a merger is approved and should be applicable to actions taken in anticipation of a merger, CP has made no commitment in that regard. Furthermore, it is unclear what would happen if an ultimate merger application is denied. If CPRL were to remain in control of NSC with Mr. Harrison at the helm, there would be multiple changes to NSR as a result of the voting trust/executive embedding plan; but without an approved transaction it is not clear whether employee protections would apply. In the SFSP case, the ICC recognized that employees had been adversely affected by actions taken by the parties to the failed merger during the pendency of the voting trust; but it held that it lacked authority to impose protections conditions for such employees, because the Commission had not *approved* the merger. *Railway Labor Executives Ass'n v. I.C.C.*, 958 F.2d 252 (9th Cir. 1992). Accordingly, the CPRL plan is adverse to the interests of rail workers that are to be considered under Section 11324(b)(4) and Section 10102(11).

Employees of both NSC railroads and CP will also be adversely affected by the acquisition premium offered by CPRL. According to CPRL, its last offer to NSC shareholders was worth about \$45-\$60 per share over the \$79 NSC share price prior to the CPRL effort. This premium will have to be paid somehow. Experience with the CSX/NSC acquisition of Conrail was that the acquisition premium resulting from the bidding war between CSX and NSC led to demands for more concessions from labor. But it will also leave the railroad with more debt and less capital to invest in the railroad to the detriment of employees (as well as shippers and the public generally). Mr. Ackman blithely assured analysts that the premium would be covered by some debt, cash from CPRL and the railroading voodoo of Mr. Harrison. But what if the voodoo does not make up for the 60% acquisition premium? Not only will that lead to much more debt,

more layoffs and demands for concessions from labor, it will mean NSR and CP will have less ability to invest in and properly maintain the railroads. Mr. Ackman and Pershing Square will benefit in the short run because completing the transaction will help CPRL, and control of NSR will allow CPRL to funnel earnings to CPRL and Pershing Square. But Mr. Ackman and Pershing Square will be able to move on, while the railroad is saddled with debt; and shippers and the States in which NSR operates and career employees will be stuck with a weakened railroad that will have less capital and fewer employees to maintain and improve the railroad. Such an outcome is contrary to the transportation policies of as promoting safe and efficient transportation, ensuring development of a sound transportation system, operation without detriment to public health and safety, and encouragement of fair wages and safe and suitable working conditions. 49 U.S.C. §10101(3), (4), (8), (11).

The Unions further submit that the Board should consider the consequences of a merger for the future of the industry as a matter of public interest. Just as the BN-SF merger led to the UP-SP merger which led to the CSX/NS acquisition of Conrail (and the Delta-Northwest merger led to the United-Continental merger which led to the American-US Airways merger in the airline industry), a CP-NS merger will surely lead to other transcontinental mergers (Mr. Erceg described CPRL's plan as creating an integrated transcontinental railroad, Unions Ex. 2 at 4). And, given the limited number of Class I carriers, the result would be a final consolidation of the Class I railroads and a dramatic change in the operational and competitive environment for railroading in the United States. That the next merger of Class I's would lead to a final consolidation was a principal reason for the Board's revision of its rules governing Class I mergers in 2001.

Experience in prior mergers demonstrates that when the full round of mergers is

completed, there necessarily will be significantly fewer jobs for railroad workers and cross-country systems will lead to even larger seniority districts forcing relocations and constant travel away from home. So the Board should consider the impact of this transaction not only on NSC carrier employees and CP employees, but on all railroad employees in the United States. The Board should recognize that even if employee protections are imposed, they will not ameliorate all of the impacts on employees; they will not wholly substitute for long term continued employment for those whose jobs are lost; and they will definitely not make up for the disappearance of high quality jobs with good compensation and benefits. Shippers and the public at large also have reason to be concerned about this transaction being the tipping point that leads to a final consolidation of the industry. The Board should not unwittingly set itself on a path toward final consideration of the industry without considering the public interest just because CPRL has sought approval of a hypothetical voting trust.

Experience with prior mergers also raises a public interest concern that militates against the CPRL plan. The major mergers in the 1990s resulted in major service disruptions. The applicants in each successive transaction claimed to have learned from the experience of the prior mergers and represented that such problems would be avoided in their merger. But there were major service disruptions in each of the follow-on transactions despite the assurances of lessons learned. Accordingly, there is no reason to credit CPRL's assertions that there would be no or minimal service disruptions adverse to the public after a CP-NS merger.⁵

⁵ CPRL's attempted answer to these concerns is that an NSR run by Mr. Harrison would adopt his model of railroading which would also be continued at CP- so the plan to minimize service disruptions is predicated on coordination between the cultures and practices of the two carriers notwithstanding the voting trust. So the purported answer to the concern about potential service disruptions only illustrates the ineffectiveness of the CPRL voting trust/executive replacement and executive retention plan as a way to prevent an unauthorized control violation.

Finally, CPRL has alluded to certain tax advantages of the proposed transaction. See transcript of December 8 Conference call (Unions' Ex. 2) at 10-11 –remarks of Bill Ackman of Pershing Square Capital; and December 16 conference call (Unions' Ex. 3) at 3,5--remarks of CPRL CFO Mark Erceg. Mr. Ackman referred to annual tax savings of \$200 million per year, and said the “tax synergies obviously you get immediately”. Mr. Erceg said “we see an opportunity for meaningful tax efficiencies, which we belief will result in an effective tax rate below 30% for the combined entity”. Little more was said about the purported tax advantages alluded to by Mr. Ackman and Mr. Erceg, but the Unions note that one element of the proposed transaction involves cash from CPRL to NSC and debt assumed by NSC that was not described. Perhaps the cited tax advantage is a tax inversion with assumption of debt by NSC and stripping of earnings from NSC to benefit the Canadian CPRL. Indeed, one of Pershing Square Capital's other big deals was the merger of the California based Valeant Pharmaceutical merger with the Canadian Biovail Corp. which reduced Valeant's tax rate to less than 5%. *Valeant-Salix Deals Shows Why Inverted Companies Will Keep Winning*, Wall Street Journal March 23, 2015.⁶ To the extent that the transaction is premised on a “tax inversion” by the NSC carriers becoming controlled by a Canadian corporation, which results in an NSC saddled with debt, earnings stripping and reduction in taxes to the Federal government as a result of this sleight of hand, the transaction is plainly contrary to the public interest. The new Treasury Department Regulations on tax inversions. 26 C.F. R. §§ 1.7701(l)-4T, 1.7874-11T *et seq.*; *Inversions and Related Transactions*, 81 Fed. Reg. 20588 (Apr. 08, 2016).

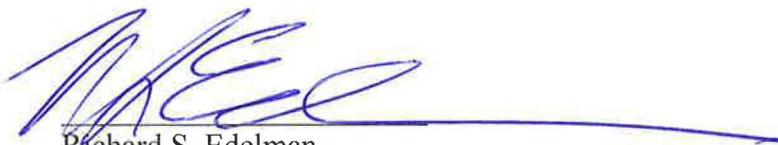
⁶ Of course a year after that article was written, Valeant and Pershing Capital are no longer winning. Valeant's stock fell from \$161 per share in February of 2015 to \$34 per share in April of 2016; and Pershing Square has suffered a 24% loss in value this year after a 20% decline last year when Valeant's stock started to drop. *Bill Ackman Vows to Recoup Valeant Losses*, USA Today, April 7, 2016. The Board should consider this experience as a caution when Mr. Ackman and Mr. Harrison claim that they will pay the acquisition premium with Hunter Harrison magic dust, debt and cash from CPRL in acquiring an essential Class I railroad.

Thus, the various public interest considerations applicable here militate against granting CPRL the declaration it seeks. And while CPRL has asked the Board to ignore all of these considerations and defer them to consideration of an actual application, the Board should reject that self-serving argument and recognize that a voting trust arrangement, particularly this voting trust arrangement is likely to lead to changes that may well make a merger a *fait accompli*, rendering the public interest moot by the time there is an actual transaction.

VI. CONCLUSION

For all of the foregoing reasons, the Unions respectfully submit that CPRL's petition for a declaratory order should be denied.

Respectfully submitted,



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April 8, 2016

CERTIFICATE OF SERVICE

I hereby certify that on this date I caused copies of the foregoing Reply To Petition Of Canadian Pacific Railway For Declaratory Order Filed By Brotherhood Of Maintenance Of Way Employes Division/Ibt, Brotherhood Of Railroad Signalmen, And International Association Of Sheet Metal, Air, Rail And Transportation Workers/Mechanical Division upon the following by First Class Mail:

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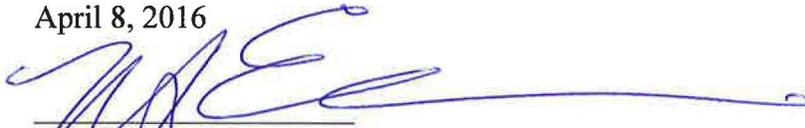
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April 8, 2016



Richard S. Edelman

BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 36004

CANADIAN PACIFIC RAILWAY LIMITED

**EXHIBITS TO REPLY TO PETITION OF CANADIAN PACIFIC RAILWAY
FOR DECLARATORY ORDER FILED BY BROTHERHOOD OF MAINTENANCE OF
WAY EMPLOYEES DIVISION/IBT, BROTHERHOOD OF RAILROAD SIGNALMEN,
AND INTERNATIONAL ASSOCIATION OF SHEET METAL, AIR, RAIL AND
TRANSPORTATION WORKERS/MECHANICAL DIVISION**

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April 8, 2016

EXHIBIT 1

Bill Ackman Bets Again on Valeant, Taking a Seat on the Board

Andrew Ross Sorkin

DEALBOOK MARCH 21, 2016

After reaping the best returns of any hedge fund manager in 2014, Bill Ackman appeared on the cover of Bloomberg Markets magazine, grinning, with the headline, “How Do You Like Bill Ackman Now?”

Well, these days, about 47 percent less.

That is the amount Mr. Ackman’s funds are down from their highs as he miscalculated, several times over, his investment in Valeant Pharmaceuticals, which has turned into an unmitigated disaster.

On Monday, Valeant said it would restate its earnings, asked a former chief financial officer to resign from the board over “improper conduct” and pushed its chief executive, J. Michael Pearson, to step down. And Mr. Ackman, who made his name — and billions — spotting financial fraud but missed any signs of chicanery at Valeant, joined the board, hoping to salvage his investment, which had fallen 86 percent in the last year.

With the hedge fund “It Boy” dethroned, the schadenfreude on Wall Street is thick.

Mr. Ackman has earned his reputation as an elite investor by making big, concentrated bets. He has had huge wins, like a 77-fold return in the mall owner General Growth Properties and successful activist campaigns like a recent one in Canadian Pacific railroad. But he has also become a lightning rod over failed investments like those in the retailer J. C. Penney and his long fight, thus far unsuccessful, to bring down the supplements maker Herbalife.

Now, deep in the red, Mr. Ackman will have to generate returns between 50 percent and about 70 percent in his various funds to earn a performance fee, typically 20 percent of the profits that account for most of a hedge fund manager’s compensation. This will take a near miracle — or a very long time. The preternaturally optimistic Mr. Ackman thinks that he can save Valeant and that he will recover.

But here’s the conundrum: Mr. Ackman’s pain is not just his own.

The damage wrought by Mr. Ackman’s wrong-way bet has had a cascade effect across Wall Street, not just for those who followed Mr. Ackman into Valeant, but everyone who threw their

lot in with his fund, Pershing Square Capital Management. Mr. Ackman is causing agita across the globe.

There is Deutsche Bank's London office, which helped underwrite a public offering for Mr. Ackman's funds in 2014. Pershing's fund opened at \$25 a share; it now trades at \$13.18.

Then there is UBS, which also led Mr. Ackman's offerings. One of Mr. Ackman's friends is Mark Axelowitz, a managing director of UBS Private Wealth, which hosts an annual charity event with Mr. Ackman. Mr. Axelowitz and the firm put some of their clients into Pershing.

Those two banks, by the way, received about \$100 million in fees for their work on the Pershing initial public offering.

At the time of the I.P.O., the famous Rothschild Bank and its wealth management unit bought \$274 million worth of Pershing stock on behalf of its clients. A unit of Qatar's investment fund also took a \$141 million stake. The Blackstone Group bought into the offering and worked as an adviser to Pershing.

Even Mr. Ackman's former nemesis Carl Icahn has taken a hit via his stake in the insurance giant American International Group, which has a stake in Mr. Ackman's fund. Mr. Icahn received an A.I.G. board seat after pressing the insurer to break itself up. A.I.G. has announced plans to reduce its exposure to hedge funds, slashing its \$11 billion investment in half. It remains unclear whether Mr. Ackman's fund is among those it plans to eliminate. (How A.I.G. — which was bailed out by the federal government in 2008 — ever wound up with such concentration in risky hedge funds is a question for another day.)

But it's not just wealthy investors who have been burned by Mr. Ackman. Several public pension funds that manage money for teachers, police and firefighters, including some from New Jersey and Massachusetts, have stakes in Pershing Square. They are counting their losses at a time when many pension funds are re-evaluating whether they should be in hedge funds in the first place.

Then there are eyebrows being raised in New York real estate circles. Last year, Mr. Ackman, with the Georgetown Company, agreed to buy 787 11th Avenue, where he plans to move Pershing Square. He is expected to build a tennis court on the roof. Mr. Ackman is an avid tennis player.

While nobody has said the development is in jeopardy, some real estate agents have already begun speculating about the future of the project. There is gossip over whether he will have to take a loss on a \$91.5 million apartment he bought in One57 overlooking Central Park that he said he purchased as an investment in the hope of selling for a profit. And now, luxury Manhattan real estate appears to have peaked.

Mr. Ackman sees his putrid performance as a blip. He has privately told some colleagues that he believes he can get back to even within a year. But he may have to turn it around sooner — May is the next window for investors to ask Mr. Ackman for their money back.

Correction: March 23, 2016

The DealBook column on Tuesday, about a shake-up at Valeant Pharmaceuticals International, misstated an action taken on Monday by Valeant. The company asked a director to resign, not its chief financial officer. It did not force the resignation of the director, Howard B. Schiller, who is its former chief financial officer and onetime interim chief executive. (Mr. Schiller has declined to resign.)

EXHIBIT 2

THOMSON REUTERS STREETEVENTS

EDITED TRANSCRIPT

CP.TO - Canadian Pacific Railway Ltd Conference Call to Discuss its Proposed Combination Offer with Norfolk Southern Corp

EVENT DATE/TIME: DECEMBER 08, 2015 / 2:00PM GMT

OVERVIEW:

On 12/08/15, CP provided an update on its proposed combination offer with Norfolk Southern Corp.



CORPORATE PARTICIPANTS

Nadeem Velani *Canadian Pacific Railway Ltd. - VP of IR*

Hunter Harrison *Canadian Pacific Railway Ltd. - CEO*

Mark Erceg *Canadian Pacific Railway Ltd. - EVP & CFO*

Paul Guthrie *Canadian Pacific Railway Ltd. - Special Counsel to the CEO*

James Clements *Canadian Pacific Railway Ltd. - VP Strategic Planning and Transportation Services*

Keith Creel *Canadian Pacific Railway Ltd. - President & COO*

Bill Ackman *Canadian Pacific Railway Ltd. - Member of the Board & Pershing Square Capital Management Founder*

CONFERENCE CALL PARTICIPANTS

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Chris Wetherbee *Citigroup - Analyst*

Thomas Wadewitz *UBS - Analyst*

David Vernon *Bernstein - Analyst*

Brandon Oglenski *Barclays Capital - Analyst*

Walter Spracklin *RBC Capital Markets - Analyst*

Allison Landry *Credit Suisse - Analyst*

Ken Hoexter *BofA Merrill Lynch - Analyst*

Jason Seidl *Cowen and Company - Analyst*

Jeff Kauffman *Buckingham Research Group - Analyst*

Turan Quettawala *Scotiabank - Analyst*

Donald Broughton *Avondale Partners - Analyst*

Steve Paget *FirstEnergy Capital - Analyst*

Steve Hansen *Raymond James & Associates, Inc. - Analyst*

David Tyerman *Canaccord Genuity - Analyst*

Benoit Poirier *Desjardins Capital - Analyst*

Justin Long *Stephens Inc. - Analyst*

PRESENTATION

Operator

Good morning, my name is Sharon and I will be your conference operator today. At this time, I would like to welcome everyone to Canadian Pacific's conference call today. The slides accompanying today's call are available at www.cpr.ca.

(Operator Instructions)

I would now like to introduce Nadeem Velani, VP Investor Relations to begin the conference.



Nadeem Velani - Canadian Pacific Railway Ltd. - VP of IR

Thank you, Sharon. Good morning and thanks for joining us. I'm proud to have with me here today Hunter Harrison, our Chief Executive Officer; Andrew Reardon, Chairman of CP's Board; Mark Erceg, Executive Vice President and Chief Financial Officer; Paul Guthrie, Special Counsel to the CEO; Keith Creel, President and Chief Operating Officer; James Clements, Vice President Strategic Planning and Transportation Services; and joining us today, Bill Ackman, member of Canadian Pacific's Board and Pershing Square Capital Management founder.

Before we begin, I want to remind you this presentation contains forward-looking information. This presentation also contains non-GAAP measures outlined on Slide 4. The formal remarks will be followed by Q&A. In the interest of time, we would appreciate if you limit your questions to two.

It is now my pleasure to introduce our CEO, Hunter Harrison.

Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

Thank you, Nadeem, and good morning to everyone. Thanks so much for joining us.

My job today is to facilitate and try to provide some clarity to this whole issue now that we are faced with. I've gotten a lot of questions from the audience here about why now, why we are trying to do this transaction? Let me give you a little bit of background. We came out of, we the rail industry, came out of 2014 with some substantial amount of criticism about the lack of infrastructure and to being able to handle traffic throughout North America. And we addressed those concerns very seriously and we took a look at enhancing infrastructure and doing some things differently and we found that we were met with oppositions from local communities with a kind of a, not in my backyard mentality.

So we are faced with an issue that we are a common carrier. We don't have a choice about hauling these goods. At the same time, we have communities that would prefer not to see infrastructure added into their backyard. And at the same time, people are opposing consolidations or merger actions. So the question becomes what do we do? What do we do in the future? What do we do in the East? What do we do with additional growth if that infrastructure cannot be added?

So as we went through those issues, one of the things that quickly came up was potential consolidations. Where we believe and we talked a lot publicly about, that we think we can without adding infrastructure, add capacity to particularly the infrastructure East of the Mississippi River. We engaged in very brief conversations with the CSA for only really one day and that was kind of blown out of proportion.

And then, we were getting requests from the shareholder community saying your numbers have been pretty compelling. Looks like to us, you've done an excellent job, why would you not take those type numbers and marry up with a Eastern Road for example, and create even greater synergies to solve some of these issues? So we started down that road to explore those opportunities. Now we've come to this point where we've had one meeting with our friends at Norfolk Southern that was Mr. Squires and I face-to-face. We have tried to engage and one of our top priorities is just to get the Norfolk Southern to sit down and engage in a dialogue with us and we see no downside there.

So what we are going to try to do today is go through several important buckets. We're going to talk about the trust structure and Paul Guthrie's going to speak to that. James Clements is going to talk more about the regulatory environment and some of what we think are rather unique ideas to improve some of the competitive landscape. Once again, without adding infrastructure. Mark Erceg, our relatively new Chief Financial Officer, is going to talk more about the latest structure of the deal. And Keith, is going to talk about some of the operational issues. And then finally, Bill Ackman is going to talk to us more from a shareholder perspective and Pershing Square's experience in the past.

Let me just take one minute to clarify a couple of issues that are kind of a little personal needle in the side to me. I've been involved in several of these transactions and there's been reference by NS to the potential CNIC, or TCSIC, excuse me, merger in the Kansas City which was turned down as result of a trust and that's totally untrue. It was not. Kansas City Southern changed their mind at the last minute. The trust structure is not in question.



In the case of the CNIC merger, people have talked about disruption, have talked about all of these things that mergers do. That merger was okayed in advance. They gave away some of their oversight responsibilities. They were very complementary of the job that the two organizations have done for the shipping public and just because one railroad cannot implement a merger successfully doesn't mean another cannot.

And finally one little piece, one little tidbit I'd bring to your attention, is I had a visit with the then CEO of Norfolk Southern back in the mid-2000s, where they invited me over to their office car in Augusta, Georgia. And at that time, I think it was 2006, brought to my attention that they were very pleased, they were hopeful that they could have a quarterly results that started with a six. That's effectively 10 years ago and they are trying to still get to the point of starting with a six. So, I think it raises some real issues as we go forward about the potential credibility of what can and cannot be accomplished.

So I will have some additional remarks at the end and we are going to – we plan to have a Q&A session and we are here as long as you want to ask questions. I think the other group, the call was limited to one hour. We are willing to stay here as long as it takes to explain our proposal to the public and mostly importantly, to the shareholders. Because that's really what this is all about, is creating shareholder value.

So with that Mark, let me turn this over to you so if you can outline the proposal for us.

Mark Erceg - Canadian Pacific Railway Ltd. - EVP & CFO

Thanks, Hunter. As Hunter just indicated, we remain committed to our strategic vision. Which is to create an integrated transcontinental railroad with the scale and the reach necessary to deliver unsurpassed levels of safety in service to our customers and our communities while also increasing competition and creating significant shareholder value for both NS and CP shareholders. And consistent with that, we have modified our already generous offer in three important ways.

First, we are prepared to dramatically reduce the regulatory risk by agreeing to close the transaction into a voting trust which Paul Guthrie is going to explain to you shortly. Second, we've made our offer significantly more attractive financially by agreeing to use a trust structure, NS shareholders will now receive their cash and their stock considerably faster than before. And just as importantly, we've agreed to increase NS' pro forma ownership from 41% to 47% allowing NS shareholders to more fully participate in and benefit from the significant value creation we expect to create through this transaction. Finally, we are prepared to complete our due diligence within three weeks in order to expedite the transaction.

If we put all this together, we get a revised offer of \$32.86 in cash and 0.451 shares of stock in the new investment grade Company which will create on both the TSX and the NYSE, of under as of yet to be determined new ticker symbol. So boiling it all down, because NS shareholders will receive cash and stock considerably faster than before, and with much less risk I might add, and because of the increase in pro forma ownership, our revised offer actually represents a 77% premium versus NS's unaffected stock price of \$79.14 a share which provides 30% more value than our previous offer.

And probably just for clarity, I should mention that CP shareholders would exchange their shares on a one-for-one basis which would result in 53% pro forma ownership for existing CP shareholders. Now, after a lot of careful study, we believe there's an enormous amount of value which can be unleashed by combining our two great railroads. Between pre-merger, what we're calling operational improvements and we're also referring to as post-merger combination synergies, we expect to capture an incremental \$1.8 billion (technical difficulty) and that's USD per year.

Operational improvements like fuel efficiency, velocity improvements, improved asset utilization, yard and terminal consolidation and workforce optimization, which we would expect to manage via natural attrition, those will all begin upon trust approval and phase in over four years. These operational improvements represent over 70% of the value that we've identified through our studies.

Now it is very important to understand that these operational improvements are not contingent upon final SPV approval. And to be clear, we are not shooting for the moon here. Rather than that pretty much across the board, we're just looking to move NS up to the industry standards and we are very confident that we can do that.



So just as one example, let's take fuel efficiency. Right now CPUs is one gallon for every 1,000 gross ton miles. Now in contrast, NS uses 1.28 gallons. That's obviously, an enormous difference. And by simply bringing NS's fuel efficiency in line with the Class I industry average of 1.12, we can save \$100 million per year. Combination synergies from extended reach and longer length of haul, market share gains from improved service and interline efficiency, those will only become available upon full STD approval and at which time, they will also phase in over a four year period.

Then in addition to the operational improvements and the combination synergies, we also see an opportunity for meaningful tax efficiencies, which we believe will result in an effective tax rate below 30% for the combined entity. Finally, we expect to uncover and monetize redundant or underutilized assets along the way although we've not specifically factored that into our analysis.

Beyond the significant value a CP/NS combination would create, our offer also gives NS shareholders a vested interest in a combined network with better growth prospects than what either one of us would be able to achieve on our own. And I should add, a larger more diversified book of business which is less dependent on commodities, which as we all know, have been and can be very volatile. So for example, thermal coal, that currently represents about 15% of NS's business. But by contrast, it only represents 1% of CP's business. So, if we put these two companies together, we will both have a more sustainable business and stable business going forward.

The last thing I should probably quickly point out is that we plan to combine these two historic companies in a very responsible way by maintaining a strong investment grade balance sheet. Leverage, when the trust closes is expected to be about 4 times, which would be DDD at SMP and Daa2 at Moody's. Then, because of the significant cash flow of the combined entity, we plan to quickly deleverage and by 2017, we expect our leverage to be 2.8 times which we believe would support a BBB plus or Baa1 equivalent credit rating.

With that, let me turn the call over to Paul Guthrie. Paul is going to explain in detail how a voting trust really works because there's been a lot of miscommunication on this topic recently.

Paul Guthrie - Canadian Pacific Railway Ltd. - Special Counsel to the CEO

Thank you very much, Mark. Paul Guthrie, I'd like to address both the voting trust and the regulatory matters before I turn this over to my colleague, James Clements.

As contemplated by the 2001 merger rules, CP will apply for authority to use a voting trust. Under the rule, CP will have to show how the proposed trust will insulate the transaction from unlawful control violation and why use of a voting trust would be in the public interest.

First, let me say that there's been an assumption that CP's plan would put NS into trust. In fact, CP contemplates that either Company could be put into trust and at this time, we are leaning towards putting CP in trust. It is clear that Hunter Harrison going to NS as the CEO is greatly in the public interest. We are confident that his proven track record will result in NS being a better railroad. We expect that approval for a voting trust will be forthcoming and anticipate such approval would occur some two to three months after our application.

I would like to turn you to the first of the slides that's entitled STB criteria for voting trust approval and I'm going to take you through a few points on that slide. On the left-hand side, you will see the number one, an insulation from unlawful control violation. An independent trustee would be appointed to oversee either CP or NS while in trust. Whether CP or NS is in trust, Mr. Harrison will be CEO of NS and will sever all economic and other ties with CP including stock and pension rights.

Under the second bucket, consistent with the public interest, the public benefits will result from improved operational efficiency, asset utilization, service economic efficiency, fuel consumption and on competition. If the transaction is ultimately rejected by the STB and either CP or NS must be divested, operational improvements will have material increased the value of NS benefiting all shareholders. These public interest benefits outweigh any risk that the transaction is not approved.

I would like down to take you to the first of the timeline charts, STB trust approval. All that I would like to say on this chart is on May 2016 or earlier, which you'll see at the right-hand side of the chart, close into trust and at that time, the shareholders will be provided with shares in the new public



Company and cash. The second chart, the STB merger approval timeline, just sets out the approximate timeline for this transaction. I don't have any further comments on it.

I would like to turn you to the slide that's entitled voting trust precedent. On the left-hand side of this slide, you will see a very pertinent example. This is the CN-IC merger from 1999 and it is very pertinent of course because it involved Hunter Harrison. Hunter Harrison resigned from IC and joined CN as COO, IC was held in voting trust pending the STB approval, the operational improvements began upon Mr. Harrison's arrival, the transaction was approved and the trust dissolved.

The five-year oversight period was shortened due to successful integration. All of this was done without any service disruption. On the right-hand side, we set out one of an example of other transactions. This one is the G&W and RailAmerica. This is the latest transaction that involved a voting trust. That was in 2012. As I said, there are other examples of this.

I would now like to turn you to the slide that deals with regulatory matters in general. It is entitled exceeding the public interest standard for mergers. First of all, let me say that a lot has been said and written, some quite recently, about the difficulties of overcoming the regulatory standards. We are confident that the current STB Board would judge our application based on its merits under the proper legal standard and when they do, they will act favorably on it.

So I would like to take it to the left-hand box, this is the public interest standard and this is under sustainable and demonstrable gains in important public benefits. First of all, service and safety improvements. The merger will result in an efficient, reliable single-line service. It will ease Chicago congestion. Under sustainable economic and environmental benefits, it will increase equipment utilization, reduce fuel consumption, streamline facilities, create capacity through efficiencies, not new construction, and it will reduce highway congestion.

On the right-hand side, and my colleague James Clements will be talking about this in a moment, there will be an enhanced -- there's a necessity to show enhanced competition. This merger will create a stronger railroad, better positioned to compete. It will open new competitive opportunities. The proposed access model will introduce meaningful competition.

Let me say in closing that the public interest test is a balancing act. The proposed end-to-end CP-NS merger does not result in any potential anticompetitive impacts. Nor is there any reason to assume that other carriers would feel the need to merge in order to compete. It creates a balanced, competitive industry.

Thank you, James.

James Clements - Canadian Pacific Railway Ltd. - VP Strategic Planning and Transportation Services

Thanks, Paul.

CP is proposing to change the status quo and introduce an innovative approach to pricing and service that will enhance competition for our customers. The first piece is about bottlenecks. I think it is important for me to outline what a bottleneck is and what we are proposing to do.

Today in the industry, if you have a move from A to C on this chart and there's a competitive alternative for a portion of the move B to C, this is the situation that results in a bottleneck. This segment from A to B is what is called the bottleneck segment. As a carrier that moves from A to C, CP in this example, we do not have to quote a rate from A to B. We only have to provide the shipper with a rate through to C, they don't have access to the competitive alternative of B to C.

Where we would go with the proposal, is we would provide the customer the alternative to see what the option of B to C is by providing them with a rate from A to B as well as a rate from A to C if that's what they would like. They are then free to make their own choice based on the alternatives and the competition that would exist.

We don't think that this is an onerous option for the shippers or for the railway. In fact, it's got direct parallels to how we price today in Canada. And we are also not the only ones that think this will enhance competition. This is what shippers are asking for today in the US regulatory environment.

And then to further competition, we are also proposing what we are calling, modified terminal access. In terminal areas, CP would allow another carrier to come onto its railway in order to serve CP served shippers when we are not providing service or we are not providing competitive rates to the customers that we serve in those terminal areas.

Again, we don't see this as an onerous option for us to provide it to the shipping community because we are in charge of our fate here. If we do a good job and we provide service, which is one of our core principles, and we provide competitive rates, then we're not going to be faced with the other carrier coming across our network.

The other thing I want to make clear here is this is not open access. We are not allowing a second railway to just run all over our network and come on service, shipper at one of the points and run across our network wherever they want to take that traffic. It is simply an option where the second carrier can come in at the terminal area, go to that customer and provide that service to them and take it back to their railways to haul it across their network.

I think this is a compelling competitive alternative, but I'm not the only one. Today, the STB is allowed to grant this as a remedy to shippers if they determine that a railway in a terminal area is providing anticompetitive type service or rates. So we are just bringing simply bringing forward and simplifying this remedy that has been contemplated by the STB as allowing access to the shipper and options.

If we take these two pieces together, both the terminal access and quoting the bottleneck rates, we will provide enhanced options and competition to the shippers across all of our network. You may have some questions about short lines and when we look at that, we would also be proposing that we remove the paper barriers for the short lines that we don't own the track.

And where it is the leased line, the remedies that I've just described in terms of bottleneck pricing and terminal access, would be allowed to any of the leased lines on the CP-NS network. This framework plus the service and reach of the combined network provides competition to all the shippers in the proposed transaction.

Now, I will hand it over to Keith.

Keith Creel - Canadian Pacific Railway Ltd. - President & COO

Thanks, James.

I'm going to spend my time and my comments providing color from the operational perspective to set the record straight. Last week, I listened to Jim's comments and the NS team's comments and have reflected on them and thought about them. It's apparent to me to simply say with all due respect, NS does not understand the facts of our transformational journey that we started mid-2012 at Canadian Pacific. NS does not understand the way we run an efficient railway day-to-day, ship to ship, week to week.

In spite of the naysayers back in 2012, it seems like it was yesterday when they all said that we couldn't, this team has taken with this operating model, this Company, this franchise, from being an industry laggard to an industry leader. And it is done day-to-day by estimating a scheduled railroad operating model that focuses on sustainable principles, not cut to the bone principles. Providing service, improving the service for our customers, asset utilization, turning assets, sweating assets, making asset use in a very asset intensive industry, more efficient.

Controlling our cost, not cutting cost to the bone, understanding what your cost should be and controlling and creating a discipline so that you progressively and constructively manage those costs. Developing people, people the folks, the key asset, that make this happen day in and day out in a railway industry. And doing it all safely, respecting the communities we operate in and through, respecting our employees, respecting our moral and professional obligation to run the railway safely.



If you execute this properly, it creates sustainable profitable results that yes, produce a very strong operating ratio and yes, produces strong cash flow, which as Operating Officer, it excites me with an ability to reinvest back at the physical plant to sustain those results on a long-term basis. Be it, number one, call for cash, protect the safe operation of the railroad. Number two, invest in our physical plant so that we can do things more efficiently, more productively, be it in our terminal, be it online of road, be it in our yards. And finally, invest to increase our capacity to grow with our customers today and in the future.

The facts speak for themselves. You can see on the charts that we provided for the industry. Since the turnaround began in 2012, over 2,000 basis points improvement in the operating ratio. While significantly increasing our capital spend of over \$400 million more annually. Hardly what I would suggest reflects a cut to the bone philosophy.

Now, let's frame it up from a service perspective. CP customers at this railway since 2012, had benefited from increased and improved transit times across every lane that we operate in. So if you are a customer that owns your own cars, I would say that matters. And it matters because you don't need to own the same number of cars today that you would have owned in 2012 before this turnaround began.

Now, I want to speak specifically to service-oriented truck competitive traffic. I believe that's the exact quote that was used. By definition to me, and better said in the industry, that's domestic home business. This is another area that we've created significant success contrary to the naysayers or the lack of understanding at the NS, here on the Canadian Pacific railway where we've revised the service schedule. Back in 2013, we've cut a day off of our key domestic routes going from Toronto to Calgary to Vancouver and our customers that have benefited from this has awarded this Company and recognized that service improvement with over 20% growth since those operational service improvements and changes were made. To suggest that we don't understand sensitive truck competitive traffic is just not fact based.

Now let's talk about Chicago. Hunter mentioned it. How soon we forget. I'm an operating guy that actually lives in Chicago. I've lived there almost the last decade of my life. Blood, sweat and tears for two railroads, not one, trying to manage efficient operations through a very capacity constrained Chicago terminal. The single largest interchange location in North America is in Chicago. So for any railroad to suggest that the industry would not benefit, that our customers would not benefit, that their customers would not benefit from rerouting and moving traffic away from that congested gateway, to me again, is not fact-based; it is not substantiated.

If you understand Chicago, Chicago is a place that depends upon the belt carriers in Chicago. The belt railway specifically as you see on the chart, for the lack of a better term, is the heart of Chicago when it comes to operations. All the major Class I railroads interchange traffic in Chicago. All that operate in Chicago interchange in the belt. We're all very dependent upon the belt. When the belt runs well, Chicago has a chance of running well. But when I say run well, it is fragile at best. To suggest that you should again, take our suggestions that we can improve efficiency and create capacity in Chicago with a grain of salt, as I've read by some STB commissioners, to me again, is reckless.

I would suggest to you and those in this industry that clearly understand the pains associated with 2014, as I set an STB hearings and explained how Chicago worked and explained how this industry for Chicago, for the weather, was in complete gridlock that affected this entire country. To suggest that it improved Chicago, doesn't serve the public interest again, I think is unfounded, it is not fact-based and it is irresponsible. And I would also suggest in closing before I turn it over to Bill, those current today, serving STB commissioners that held those hearings, that took those phone calls, that dealt with concerned shippers when this country was in gridlock, I would suggest they would agree with my reflection on the memories of and the impact of a better Chicago.

With that, I will turn it over to Bill for his comments.

Bill Ackman - Canadian Pacific Railway Ltd. - Member of the Board & Pershing Square Capital Management Founder

Thank you, Keith.

Hunter asked me to give a prospective, the investor perspective on the transaction. And so, I'm going to begin with what I would call a flowchart. If you start on the way you look at this transaction, there are really two choices. You can stay with the standalone plan and the standalone plan, Jim Squires has a goal of getting to a 65% OR in five years. Alternatively, you can pursue a merger with CP.



We believe the transaction could be executed, due diligence completed by the end of the year, and then, we would file an application for a trust. If the trust is not approved again, what we believe to be very unlikely event, you are back to square one with Jim Squires. If the trust is approved, Hunter Harrison would immediately join Norfolk Southern Railroad and would run the railroad and start implementing the benefits that we've heard about here.

Just thinking about it touching on what Paul Guthrie had to say, if you keep – if you put CP in a trust and Norfolk Southern is outside of the trust, Hunter's simply leaving Canadian Pacific and joining the Norfolk Southern Railway as a CEO. Hunter is a – other than the employment contract we have with him that ties him up for another 20 months or so, he's a free agent. He's free to leave absent that contract and go take another job. And he would take another job and run another railroad. And that is certainly something that the STB really has nothing to play a role in.

With respect to CP staying in trust, the good news is that CP is being run extremely well and has been run extremely well by Hunter and by Keith. And I think Keith demonstrated when Hunter had to take an absent earlier in the year, Keith was effectively the Interim CEO of the Company during that period of time and how well this railroad runs with Keith at the helm.

Assuming the trust is approved that we expect on May 1 closing, on that date, shareholders would receive \$32.86 in cash and 0.451 shares of a new Company. We're calling it CP-NS. And the Canadian Pacific shareholders turn in their stock certificates and they would get a share in the new CP-NS on a one-for-one basis. This is an entirely new Company. It has new management. Hunter is the CEO. It's got a new capital structure as part of the transaction. It is a holding company that owns interest in two railroads, one, Canadian Pacific that's held in trust, one is held outright, and it's going to have a different business plan going forward. And we believe that Company has enormous value and I'm going to take you through the details on that transaction, on the valuation.

About, call it, 18 months later, December 31, we expect to have an answer from the STB and at this point, I think it is difficult to precisely estimate the probability, although we think it is likely that it gets approved. Certainly more likely than not. But let's assume it doesn't get approved, in that circumstance, the holding Company, our CP-NS would have an obligation to distribute either CP or NS to shareholders in a spinoff to separate the two companies. Hunter would continue as CEO of NS. Keith would continue as CEO of Canadian Pacific. And shareholders could choose to retain both either or none of those shares in that circumstance.

All of the operational benefits however, that Hunter will implement during the period of time while we're waiting for the merger approval, will inure to the benefit of the long-term NS shareholders. The STB approves the transaction, then the merger closes, CP-NS becomes one company, and then, the Management team and the Company consolidate. We get the benefit of synergies.

Turn to the next page. Not only is this a substantially more value creating transaction, it is less risky. The reason why it is less risky is here we have proven management and in the case of Jim Squires, Jim is not a proven railroad operating executive and this is the first time NS has put forth an intermediate or goal in terms of an OR target. They have been stuck in a low 70s OR, we will show you for the last 20 years, and it is a really leap of faith for people to assume that all of a sudden beginning a week or so after the CP offer, the Company now has a plan to get to a 65% OR.

So if you want that plan, that's worth \$90 a share according to analyst estimates. The stock is trading above that. You should sell your stock in NS. If you want this plan and what would happen in our plan, there would be a merger, we'd close at trust, Hunter would become CEO of NS, Keith would run CP and we'd follow the path as I described before.

In the event the merger does not close, the non-closing scenario, the stock of CP-NS on the day of closing, the stock certificate you received we believe will be valued at \$125 a share. If the transaction ultimately close, the stock would have been valued at \$140 a share. So, the right way to think about is it's worth \$125 plus you have some probability of receiving an extra \$15 of value depending upon your estimate of the probability of that transaction.

If you go to page 5, I'll talk briefly about the NS plan which calls for a 65% OR by 2020. As I made the point before, this is the first time they've issued medium or long-term guidance. And if you can hear in this analyst's own words, I quote the Citi analyst: Norfolk's standalone case lacks detail upside while we credit NS for diverging from its tradition of not issuing financial guidance. We think its OR and EPS growth targets lack the necessary detail or upside to convince shareholders that further overtures from CP would be worth ignoring.



Let's look at the long-term record. Let's look at the last 10 years that Hunter was referring to. This is a chart of all of the Class I railroads, all seven. The bright red line is CP from 2006 to the present and the black line is NS. And you note, beginning in 2006, looks like around a 73% operating ratio and today, something north of a 71% ratio. It's bounced around in that corridor but really, there's been no progress made in the last 10 years. If you look at it on a relative basis, NS with the number two railroad in terms of operating performance for 2006, 2007 and 2008, and then if you look at it in the last really five years, it is gone from – it's in the bottom of the pack and most recently now, is dead last at number seven.

Let's assume for a moment that NS is able to achieve a 65% OR in five years. Let's look at analyst estimates going to get back to Citi quote: based on our map, NS's target for sub-65% OR in 2020 was largely priced into the valuation prior to CP's proposal. Assuming 4% revenue growth, a 65% 2020 OR in further buyback activity of \$750 million to \$1 billion annually, we see 2020 EPS of roughly \$9. Assigning a 14 multiple and a 10% discount rate implies the mid-\$80s to mid-\$90s valuation in line with the current merger affected stock price and up modestly from the \$80 price pre-offer. That's your upside case in the standalone circumstance.

As we pointed out, the synergies here, the substantial majority of them are created by improving Norfolk Southern Railroad. Those will be achieved regardless as to whether or not the ultimate merger is approved. If you look at the chart at the bottom, \$1.260 billion of pre-merger operational improvements that Hunter will implement along with the rest of the NS team, and then layered onto that the transaction closes, we have additional cost synergies of \$270 million. We have some revenue synergies of \$225 million and we have annual tax savings beginning at \$200 million per year. So the benefits are material, the transaction closes, but you still get call it, two-thirds of the benefits even if the merger does not ultimately get approved.

In terms of benefits to the public, those have been outlined quite well by the team but one of the counterpoints that had been made by NS, they say even if the proposed combination were ultimately to be cleared, be subject to a wide range of owner's conditions that would reduce the value of the stock consideration that has been proposed. What's interesting here is, there is no obligation for the Company to go forward with the merger.

The STB comes back and imposes conditions that are too onerous that would destroy shareholder value, then the companies will simply separate, the spin-off will take place, the merger will not take place. And you'll have Keith running CP, Hunter running NS and shareholders will already have received the \$33 a share in cash 18 months prior to that STB denial.

If you go to the next page, just kind of line up each transaction. So in the standalone plan, you get \$0 upfront and the fair value of the equity, if you believe that Management can execute on a 65% OR in five years, you get \$90 a share which is less than the current market price for the stock. The CEO Jim Squires, does not have proven track record for turning around railroads. If you look at the two CP scenarios, on the day the transaction closes in May, you get call it, \$33 a share in cash, you get 0.451 interest in a new Company which will be valued, that interest will be worth about \$92 a share at the time and for a total combined value of \$125 million. And you get proven management, Keith at CP, Hunter at NS, with a superb long-term track record. And again, in the approval transaction where the STB goes forward, you get \$140 of value and that same excellent operating team.

So, how do you value this transaction because there's been a lot of misleading information about this. Even some analysts get it wrong to be honest. The point we are making here is, if this were a cash transaction, you could simply line up \$90 versus \$120. Clearly one is better than the other. Or even if it were a very large company buying a small company, you could look at the value of the acquiring company's stock and you say I'm getting half a share of that, I can value that.

But here what you have is you have two companies that on an unaffected basis had almost identical market caps. CP at \$23 billion market cap, NS at \$24 billion market cap. Now these two companies are coming together. And when these companies come together, a lot of changes take place. Remember most importantly, we have a new CEO at Norfolk Southern, a new operating plan, a new approach to railroading. Number two, you're going to have a different capital structure. Number three, you're going to have precision schedule railroading which is not the way the business has been implemented historically. So it is completely different NS.

You're also going to have an ownership and CP run by Keith. So again, you're getting an interest in a holding company. Instead of owning just one company at CP, it owns two. It has a different capital structure, a different management team, a more diversified base of operations, bigger scale,

a larger market cap, it's a completely different enterprise. In a transaction like this, you don't value the Company based on where a CP stock trades today because the new Company doesn't yet exist. You have to value the Company based on what it will look like when the transaction closes.

So what will it look like? To get to that answer, first we walk through the assumptions that we use which we believe are conservative. And again, we encourage I'm sure analysts will come up with their own numbers, but we start with the base assumption. So the base revenue assumption we use is consensus estimate through 2018. In terms of beyond 2018, we assume 3% revenue growth, which we think is a conservative assumption. Because we don't give any benefit revenue synergies because this is again, a base revenue assumption.

With a base operating ratio, and we use again, consensus estimates. And in case of OR stays at 58% for CP and 68% for NS beyond 2018, again excluding operational efficiencies. Then we layer on top of that the operational efficiencies. We assume basically a four-year phase in for the transaction closing in May. So 17% of the synergies are achieved from May 1 to December 31, accumulatively another 25% gets you at 42% by the end of 2017, another 25% by the end of 2018, another 25% by the end of 2019, and the last stub period, you get the full synergies in 2020.

My experience with Hunter Harrison, the last time he told me it would take four years and it took 2.5, and what I like about 71 year old CEOs, is their motivated to get things done promptly. I would say these are probably the most conservative estimates it terms of the synergy realization. In terms of the post-merger combination synergies about \$0.5 billion, we just phased those in 25% a year. And again, we think this is conservative. Tax synergies, obviously you get immediately.

We put no value for real estate or asset monetization and if you look at how much asset value, excess locomotives, other equipment that were extracted from CP, we've got many, many years left of deferred locomotive purchases because of that monetization, it can be very material. And let me point out, real estate, this is a particular area of mine. What's interesting about Norfolk Southern is vast ownership of real estate and some of the most valuable real estate markets in the world, the Northeast and certain parts of the South of this country.

On taxes, we assume a 27.5% tax rate for CP and a 36.2% for NS. This is NS while in trust but again, the likely outcome is that CP will be in trust and there are no tax benefits while the entity's held in trust. Post transaction, the combined entity will have a tax rate below (technical difficulty) 30%.

In terms of CapEx, we use consensus estimates and we make flat CapEx as a percentage of sales. In terms of valuation, we use a 17 multiple 2021 EPS, which we expect to be a CAD27 assuming STB approval, or a 16 multiple 2021 of CAD25 with no STB approval.

The reason for the slightly higher multiple is as the Company generates more earnings, there's more free cash flow conversion and this turns into about a low 20s free cash flow multiple for the Company. And we use P/E multiples that are similar to where CP/CN trades because of their higher margins and their higher free cash flow conversion. And then, we discount those. We value the Company based on 2021 earnings in 2020 and then we discount back the value of the stock at a 9% discount rate.

How does that look? If you go to the next page on transaction valuation, you start with the earnings estimates of \$25 and \$27 for 2021, a forward multiple of 16 to 17 times. The fair value of CP at the time, \$399, CP, this is CP-NS, excuse me, of \$399 to \$464. We discount that back to the present. We convert it into US dollars and the US dollar value of the Company \$204 to \$237 a share. So the CP stock that today or closed yesterday at \$176, we believe in mid-- the Canadian version, we think will be worth between CAD271 and CAD315 and the US stock which closed in the \$130 or so, we believe will be worth \$204 to \$237 a share. So you get a sense of how much value creation there is on the closing of the transaction.

Breaking this down into stock and cash, the NS shareholders receive 0.451 shares. So 0.451 times the US dollar value of CP, you get to \$92. Add \$33 in cash and you get total fair value of \$125. In the STB case, it's worth at \$140 and so you have to probabilistically discount that \$140, so somewhere between \$125 and \$140 is fair-value. And that means a premium to the standalone plan is 39% to 55% and a premium to the unaffected price of 58% to 77%. Now these are two of the biggest, one of the biggest premiums I've seen for any transaction, particularly one of the scale.

This is a complicated way to describe the valuation. I figure people would like a simpler version. I like simplicity. So regarding the next page, a much simpler way to think about CP. What we've done here is we calculate the new CP-NS 2017 EPS. This based on the assumptions we use before and assuming that only 42% of the pre-merger operational improvements and of course, 0% of the post-merger synergies are achieved by the end of 2017. So this is, an analysts can do their own assessment, but we believe the Company will earn approximately \$12.29 in 2017.



Our valuation on the previous page comes up with a \$204 to a \$237 valuation for CP-NS. That's a 16.6 to 19.3 multiple of 2017 earnings. We think this multiple range is conservative because again, NS will be in a transformational turnaround at this point in time. CP still has very substantial growth and so earnings are going to grow much more quickly than a standard rail at this point in time.

We think a 16 – take the low-end of the range, 16.6 times, that's a very conservative valuation. In order for the CP-NS deal to be superior to the standalone \$90 valuation, CP only needs to trade at CAD170 a share or \$120. So basically the stock can go down from where it is today and it's still a better deal than the standalone plan. So if it trades at 10.4 times earnings, it's still a better deal than the standalone frame.

Let's look at the track records of the team. Hunter Harrison's track record is very well known. My guess is there are a number of risk arbiters on the phone who don't know Hunter that well. Let me tell you a little about him. He ran Illinois Central from 1989 to 1997. He made it the best performing railroad in North America. 2,000 basis points lower operating ratio than the rest of the industry. Nearly tripled operating profit. OR went from 80% to 63%. And then, again, as Hunter's focused on shareholder value, a 5.5 fold return for the investors in Illinois Central.

Then he went to the Canadian National when that transaction was acquired in a trust deal and he led the transformation of CN into the best performing railroad in North America. EBIT's up almost threefold. OR from 78% to 67%, this is 67% in 2009 which as you know, was a recession year. A fivefold return, 5.25-fold return to shareholders. And I think a very important point here and this really gets to whether the changes that are being made are cut to the bone short-term changes, even after Hunter left CN, CN has continued to improve, the ORs continue to drop, the revenues have continued to grow. These are changes that have sustainable long-term value. Then Hunter went to Canadian Pacific. Again, Hunter only knows how to increase profits by looked like threefold, and then he leaves if you look at the chart. OR from 81% to 60%, a fourfold return for shareholders. But I think this track record speaks for itself.

The next page, we go through Jim Squires background. Jim is a lawyer. He is educated at a very good law school, University of Chicago Law School. He graduated in 1992, and again, this is just from the company's website. He joined NS in 1992, so right out of law school and he served in several law positions according to his bio. He became Vice President of Law in 2003, Senior Vice President of Law in 2004, Senior Vice President of Financial Planning in 2006, Executive Vice Present of Finance in 2007, Executive Vice President of Administration in 2012, President in 2013 and then CEO in June, about six months ago, and Chairman, a month or so ago.

If you look at this bio, obviously he looks very different from Hunter Harrison. Yes, he's worked at a railroad since 1992, but he's worked on the legal and the administrative side and the finance side. Not on the operating side. And the problems at NS are not legal, they are not finance and they are not administration. They're operations and Jim does not really have an operating background. I guess his first exposure to operations would have been when he became President. But from 2013 to the present, we have not seen an improvement in any of the operations of the Company.

Next slide we compare the return of Canadian National versus the return of Norfolk Southern over various periods. We look at when Hunter was at CN, the OR went down 1,170 basis points, the OR increased over that same period by 410 basis points from 1998 to 2009 at Norfolk Southern. Revenue grew about the same, 5% compounded at both places. Since Hunter retired, CN has continued to outperform NS. A threefold the return of NS from December 2009 to the present. OR continued to drop from what was already a very low operating ratio by 780 basis points. Revenues doubled NS' growth rate and doubled the improvement in NS's OR.

And then, if you look at Hunters tenure over the last four years at CP, in terms of relative returns to investors, a sixfold return versus Norfolk Southern. Revenues compound annual growth rate of 7% versus negative 1%. Again, these are comparable periods of time in the railroad industry that we are comparison. These do not look like short-term improvements.

Let's look at the very long-term record. Hunter joint CN, call it, 20 years ago. And that gray line that shows the operating ratio dropping like a stone over that period, even after Hunter left CN, that's the CN track record. It's really remarkable. The red operating ratio is basically stable. It's 84% to about 81%. Hunter joined CP in June of 2012, and the OR drops again like a stone on an even more dramatic basis than the OR of, and much more quickly frankly, this is my argument about the 71 year old CEO, he works faster now than he did 20 years ago.

But take a look at Norfolk Southern. 20 years and some it looks like a kind of mountainous period here during the Conrail integration, but back to a low 70s OR. 20 years without improvement. Then let's talk about – we have been here before.



So in 2011 we bought a 14% stake in Canadian Pacific with Hunter as our partner. We proposed him to the Board of Canadian Pacific and he said look, you have the worst CEO in North America and we have the best and we would like to replace those two. The Board didn't like outsiders coming in and telling them their railroad was underperforming. So they came out and said, we have got a new plan and we can beat Mr. Harrison.

They really derided our plan and they made some remarkable statements, all of which are recorded and I encourage you go to the CP rising website still left over from the proxy contest. You can watch our Analyst Day. But the CEO on their Analyst Day said quote: curves and grades is physics and the dismissive comments by Mr. Harrison indicates a clear lack of research or understanding or both. So basically Mr. Green said the laws of physics have not allowed Hunter to achieve the results he's achieved. He said our operating ratio targets for CP are unrealistic and lack credibility. We said the Company would get to a 65% OR in four years. The Company got to a sub-60% OR in three years.

Because those arguments were not having a lot of credibility with shareholders, believe it or not, the Company, the Board hired a consulting firm. Oliver Wyman is considered the most highly regarded consulting firm in the railroad industry. And Oliver Wyman concluded that our multi-year plan, the Company's multi-year plan was ambitious but achievable. They also concluded that Pershing Square's stated OR target is both unrealistic and unachievable. So they paid \$5 million to Oliver Wyman to put out a white paper. The white paper said Mr. Harrison's never going to achieve these results. So it just seems familiar to me.

The arguments always go like this. Hunter shows up, he says I can fix things, management says we can do better and they put out a new plan and they say now we're going to get it right even after 20 years of failure. Then they say well, what Hunter says he's going to do here are just not achievable and not only are they not achievable, but all the customers are going to flee and that's what's going to happen.

But when you look at the track record, when you look at Illinois Central, when you look at Canadian National, when you look at Canadian Pacific, when you look at 50 years of what I can say is the greatest railroader of all time, a three-time awardee of railroader of the year. I was at the recent – last year or so, where he won again. The facts could not be more stark.

The other point I want to make here is look, I'm very confident that the Board of Norfolk Southern is comprised of very high-quality, honorable people that I have a lot of respect for. But what happens in situations like this is that pride gets in the way. Perhaps in the case of Mr. Squires, he's been at Norfolk Southern since his entire career, he's now made it to CEO, and unfortunately Hunter showed up six months after he became CEO of the railroad. I'm sure Mr. Squires would prefer to keep his job and he's fighting awfully hard.

But this is not about Mr. Squires job, and this is not about the prestige of being on the Norfolk Southern Board. It is about what's in the best interest of the owners of the Norfolk Southern Railroad. It is about what's in the public interest in terms of the railroad infrastructure of the country. And in those respects, this transaction makes enormous sense.

And it makes no sense for a Board to run out and get a white paper, so-called white paper written, the night before our presentation when they don't even know the whole presentation is based on the CP going into trust when in fact, the likely plan is for Norfolk Southern to go into trust. And of course, what we've learned is you can pay consultants and they'll say what you want. With that, the facts are clear.

I'm going to turn it over to Mr. Hunter Harrison.

Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

Thanks, Bill, and good point. Sharon, why don't you take questions from the audience.

QUESTIONS AND ANSWERS

Operator

(Operator Instructions)



Scott Group, Wolfe Research.

Scott Group - Wolfe Research - Analyst

Thanks. Good morning, guys.

Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

Good morning, Scott.

Scott Group - Wolfe Research - Analyst

I think the voting trust structure is really key here and the idea of putting CP in trust is new to us. So can you discuss, is there any precedent for the acquiring railroad to go into trust? And maybe just some more color. We've heard from NS about the reasons they are so confident the trust cannot get approved. Maybe, can you share any conversation you guys have had with past STB members maybe including Linda Morgan in the past? Why you think this structure can be approved? And then just with that Hunter, if at some point we learn that couldn't run Norfolk while in trust, would you still be pursuing the transaction?

Paul Guthrie - Canadian Pacific Railway Ltd. - Special Counsel to the CEO

It is Paul Guthrie. First of all, no, it is premature for us to have had any discussions with the STB staff. So that has not been done. Yes, we were blessed with having Linda Morgan as you know, as the ex-Chairperson of the STB on our Board. And we had many discussions with her at the Board level and at a personal level about the voting trust and other regulatory matters.

I think she would be very surprised to hear that people say that it is impossible to have the voting trust approved by the current STB Board. She was always very supportive of the fact that mergers could take place in the appropriate circumstances. I think you've heard this morning why it is appropriate that this merger should be approved.

Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

Scott, I'm going to add to that is that really, the only thing that's changed in the standards is the public interest test with the trust. And it is beyond me to try to understand what's not going to be in the public interest here. And one of the reasons that we are still trying to engage in a dialogue that if there are advantages that our friends at NS know or understand about which Company is better to put in trust, we would like to hear those and put them in the blender. But if there's no dialogue, then we are left to independently make the decision alone as to which way we should proceed. But I think that my view when all is said and done, the trust issue is not a major hurdle.

Bill Ackman - Canadian Pacific Railway Ltd. - Member of the Board & Pershing Square Capital Management Founder

Paul, the other question was, is there precedent for the acquiring company to be in trust versus the target Company and maybe you can address what we've learned on that respect?

Paul Guthrie - Canadian Pacific Railway Ltd. - Special Counsel to the CEO

In the CN-IC situation, that of course was exactly that situation. Hunter would be familiar with that.



Bill Ackman - *Canadian Pacific Railway Ltd. - Member of the Board & Pershing Square Capital Management Founder*

So CN was in trust?

Paul Guthrie - *Canadian Pacific Railway Ltd. - Special Counsel to the CEO*

No, IC was in trust.

Scott Group - *Wolfe Research - Analyst*

What are the rules with respect to, does the STB require the target company to be in trust or either company?

Paul Guthrie - *Canadian Pacific Railway Ltd. - Special Counsel to the CEO*

No, sorry, either company can be in trust if that's the question.

Scott Group - *Wolfe Research - Analyst*

Okay. That's helpful and just second question for Hunter, and also for you, Bill. Can you guys talk about the next steps? And it seems like it might be tough to reach a deal directly with NS management. So what are the steps you guys are thinking about to get a deal done and maybe improving the terms even more if that's required? Would you consider more cash versus stock? Would you consider a higher price as I think many were expecting today? And then Bill, can you comment if you own any NSC stock, if you are able to own NSC stock? And do you think, would you consider maybe leading a proxy contest to bring this to a vote?

Hunter Harrison - *Canadian Pacific Railway Ltd. - CEO*

From my standpoint Scott, one of the things I've learned over time, and it is kind of hard to learn, but never say never, but our interest right now is to try to engage in a dialogue with Norfolk Southern. That's the best outcome for all of them. One of the things we lose sight of is whatever the outcome is here, is we've got two railroads to run going forward.

To create a lot of adversarial relationships in this is just not healthy. So if we can sit down and enter a dialogue, that's step number one. I don't want to speculate and draw lines in the sand about what might be next. I personally think that the offer is awful nice. It is very generous. I think it meets the criteria, but that is for others to decide. But I think that's what we will be trying to pursue.

Bill Ackman - *Canadian Pacific Railway Ltd. - Member of the Board & Pershing Square Capital Management Founder*

And I guess from our perspective and I can give the perspective of a shareholder activist, if I were not on the Board of CP, I would be buying stock today in NS and considering seriously putting up a slate of Directors as a shareholder activist. And I think, the [clay] icons of the world, the Dan Lobes, the John Oh's, this is an ideal activist situation. You have a transaction where the Company, if the transaction goes through, is worth \$125 plus to NS shareholders. And if the transaction fails, you have a Management team that's a \$90 price target.

So that should motivate activists to come in but putting aside activists, I would think the big shareholders of Norfolk Southern Railroad are going to pick up the phone and call the Management and speak to the Board and people will come to their senses. I do think it was appropriate for the Board to reject our first overture because there was uncertainty and there was value and it is very common in a situation like this for a first offer to be rejected.



In response to the rejection of the offer, we made very material changes to the deal. We've brought forward the timing 18 months, the transaction closes, you receive cash in six months instead of maybe in two years, you receive stock in the new Company. A lot more of that value is being shared for shareholders. So this is a much higher offer. It is a 30% higher offer based on where we expect the stock to trade and we encourage you to do your own analysis.

If you don't agree with our \$125 value for us, what is your 2017 earnings estimate and what multiple would you use? But you're going to get to a number where the stock is worth \$120, \$130 a share, that's a huge premium to the market price. It's really not going to be about increasing the offer. It's about engagement and hopefully, with this offer and with the certainty and the reduction in regulatory risk, the Board will consider very seriously, their advisors will study it and they will make the right decision to engage.

Hunter Harrison - *Canadian Pacific Railway Ltd. - CEO*

Scott, I would just add to that last point is this. Not necessarily from a shareholder perspective, but the Company said it doesn't matter about the price. That it's all about the regulatory and all about the trust. So they've indicated to us it doesn't matter what the price is. So there's no use in going out there and making additional offers if it doesn't do anything with the Company. When we get to the point of talking to the shareholder, it is a different situation. But I just would hate to [have that].

Scott Group - *Wolfe Research - Analyst*

Okay. Thank you for the time, guys.

Operator

Chris Wetherbee, Citi.

Chris Wetherbee - *Citigroup - Analyst*

Thanks for the time. Maybe following up on that question, just thinking about that cash versus stock. And I certainly understand the point and I can get the picture from a valuation perspective and that would change that with that proportions being changed between cash and stock. But given some of the responses from the Company and what we are hearing from shareholders, I guess I'm a little curious why the cash component maybe didn't go up and how you think about how that could be changed going forward if it does get changed as you pursue this down the road? I'm curious about that.

Mark Erceg - *Canadian Pacific Railway Ltd. - EVP & CFO*

I think again it is important to realize that the offer that we have now brought forward is substantially more financially attractive than the prior one. In the earlier scenario, cash wasn't going to change hands until the final STB approval which would have been as late as December of 2017. Now cash is available as early as next spring which is considerably sooner and we are increasingly the pro-forma ownership from 41% to 47%.

So in that sense, they are going to be equal participants in this transcontinental railroad that we are going to put together which is going to have as we said earlier, \$1.8 billion with the synergies available to it going forward. So this is a very, very attractive proposition from a financial standpoint versus their base case which more or less at this point suggests, they are already overvalued.



Bill Ackman - *Canadian Pacific Railway Ltd. - Member of the Board & Pershing Square Capital Management Founder*

One thing I would add is in terms of getting a transaction approved, in terms of having a transaction that shareholders are going to support, I think it is very very important that the combined Company has a strong balance sheet. And we are staying at BBB rated company as a result of this transaction which is a strong investment-grade credit. If we were lever up and put more cash in the deal, it would be less valuable to the shareholders and they don't own interest in a much more levered company.

Again, this is not a sale of a small company to a really big one. This is a merger of two similarly sized companies and as important to the people who own the target as it is to the people who own the acquirer, that the combined Company is strong financially. I think it is very important to the STB as well.

Chris Wetherbee - *Citigroup - Analyst*

That's helpful. Then just following up with a second question, obviously the trust structure is probably key here and you guys talked decent amount about that. But one of the other pushbacks that we got from Norfolk Southern was really about some of the access ideas from a terminal access perspective and bottleneck pricing. You guys have articulated what your strategy is here.

How do you think about the potential impact to the industry from a pricing standpoint? The pushback we've gotten from companies in the industry is the potential risk to pricing. Some of the big gains have been made over the last decade or so. How do you think about that going forward and what could this potentially do, if anything, to that dynamic?

Hunter Harrison - *Canadian Pacific Railway Ltd. - CEO*

Scott, what we've said before, Chris, is that we are not suggesting being so presumptuous to suggest to the Board what they should do. What we are saying is here's what we will do in this situation which we think is appropriate for us and our customers given what we are allowed to do the transaction. Clearly it is pro competitive. It possesses all the things that we've ever heard from the shipping public.

And this Company has, since I've been associated with it and I think if you check my track record wherever I've been, I've never been an advocate of bottleneck. I've never been an advocate of paper barriers. I've never been an advocate of and been concerned about access. So this is not a different position that we are trying to take advantage of what's the right thing to say today. Keith, you want to add to that?

Keith Creel - *Canadian Pacific Railway Ltd. - President & COO*

Yes, I was just going to say, just look North to the border, look to Canada. You've got the two most financially successful, service successful, operation efficiency successful railways in the industry, that although it is not the exact same idea, we still face the same competitive issues that you might be concerned about or that NS or CSX or any other road. And we survived and we thrived.

If you are willing to compete and provide a service, your customers are going to reward the business to you and you're going to do well. The ones that can do that well will do well. The ones that cannot maybe not so much. But at the end of the day, we intend to be a leader in that regard.

Chris Wetherbee - *Citigroup - Analyst*

So it really comes down to service. All right, that's great. Thanks very much for the time. Appreciate it.

Nadeem Veiani - *Canadian Pacific Railway Ltd. - VP of IR*

Thanks, Chris.



Operator

Tom Wadewitz, UBS.

Thomas Wadewitz - UBS - Analyst

Good morning and thanks for all the information in the call. It's great to have a lot of further detail so we can understand the approach. It seems like -- I know Hunter, you have said that you are highly confident that you will get this voting trust structure approved. It seems that we don't have much in terms of precedent post-2001. I know you cited Genesee & Wyoming and RailAmerica, but that's a different type of railroad. And so I guess, what is it that gives you the confidence that there would not be an issue with control, which I think would be a point you'd say yes, you leave CP and you go to Norfolk but you still know Keith well, you were the CEO when there's some element of residual control or relationship? What gives you so much confidence that wouldn't be an issue? Or is it just a probabilistic we think it's 70% and we will -- we've got to see it is worth, we have to go forward and see what happens?

Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

Tom, I would go back to the little bit of the present and the history of the past. There's never been -- I know the rules have changed a little bit but there's been seldom cases of trust being turned down if you go back through the public record. All we have in this case is effectively different is talking about the public interest. I don't understand the argument that to put a company in trust is not in the public interest. I think we made a pretty compelling case of all the improvements we can make that are in the public interest.

So if it is in the public interest, if the Service Transportation Board retains oversight, why not do it? If you cannot get a trust approved, they should have just written a law and said there's no more mergers. There has to be a mechanism and as I understand it, there was some statements made at one of the conferences that the trust was the gold standard now for approval of mergers. Maybe I'm being too logical and rational here, that this make sense but I just cannot see the argument against it.

Keith Creel - Canadian Pacific Railway Ltd. - President & COO

If I could add to that, Hunter. Tom, since you mentioned my name, I'll take you back to personal experience. Back in 1998, 1999 when IC was put in trust. Hunter was the CEO of IC. Hunter left, severed from IC, went to the Canadian National and started their journey ahead of the approval. I remained back at the IC.

There were a lot of us that were trained and taught and developed our operating ability by Hunter. So certainly, we ran the railway to make him proud, but at the end of the day, we know what the law says, we comply with the law, we respected the law. Not only did they approve, they approved the deal early and they reduced the oversight period. So I would say experience speaks to that point significantly.

Mark Erceg - Canadian Pacific Railway Ltd. - EVP & CFO

If I can just add one thing. Hunter would be leaving the entity that's held in trust to go take another job. If his contract actually were over, he could do that anyway and no one would stop that. Then lastly, I would say what's the downside? We cannot with precision tell you what the probability is. We can tell you what our best judgment is. The upside if this transaction happens is enormous.

If we sign a merger agreement, lawyer's spend some legal fees over the next few weeks, we apply for a trust transaction and let's say it gets turned down 90 days later. No harm, no foul. There's been no negative impact on either railroad. So I think you just look at these things on downside versus upside. I don't see any downside of it other than \$2 million of legal fees, the upside is enormous



Bill Ackman - *Canadian Pacific Railway Ltd. - Member of the Board & Pershing Square Capital Management Founder*

And if they do basically approve the trust but then ultimately come to a different final determination, you still get a significant portion of the operational improvement in that interim period. And you still then end up with an entity that's running considerably better than it is today and your valuation is the \$125. So there is no downside in any permutation that one can put forward constructively at this point in time.

Hunter Harrison - *Canadian Pacific Railway Ltd. - CEO*

Last point, Tom. I heard this on your call the other day, that we could do alliances just as easy. People that talk about doing alliances just don't understand railroading. Our weakness right now in the business, and you know this as well as I, is if I get a customer asking me what our service is from central Canada to Florida, all I can tell them is what we are going to -- what it does going to Chicago. I have no idea what the final service is because I have no control over. So end-to-end, one quoted service and rate is powerful and you cannot do that through alliances.

Thomas Wadewitz - *UBS - Analyst*

If I could -- I appreciate that really thorough response from all of you. If I could ask a second question? With respect to the final ruling that on the rail combination, not the trust, but the rule on actual application for the combination, you could say well, the shippers aren't the biggest hurdle here. Maybe the other railroads could be doing some pretty innovative things to help increase access and to help offer something to shippers.

I think Paul said that you don't believe CP-NS would prompt others to merge and there wouldn't be a downstream affect. Why do you have the view that there wouldn't be downstream effect? And how do you think you get over the bar of resistance it seems likely from the other railroads to the final approval of your deal? And thank you for the time.

Hunter Harrison - *Canadian Pacific Railway Ltd. - CEO*

Let's take it a step at a time. Number one, and I don't want to paint everybody with broad brush, but let's say railroad A objects. Why do they object? Why do they object to something that's pro competitive? Why do they object -- do you know what they are objecting for? They're hiding behind this whole issue of saying, we like this new opoly. We don't like to have more competition brought in. We like to have paper barriers. We like to have all that artificial protection and it is being stripped from them.

As far as downstream effects, look, I can make a case that the four big boys in the US, that somehow they do some combination, CP doesn't have any compelling position there that's going to hurt them. So it is their decision. I don't see it as an automatic that they've got to merge their sell with the two giants in the West because of something that CP is doing -- this Western Canadian railroad. I just think it is a lot of rhetoric about nothing.

Bill Ackman - *Canadian Pacific Railway Ltd. - Member of the Board & Pershing Square Capital Management Founder*

Ultimately, Hunter, if the STB decides that it is going to have downstream effects that are negative, they want to approve the merger. But still the vast majority of the economic benefit, the operational improvements, you are going to get anyway. Right? If our proposed, your proposed operational changes and your offerings, the STB decides that's going to be bad for the other railroad, they don't have to accept those proposed changes. They can propose other ones. We can consider them and decide whether or not we want to go forward.

Hunter Harrison - *Canadian Pacific Railway Ltd. - CEO*

I guess what we should do Tom, is let them be a part too. I'm just kidding. (Laughter).



Thomas Wadewitz - UBS - Analyst

Thanks for the time. Appreciate it.

Operator

David Vernon, Bernstein.

David Vernon - Bernstein - Analyst

Thanks for taking the question. It seems like one of the reasons here that Norfolk won't accept a deal or doesn't seem to want to even propose a deal is that they think for whatever reason that the regulator won't accept that trust. Given the size of the potential for value creation here, would you consider offering them a break fee if the regulator doesn't approve the trust?

Mark Erceg - Canadian Pacific Railway Ltd. - EVP & CFO

I think we would love to engage with them and if they come back to us and say we will do the deal and we want to break up the effects, we will take it under advisement, won't we Hunter?

Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

That's one thing you should talk to them about but they won't talk. You cannot put everything in a letter and all they want to do is – right now, they don't want to sit and talk. So we would have to see and understand what else is coupled with it.

David Vernon - Bernstein - Analyst

Then I guess along those lines of thinking, have you thought about anything else that short of a proxy fight that would maybe get NSC to the alter here? Because it does seem like they want to do the regulators job in a way and say that the deal won't get approved so we won't accept it. And I'm just trying to understand if there's a way to get them off that position?

Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

That's what we are doing this morning and that's what we are going to be doing with other shareholders. At their request, by the way. (Technical difficulty). We've got a long list of shareholders that want to talk to us. They've got a lot of questions and we've got a lot of answers.

So as I said early on in this process, we are taking our argument and our case to the shareholder. In the final analysis, this is about, as Bill made the point, this is about the shareholder, not the NS Board. Not NS Management, this is about the shareholder. That's what we are going to do until we get shut off at the pass and give up is that we're going to go to the shareholder.

Bill Ackman - Canadian Pacific Railway Ltd. - Member of the Board & Pershing Square Capital Management Founder

I'm cautiously optimistic and I've seen this movie before where the press release that was put out this morning was put out before they even heard what we had to say. I guarantee that the Board was not assembled to put together that press release. That was put out by a PR firm and by the way, NSR hired the same PR firm that CP did. And their mode is, protect the Company at all costs.



I just think this Board is comprised of some high-quality people and that hopefully they're listening to the call or they'll get a copy of the transcript, they'll consider the facts and cooler heads will prevail, they'll listen to their advisors and they will engage. That's what I would do if I were a member of this Board of Directors. I think that's what any Board member would do if they're observing their fiduciary duty.

David Vernon - Bernstein - Analyst

Great. Maybe just as a quick follow-up, who would run the holding Company?

Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

That's another question that we've tried to raise. And when I raised the one face-to-face we've had, when I raised that, if they had concerns, desires or thoughts, they said it is about shareholder value. If you are not having a dialogue, you cannot get there. So we have some flexibility there.

One of the things that we tried to not be so presumptuous that we had all the answers, that we walked in there and here is the plan and here's what we are going to do. We walked in there and said look, we think this has the potential to create compelling shareholder value. And we are not -- we are neglecting our duties, our fiduciary duties if we don't explore those opportunities. And we've been effectively stonewalled so far, at every turn. So, I don't want to get into because they could come back with a different response and we could have a different model.

I think hopefully, we've tried to clarify today, either company can go in trust, under certain circumstances there would need to be a holding company, under certain, there would not need to be, depending. But once again, if they are opposed to it and they won't talk, then we will have to come up with our own plan and do the best we can without them. Which I think is too bad. I just cannot understand why people won't talk. What is the danger? What are they scared of to sit down and talk?

Bill Ackman - Canadian Pacific Railway Ltd. - Member of the Board & Pershing Square Capital Management Founder

Going to the CP situation, the last time the Board would not talk to Hunter, the shareholders voted 87% to 94% to replace the seven directors that we opposed. The other eight directors, none of them got a majority vote and we didn't even oppose them. It was the biggest landslide vote in the history of public company proxy contest. And it was all because the Board would not engage with Hunter.

My view is the Board is going to have to take a look at that precedent and they are not going to -- they are going to engage. I think the analyst community can be very helpful in what you say in what you write. And the shareholders will have enormous effect and if they do it publicly great, but even if they took up the phone privately or send a letter to Board, that will have a huge impact on this Board of Directors.

David Vernon - Bernstein - Analyst

Appreciate it everybody. Thanks so much for your time.

Operator

Brandon Oglenski, Barclays.

Brandon Oglenski - Barclays Capital - Analyst

Good morning, gentleman, and thanks for hosting this call. Hunter and Bill, I'd say, Norfolk shareholders already owe you a huge favor because this the first time they've actually put a financial targets at least in the history that I've understood for the Company. But let's just talk about that for a second because it sounds like their plan for 65% OR. Now it does match other carriers. The rate of improvement's pretty conservative.



But based on the limited information that Jim has provided on his call on Friday, it does seem that a lot of that is focused on future growth based on some service plan that they have in place that's going to drive that future growth on pricing. But these sound like assumptions that we've heard a lot from the past from Norfolk even without that financial target to be held accountable to. So we have accountability now, but it does sound like it is predicated on commodities stabilizing, Eastern Appalachian coal not going down any further, which I think is a bit, not a conservative assumption now just given where natural gas prices are.

So, I think when we look at your track record Hunter, at the IC, at CN, at CP, there's clearly a more efficient and better way to run a railroad. It is much more cost and velocity focused and maybe I'm stealing your words from you here. But I just want to differentiate because Norfolk is saying that you want to cut to the bone, you want to jeopardize future growth with your strategy. But when you lay out your targets, it looks like it is much more focused on shrinking the cost structure, improving velocity on the network and then driving growth.

And I think what's lost on a lot of people is actually your legacy at Canadian National, the last four or five years and maybe we're giving them too much credit, but they have been the fastest-growing railroad, I think, on the history books. So how do you speak to these differences in plans and compare and contrast what Jim has effectively laid out to his shareholders and what you have done now three times over at three significant railroads?

Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

Look, I don't think this so-called schedule precision railroading, number one it is not a secret. I wrote a couple of books about it. Number three, I don't know how many times we invited the NS and they took us up on it on benchmarking. So we've told them everything we know. But there's some, I don't know if it is pride or authorship or what, that people don't get it for whatever reasons.

I think what really happens is somebody talks to me, maybe Mr. Squires talks to me and I say here's the plan and here's what we ought to do. And he goes to his Management team and says here's what Hunter says, what do you think? No, we don't want to do that because if they say yes, let's do that. That's a great idea, they get criticized because why didn't they do it? And if you go back and if you peel these things back, underlying all of this is some of our plan.

What I've read recently about them and they talked out of both sides of their mouth, they are saying we're going to cut to the bone but now they've cut two hump yards, I read, they are looking at another hump yard, they're looking at 1,000 miles to rationalize, that's all very appropriate. I'm not criticizing them. Don't have more assets than you need or people or what, but look, they just don't get it.

Brandon Oglenski - Barclays Capital - Analyst

I appreciate that, Hunter. And Bill, want to direct one to you because there's a lot of criticism in the market right now just given volatility and other stocks and what's going on this year. So I wanted to ask you a two-part question here. First, the timing of the deal. Why didn't you get more aggressive with CP and maybe this question is for Hunter too, but when you were talking with CSX, why not look at Norfolk last year when you had a much higher equity valuation when arguably the industry faced a lot more congestion issues?

Is this just by any means an indication that CP's standalone plan is now much more harder to achieve than you maybe thought maybe 12 months ago? So, now merger is the next way to drive value for your CP investment?

Then secondly, this question has been asked a couple times now but Jim Squires has made it very clear, on his call, he said at any price, the regulatory risks here are just too steep to pursue a deal. So you have the podium. What are you asking specifically of Norfolk shareholders and Norfolk Management, of Norfolk's Board, to walk away from this call and what do you want to see them as the next step?



Bill Ackman - Canadian Pacific Railway Ltd. - Member of the Board & Pershing Square Capital Management Founder

Sure. On the first question, let me just say that I don't run this Company. Hunter Harrison does. And it was Hunter's idea to approach CSX. It was Hunter's idea for the timing of the approach CSX. It was Hunter's idea for the way in which CSX was approached. With respect to Norfolk Southern, it was Hunter's idea to look at Norfolk Southern.

I personally got more involved in this Norfolk Southern situation because Hunter asked me to. So I do as I'm told. That's how I think about my responsibility as a Director here and I obviously, have enormous confidence in Hunter and we want to bring whatever value we can bring to get this thing done.

I think from a perspective of a Norfolk Southern shareholder and what I think a Board should do in a case like this. As I said before, it was appropriate to reject the initial proposal for some of the reasons that they described. It is inappropriate to start muddying the waters and trying to get people to come out against the deal and try to scare people about regulatory risk. What a Board should be doing in a case like this is focusing on the fiduciary duties to maximize shareholder value and they should be focusing on the stakeholders and the business.

And if you look and think about each of the various stakeholders beginning with shareholders, with the shippers – when I have the opportunity to walk around the CP property, employees come to me and thank me. I don't feel like I did anything. Thank me for the changes that took place at CP that have been implemented by this Management team. The impact on employees, people are buying homes, they couldn't buy homes before, has really been dramatic.

So, I think there's a transaction that creates enormous value that benefits all the stakeholders including the infrastructure of the country. That's a deal that you have to take seriously. And by removing the regulatory risk of waiting two years, people get their cash and they get stock in a new company in six months. All that has to happen is we sit down now, we negotiate a merger agreement, we announce a transaction by the end of the year, we file an application for a trust.

It can go awry. If we are totally wrong on the trust issue, we get turned down. We think that's an extremely remote circumstance. What we've spent is legal fees and some time and minimally distracting. It is not like one of these transactions we are hanging out waiting for a telecom deal to get done for three years and the Company is limbo for extended period of time. The limbo will end in 90 days. And we think the limbo will end with a trust approval, a shareholder vote, Hunter is CEO of the Company and then we will see on the STB and in 18 months or so.

What Board of Directors cannot take that seriously? If they have some issues, they want to talk about a breakup fee, they want to have discussions about – I'm not excited about issuing any more stock. Hunter said to me, is there a dollar or two in my pocket? Maybe. But they have to come and sit down with us right away. So there's an opportunity for even a sweetener here but that's if they engage immediately. We put enormous value on the table. I don't think there's a Board of Directors observing a fiduciary duty that's not going to consider this very seriously and I think their advisors will make the same recommendation.

Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

I made it clear to Mr. Squires in our meeting, when he talked about regulatory risk, that we would accept the regulatory risk if he would identify what it was and put some type of cap or recognition to it. So number one, that's – the reason why this came up when it did, the initial issue with their competitor in the East, was we got a signal from them that we ought to talk. A signal from the shareholder and a member of their Board. So we went and talked and we wasted two hours.

And quickly we got off that. And look, I've worked with Norfolk Southern, adjacent to them for 50 years, all my life. I've had tremendous respect for the railroad, their tradition, their culture and all, but for whatever reason they've gotten a little off track the last 10 years as Bill described. And that was admitted to me by Mr. Squires that they were stuck, they were in a rut or whatever the case was.

At the same time this is going on, we look and see that they lose, what I call, three pretty key executives. The Chief of Marketing and Sales, he was tremendously well-respected in the industry; they lost a CEO and the plans changed of the initial announcement; and their Operating Chief

announced his retirement early. With all that going on, we felt like it might be an opportunity here. So we picked up the phone and we made a call. And shame on us.

Brandon Oglenski - Barclays Capital - Analyst

Thank you.

Bill Ackman - Canadian Pacific Railway Ltd. - Member of the Board & Pershing Square Capital Management Founder

One thing, that I'm correcting the record. The NS said that we refused to sign a confidentiality agreement and that's why they are willing to talk to us but we refuse to sign a confidentiality agreement. It was the confidentiality agreement -- first of all, we're very happy to sign a confidentiality agreement.

It was a small part confidentiality agreement and big part, a stand still agreement. And the stand still agreement said you cannot stake a proposal, you can't do anything for two years. So of course, we could not sign it. If NS said to us, you know what? We want you to sign a confidentiality agreement so we could speak to you in confidence about various things, we'd do it tomorrow and we'd sit down.

Mr. Squires is a lawyer. He knows the difference between a confidentiality agreement and a stand still agreement. And he misled shareholders when he said we refused to sign a confidentiality agreement. As a lawyer, he should also know how to structure a transaction that minimizes risk to his shareholders. And this is what we proposed. A transaction where the downside is some legal fees. Frankly, we're happy to pick them up if the transaction fails, we can't get trust approval.

It is a zero downside other than some legal work. And the upside as we've described, is obviously enormous. Those are the kind of deals we have to do. And when you are in a situation of conflict, i.e., your CEO is likely to lose his job as a result of the transaction, you've got to take these things even more seriously and with more independence. And the Board and leadership on the Board has to take a very important laboring aware in the situation.

Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

In that way, my first opening in our visit with Mr. Squires, was I asked him if he wanted to be CEO with the new co, and he said it was about shareholder value. So he's not yet responded. So I don't know where he's going to be.

Operator

Walter Spracklin, RBC.

Walter Spracklin - RBC Capital Markets - Analyst

Thank you very much. Good morning, everyone. Thanks for taking my call. I guess my question and I guess you've -- certainly Bill's slide on the options, the two options in front of Norfolk Southern shareholders is quite compelling. I'm going to move a step ahead now and suggest that if a third option were to come on and if Norfolk Southern were to look to a third-party -- to another railroad for a hookup potential, is that something that would be overly -- would that be so compelling because of the interchange access points and so on that you would not still be interested in engaging that? Or is that -- how would you react to that scenario and Bill, certainly you will have had very much experience on this much more than anybody else. How would you see that unfolding?



Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

From the railroad standpoint, look, if they make a deal with somebody else and it works and it is got all the compelling issues that we've talked about here, more power to them. I'm not going to object to mergers. We are not trying to be Johnny-come-lately here. What works for us today, doesn't work next week. We are not opposed to given that you can live up to the rules, mergers. We think they're good. We are think they are healthy.

We think -- look, what is going to happen to the infrastructure in the US, East of the Mississippi going forward? You don't want to build any railroads. You don't want to have any mergers. What is going to deal with the growth? All I hear people saying is, no. But nobody's got a positive idea.

We've got two -- all of a sudden I wake up this morning about 3:00 in the morning and I start reading from two former Commissioners, Chairmen of the Board, who've got all kind of ideas and all they say is no. Who has got a positive idea? So look, I don't have any problem if they've got a better partner. I don't know why they would not like us, our lipstick or what, but more power to them. Congratulations.

Walter Spracklin - RBC Capital Markets - Analyst

I guess Hunter my second question here is you've obviously had a tremendous amount of success when you were outside of the CP organization looking in and seeing the opportunity that you could -- the cost opportunities that you could achieve as an outsider at that time. As an outsider at Norfolk Southern looking into that organization, is this simply do you just see the exact same type of opportunities? In other words, taking a very successful operating model approach and just rinse and repeat?

Or do you see something they are doing wrong, perhaps on the coal infrastructure standpoint that you see some low hanging fruit that just get me at it, I can turn that around pretty quickly? In other words, is there a big difference between what you did at CP and some of the opportunities you saw at CP from the outsider looking in to what you see at Norfolk Southern?

Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

Yes and no. They are two different organizations. Clearly in my view, Norfolk Southern going in has and had much, much better infrastructure. Okay? And in fact, the last visit I was over there, they told me when I got there, you are not going to like this. You're going to think it is gold-plated. You're going to think we've got too much of this or that, and I did. But it was a philosophical disagreement.

Now, in how to run a railroad day to day and to execute, I felt like that both of them were making similar mistakes in different type circumstances. I'm not trying to say this is the only way to run a railroad, that we've got some magic wand. I can just tell you that what we've done, it hadn't changed since I've been CEO, it is the same formula. We've been doing it 22 years. It is been successful and it works and we are going to stay with it until somebody comes up with a better mousetrap.

It is so simple and basic and doesn't have the complexities, people don't like it. It is understandable. Everybody knows what the issues are. So I don't think -- my bet is if with all these hurting we're talking about, if I end up getting to spend some time at Norfolk Southern, I think one of the things I'm going to find is a hell of a bunch of good railroaders.

Bill Ackman - Canadian Pacific Railway Ltd. - Member of the Board & Pershing Square Capital Management Founder

To that point Hunter, maybe you can talk about how can you just you go over there, are you planning to recruit lots of people into it? How do you operate? I think it is important for people to understand.



Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

That had not been my MO. Although we for whatever reason, we had to do little more at CP than normal. But I don't have a team, a traveling team. It is me. And a few comments on a piece of paper and it is evaluating the staff and sitting down with people and saying, look, I'm looking for the best athlete. I don't care where you came from, the IC, or the CP, or the CN or where came from. I'm looking to create shareholder value and put a hell of a team together and I know that that Company, NS, has some wonderful railroaders.

Somehow, if I have to be outside looking in, and I'm limited here, they've got a little off track. Leadership or something happened that they've had some slippage. But it doesn't mean they cannot be bouncing right back. So do I plan to go in there if I was ever given the opportunity with some hatchet and start -- no, we need good talent. You don't get rid of it and throw it away.

You take good athletes and you develop them. And you develop a certain esprit de core and the team spirit we're in here together and we are in here for the shareholder and it gets to be fun. That's when you start creating the type of environments that Keith and I have experienced at Illinois Central, at Canadian National and at CP.

Walter Spracklin - RBC Capital Markets - Analyst

That's very helpful. Thanks for the time, Hunter. Much appreciated.

Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

Thanks, Walter. Appreciate it.

Operator

Allison Landry, Credit Suisse.

Allison Landry - Credit Suisse - Analyst

Thanks. Good morning. In your approach to valuing pro forma, the pro forma Company as outlined in the presentation, doesn't appear that you've made any allowances for give backs to customers or costs associated with environmental mitigation. And both of these could prove to be material judging from past deals whether it is Conrail or the CN EJ&E. Do you think there will be some value leakage during the approval process related to this?

Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

Allison, I've talked about that a good bit. Look, the old days are kind of over. This is the most classic end-to-end that I've ever seen in the three for two, two for one, which is why we addressed all the competitive issues. So I don't plan on -- we are not going to any other railroad or any customer and make some cash overture to buy a deal, number one. That's in the past.

Environmentally, that's a different issue. And we had not had an opportunity as Mark alluded to earlier in his comments, to do any due diligence relative to environmental. But to Bill's point, if there's a whole lot of environmental exposure that we are not aware of and the numbers don't work, the deal is off.

Bill Ackman - *Canadian Pacific Railway Ltd. - Member of the Board & Pershing Square Capital Management Founder*

What Hunter is basically saying, the kinds of -- we don't have an obligation to pursue a merger that destroys shareholder value. This transaction is step one, put CP in trust and put Hunter at NS. And again, if it is not approved, we tear things up and fold the tent. If it is approved, Hunter is running the Company. And then, it's an 18-month process where we're working very closely with the STB on getting approval on terms and conditions that make sense. If the terms and conditions don't make sense for environmental reasons or otherwise, we don't have to go forward with the ultimate merger, we separate the two companies and we have two publicly traded railroads within a year or two of the denial of the deal.

Mark Erceg - *Canadian Pacific Railway Ltd. - EVP & CFO*

The only thing I'd add is we don't know what we don't know. But Mr. Harrison does not have a history of going in and taking large restructuring charges. That has not been the case in the past. All the reductions that we've largely affected have been through natural attrition and so we don't expect there to be big charges or write-offs. That's not Mr. Harrison's approach, at least not in the past.

Hunter Harrison - *Canadian Pacific Railway Ltd. - CEO*

I guess Allison, I certainly appreciate the issue you raised, particularly from a shareholder perspective. I'm hard-pressed to understand why those railroads are trying to help us and don't want us to get exposed too much to these issues that we are not smart enough to deal with.

Allison Landry - *Credit Suisse - Analyst*

Understood and thank you for that. And as a follow-up, to the earlier comments on Norfolk's potentially elevated capital spending in the past. And I know in the presentation one of the assumptions was for the combined entity and your outlook for what the CapEx profile would look like over the next several years. But could you comment on how much you think you can reduce spending at Norfolk on a standalone basis?

Hunter Harrison - *Canadian Pacific Railway Ltd. - CEO*

I have not really -- honestly, I had not peeled back the onion all the way to really get delve into every bit of capital. I know, and this is not clear. I know there's different philosophies about assets and about how many routes you should have and so forth. And my last trip over to Norfolk Southern which was four or five years ago, what I saw was a railroad that was in really good shape that had a lot of assets sitting around.

And that what I have read and looked at philosophically and what we have been able to do, Keith has been able to do here, he's effectively, we were hoping to take initially a two or three year holiday for locomotives, and it looks like now we're going to be taking six-year plus holiday. That right there, just locomotive, is huge. So I think it is going to be -- it is going to be substantial but at the same time, I don't want to put a mark on it and say exactly what they did wrong or I don't think that's fair on my part.

Keith Creel - *Canadian Pacific Railway Ltd. - President & COO*

If I can add a little color to that Hunter and Allison, working with Hunter for the past two decades, what he's taught this team, what he's taught me, is how critically important it is to just be a steward of capital. Have the right capital spend, not irresponsible capital spend, be it long, be it short. We come to CP, CP was grossly underinvesting this physical plant. The first call on capital from an operating perspective is to make sure we maintain a safe railway.

Once you've got that base covered, which is what we've been having to do for the past three to four years is catch-up capital so to speak, then you can take a look at your physical plant, what your assets are, what your business levels require and then you pace your capital against that. So again, it is back to being a steward. Don't spend a dollar of precious capital until you've improved and exhausted all operational opportunities for efficiencies. Don't just throw (inaudible).

So that's simply said but that's exactly the way we manage our capital day in and day out. So if capital is being spent in excess, then obviously, we're going to take a look at it. If it is not in certain areas, then maybe we increase it. So a lot of that has to be looked at day-to-day. You've got to kick the tires, you've got to get boots on the ground to be able to answer those questions. Fundamentally, that's the way we manage capital.

Bill Ackman - *Canadian Pacific Railway Ltd. - Member of the Board & Pershing Square Capital Management Founder*

Maybe I can just add a Board perspective. So when we got involved here, one of the criticisms levied against quote-unquote activists or a hedge fund manager on the Board, is are we going to push for buybacks? Are we going to model out the Company's spend the money it needed? And from the first day, number one, -- and we actually never upgraded the dividend, we said to Hunter, you have whatever you need, blank check, we trust you in allocating the capital resources of this Corporation.

And we took CapEx money, I think it was \$850 million the year before he showed up and this year it is \$1.5 billion. And look at the benefits that we've gotten from the investment in capital. Now, the Company's now projecting next year to take that \$1.5 billion down because you are finding that you fix the plants, if you will, and it doesn't require as much capital. So the purpose of the model, we used to call it, simplifying assumption of CapEx being a percentage of revenues. But this team doesn't spend CapEx based on a percentage of revenues. This team spends CapEx based on one rail tie at a time.

Hunter Harrison - *Canadian Pacific Railway Ltd. - CEO*

It depends on the audience. If you are talking to shareholders in the finance community, they don't want you to spend any capital. If you are talking about an opposing railroad and you are not spending capital, you are cutting to the bone. So one way you are wrong either way you go. And to Keith's point, that's the way you look at it is this. You look at it where you need it. You don't get in some routine of saying we're going to spend X amount of millions this year for everything. If you don't need it, depends on turn miles or other issues. But we feel like bottom line, there's some opportunities there.

Allison Landry - *Credit Suisse - Analyst*

Got it. So focus on is efficient capital spending. Thank you for the time.

Hunter Harrison - *Canadian Pacific Railway Ltd. - CEO*

Thanks, Allison.

Operator

Ken Hoexter, Merrill Lynch.

Ken Hoexter - *BofA Merrill Lynch - Analyst*

Great, good morning and thanks for the slides and info. Just a question on Norfolk Souther versus CSX last year. You talked a lot about CSX. Hunter, maybe just talk a little bit about what makes this move more right? They highlighted the minimal connections and overlap in part of their rebuttal discussion the other day. I'm just wondering why this became the more, the bigger focus? You mentioned last time I think in your initial, we recognize we made some mistakes. Why then did you choose not to revisit that topic again as opposed to going here?



Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

I want to be very delicate here and that's not my strong suit. It just didn't fit in Florida. It became clear and obvious that they've got some of the same issues as far as regulatory approval and we didn't even get beyond that. And once again, we were responding to a request of theirs.

And I really thought that it was totally inappropriate the way we were treated, which is important to me in the culture of an organization. I like to be able to trust people, to shake their hand, make a deal and it just became evident to me quickly that there was a split, that they weren't in common ground and that wasn't going to work. Because there's one thing to get these deals done as I said initially. It's something else to make it work down the line. You've got to do both here or this is not successful.

So Ken, it was our judgment that that just wasn't the way to go. So then, given the other changes that were happening that I talked about with personnel and so forth from an NS perspective, and we had -- we knew and we felt like that NS had a much stronger physical plant. And it was arguable and debatable internally about markets and extensions and that wasn't compelling (technical difficulties) either way that we felt like there was an opportunity to work with NS. And so we are now pursuing that and that's the reason why.

Ken Hoexter - BofA Merrill Lynch - Analyst

Appreciate that. You talked before about the level of public interest and the IC-CN. Was the ruling in place to have a demand or an interest for public interest? Or is that -- was that pre-the new revised rules? I guess what I'm asking is has the public interest has been tested yet in that part of the --?

Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

I would say yes and no. The lawyers would say no, but I would say yes. Because it was implied without being said in the public interest that there was something that you tried to do with the trust even before it was written in the rule and it was not in the public interest, it was probably going to be turned down in the trust process under a different name, if you will.

But the public interest -- you know what public interest is? It brought it out and keyed it up and said no, it is exactly the public interest. But it's such an ambiguous statement that anybody can argue any case. What the hell is public interest? Okay? Get that defined for me. So we can argue about that for two or three years, what's in the public interest? What's in one public's interest is not in another public's interest. So that's just a way of in my view, it is a way of removing the rules and let the bureaucrats deal with it, which is dumb.

Ken Hoexter - BofA Merrill Lynch - Analyst

Appreciate the two hours you've given us, thanks for the insights.

Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

Sure.

Operator

Jason Seidl, Cowen and Company.



Jason Seidl - Cowen and Company - Analyst

Thank you, guys and good morning. First, just on the voting trust. Bill, you laid out that you're belief that this transaction adds a lot of value. So if you apply for a voting trust and it gets turned down, is there a step that you could take to adjust the voting trust so it would be more palatable?

Paul Guthrie - Canadian Pacific Railway Ltd. - Special Counsel to the CEO

Yes, this is Paul Guthrie. We could make changes to the voting trust if we've received feedback from the STB on a certain area.

Jason Seidl - Cowen and Company - Analyst

What's usually the timeline for something like that? Is it instantaneous?

Paul Guthrie - Canadian Pacific Railway Ltd. - Special Counsel to the CEO

I don't know.

Bill Ackman - Canadian Pacific Railway Ltd. - Member of the Board & Pershing Square Capital Management Founder

I think the point is, it is not that we just put together a little package, tie it up in a bow and stick it in a mailbox and then we wait 90 days and they come back and say yes or no. I think it is going to be an iterative process. If there's something wrong with the application or they have concerns or the public interest feedback was such that they wanted us to make modifications. If those make sense, we will make them. Paul, what is the timing from a regulatory standpoint? Explain why we think it's 60 to 90 days, just to answer that question.

Paul Guthrie - Canadian Pacific Railway Ltd. - Special Counsel to the CEO

The STB in the merger rules, did not provide a time. It said that they would allow a brief period for comments on the voting trust. So we are using two to three months as being the outside of a brief period of --

Bill Ackman - Canadian Pacific Railway Ltd. - Member of the Board & Pershing Square Capital Management Founder

One of the other things that's interesting about putting CP in trust, is CP is well down the road of its 3.5 years into the turnaround printing sub-60% ORs. It is not going to be harmed by being put in a trust. Norfolk is really the railroad that requires the turnaround and Hunter's going to be there. And that's not going to be in trust. So it is less awkward to execute a turnaround at NS if it's not in trust. And we think that should resonate, make the trust approval process even easier.

Paul Guthrie - Canadian Pacific Railway Ltd. - Special Counsel to the CEO

And the trust, remember why the trust was put in place. In some ways, it's a learning lab that allows the regulators then to see end market what actually happens. During that period of time, if we don't improve service, increase competition, then shame on us. We're very confident that we will be able to demonstrate all those things, that we'll demonstrate we are increasing the public good during that period. And at that point then, the regulators will have a assurances because they will have seen it in the real in the real time.



Jason Seidl - Cowen and Company - Analyst

Okay. My next question is a piggyback on what Allison was talking about. You mentioned the elimination of paper barriers. Do you foresee some pushbacks from some of your short-line partners especially those who purchased certain properties with those paper barriers intact? And that was in their financial plans when they purchased it and how much they paid for them. Do you foresee having to compensate them in some way for this?

Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

No. This is all in their interest. This is a case effectively -- let me give you a case, where a Class I buys a short line but says -- sells a short line, but you've got to give me the business. So this is opening things up again more to competition. It is a line, the short line to act as they need to act in the marketplace. And it's the case where the Class I cannot come in there and do the transaction but say, here's the rules to the transaction. If the short lines want it another way, we will address that. We're trying to pro-competitive. We are trying to remove these barriers that railroads have hidden under. We are willing to deal with it. Others like that protection.

Jason Seidl - Cowen and Company - Analyst

Gentlemen, thank you for the time.

Operator

Jeff Kauffman, Buckingham Research.

Jeff Kauffman - Buckingham Research Group - Analyst

Bill, Hunter, thank you very much for your time today. A quick follow-up with Paul and then a question for Bill and Hunter. Paul, if I understood what you were telling Jason that this the voting trust is not a binary outcome. That it is an iterative process and that you will get feedback through that process as to what would be preferred. That's correct?

Paul Guthrie - Canadian Pacific Railway Ltd. - Special Counsel to the CEO

Excuse me, I said we might get some feedback if there was a particular issue that the STB wanted us to address on the trust, then we would look at that, of course.

Jeff Kauffman - Buckingham Research Group - Analyst

Okay. Very well. And Bill, a question for you. You are on the investment management side. You do know that in periods of uncertainty, investors tend to look three months instead of three years and cash in hand is always better than cash on the come. When you reevaluated the offer, I think I understand why the cash came down because you said you were getting it now but were increasing the equity share.

Did that feedback come from Norfolk investors that had indicated to you yes, we would be comfortable with this? Or is this a situation where as you begin to engage Norfolk's investors with the new offer, if they indicate a preference for cash over stock that you would be amenable to that?

Bill Ackman - Canadian Pacific Railway Ltd. - Member of the Board & Pershing Square Capital Management Founder

I would guess from our perspective, we would rather have more cash and less stock because we think the stock is very valuable. The strength we have is how much we can borrow today and still remain a strong investment grade Company. The reduction -- before, we were paying for the

transaction in two years and the collective borrowing capacity of the combined railroad was greater and therefore, we could pay with more cash and still maintain -- it was driven off of EBITDA multiples of debt.

We would be happy to reduce the equity component and increase the cash component. We could do that. To do it dramatically, we have to go raise some additional equity. So we are at the point here where -- the shareholders who are looking at this deal are not going to approve it based on \$33 or \$45 in cash. What matters here is the stock component. If you believe in Hunter Harrison and if you be the transformation of NS, then you want as much stock as you can get.

The way we will set this transaction up is we will give shareholders an opportunity to elect cash or stock and we'll prorate and if people want cash, they can have as much cash as is available. What I think you will find is the vast majority of shareholders are going to elect stock and the stock will be the scarce asset here. So anyone who wants cash is going to be able to get cash. And of course, this is a big liquid company. The reason why they are going to want stock, is the stock is going to increase meaningfully in value when the transaction closes.

Mark Erceg - Canadian Pacific Railway Ltd. - EVP & CFO

And remember, all the operational improvements that we discussed, we're literally just moving things to the Class I average. We have not overreached at all in the synergies. So there's \$1.8 billion here effectively between the pre-merger operational improvements and the post-merger combination synergies effectively to share. And with pro forma ownership of 47%, that's in essence what we are offering here, is access to this massive pool of value creation for both our shareholders.

Jeff Kauffman - Buckingham Research Group - Analyst

Okay, gentlemen. Thank you very much and best of luck.

Operator

Turan Quettawala, Scotiabank.

Turan Quettawala - Scotiabank - Analyst

Good morning and thank you for taken my question. I guess first of all, are you proposing any mileage limitations to your network asset of options?

Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

In the terminal, no. We have not -- this is a different precedent in the US. In the US, people try to relate it to inner switching in Canada and it's -- they're two different animals. In the US, if you go back and use the old switching districts or reciprocal switching, you had cases where people that were five miles from the center of downtown, were not open to switching but somebody that was 60 miles out of town was. It was negotiated between each shipper and the carrier. So we at this point are not, have not proposed any mileage and that is something where we would be open to discussion by Gateway or with Norfolk Southern or whatever it takes to meet the marketplace needs.

Turan Quettawala - Scotiabank - Analyst

Thank you, Hunter, for that clarification. And I guess one more question in terms of, obviously, you've created a lot of shareholder value for CP shareholders. I'm just wondering if you can comment a little bit on when or if the risk becomes too much for CP shareholders on this transaction? And I'm not necessarily talking about the monetary terms because obviously there's a lot of accretion here. But just in terms of process, is there a point where you would call it quits because of the risk for CP?



Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

No, I don't think so. I think to build and/or Keith's points earlier, I think one of the things that I'm proudest of in this model, is it's sustainable. And it works at CN very well right now. I'm sure they modified it and done some different things but the basic fundamental, same model.

And I think that we have talked to people at CP, the fundamentals of this style of railroading, I think that we could not have a better individual than Keith Creel to be at CP and I just think for there to be slippage or risk at CP, that is something that does not -- I don't even think about it. If I did, I'd give it a quick thought, marked it off and I've gone onto other things. So no, I don't think depending on where my shares are whether NS, CP or wherever they are, they are going to be in good hands if Keith's running the ship.

Turan Quettawala - Scotiabank - Analyst

I guess from a regulatory standpoint Hunter, is there any more regulatory risk that you could take on from a CP standpoint?

Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

I guess you'd have to help me define that. I think that we have -- I think we could do the same thing that we've offered, our model. I don't think standalone, it would lead the Company. If there's any more risk, I think it happens to be a strengthening mechanism. That if you look at the best carrier, the best two carriers, and you put them together and they are the strongest and they are the best and they can open up competition and it is a bigger playing field, that's exactly what you want. It is to create competition. I think competition is good and I think we would be on top now and let the rest of them come after us and that's all good and healthy.

Bill Ackman - Canadian Pacific Railway Ltd. - Member of the Board & Pershing Square Capital Management Founder

On the regulatory risk, I don't see regulatory risk and here's what I mean. There is a risk that the trust gets turned down. But the cost at that point is just the legal fees that you've incurred for the 90 days that you spend trying to get a trust approved. If the trust is approved, you'll have your own estimates for what earnings are going to be for the combined Company. But take our 16 40 or whatever, what do you think that grows to over time, what multiple you put on that, that's the stock component of the transaction.

Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

But I think this relates not directly to the trust. But set the trust aside for wasn't a trust, just the regulatory requirements of the STB.

Bill Ackman - Canadian Pacific Railway Ltd. - Member of the Board & Pershing Square Capital Management Founder

But we don't have to -- the Company can just operate independently going forward. We can separate the two in a spinoff if the regulatory requirements are too onerous. So there isn't -- we structured a transaction without regulatory risk of any consequence.

Turan Quettawala - Scotiabank - Analyst

No, that's fair, Bill. I guess maybe one last one then. In terms of the regulatory side, is Hunter moving and what in trust are there? So they're both connected or is there a possibility that you get the award in trust and then the STB says Hunter cannot move?



Bill Ackman - *Canadian Pacific Railway Ltd. - Member of the Board & Pershing Square Capital Management Founder*

They are connected.

Turan Quettawala - *Scotiabank - Analyst*

Okay, fair enough. Thank you very much.

Operator

Donald Broughton, Avondale Partners.

Donald Broughton - *Avondale Partners - Analyst*

Good morning, gentlemen. Thanks for the long call. Most of my questions have been answered at least to the extent they can be. Obviously throughout the last 20 years, I'm convinced Hunter is the Michael Jordan of railroading and further that analogy, certainly Keith's the, although he looks like John Paxton, he's the Dennis Rodman, the Scottie Pippin, the Horace (laughter) of railroading. (Inaudible).

But wow us with a detail of explanation. It is not the average age of the locomotive fleet. So where is the disparity in the fuel efficiencies? Is it idle time, is it network design, is it congestion, topography, velocity? Where is it, guys?

Hunter Harrison - *Canadian Pacific Railway Ltd. - CEO*

It is all of the above but the one biggest place is just the number of locomotives. If a locomotive in the wintertime is idling (inaudible) locomotive is probably -- I've been away from the field too long, but three or four gallons an hour just idling. The fewer locomotives you have that are sitting there idling, the less fuel you are utilizing and we have a philosophy of just maybe bare-bones locomotives. And I think the NS philosophy is to always be sure they've got plenty of locomotives. It's a hell of a premium to pay. Is it wrong? You can argue that but that's where it is. And the maintenance and all that goes with it.

Donald Broughton - *Avondale Partners - Analyst*

Thank you, gentlemen.

Bill Ackman - *Canadian Pacific Railway Ltd. - Member of the Board & Pershing Square Capital Management Founder*

Thank you.

Operator

Steve Paget, FirstEnergy.

Steve Paget - *FirstEnergy Capital - Analyst*

Thanks for everything. I've lived near in Calgary, near the CP all my life and I should say that physical transformation in CP in CP's properties in the past three years has been remarkable. My first question, you've spoken about US regulators. CP is very critical and historic piece of infrastructure



that's in Canada, a country where even a conservative government was willing to block mergers. What if the new government, a liberal, more interventionist government, block the merger or sought to block the merger?

Bill Ackman - *Canadian Pacific Railway Ltd. - Member of the Board & Pershing Square Capital Management Founder*

Maybe we can take that in two parts; the trust part from a Canadian point of view and maybe then the merger part.

Paul Guthrie - *Canadian Pacific Railway Ltd. - Special Counsel to the CEO*

We don't anticipate that there would be an objection from the government to -- or even a review of the trust, voting trust structure from the Canadian side. That's an STB issue.

Hunter Harrison - *Canadian Pacific Railway Ltd. - CEO*

And I think our advise, I think we have been sensitive to both organizations that they had both have tremendous tradition, CP and the Western Canada and throughout Norfolk Southern with its thoroughbred and all its traditions, the two wonderful railroads which was the reason for the thought of setting up a holding company so these two entities would not be lost in the shuffle. And I think that -- and I'm certainly not an expert on Canada regs, but in visiting with some advisors, I think it is safe to say, Paul, they feel like from a Competition Bureau standpoint, that as long as we meet some of the rules of engagement here, that this will be approved from the Canadian Competition Bureau.

Paul Guthrie - *Canadian Pacific Railway Ltd. - Special Counsel to the CEO*

Correct.

Hunter Harrison - *Canadian Pacific Railway Ltd. - CEO*

But we're certainly sensitive that we have to have that approval also.

Keith Creel - *Canadian Pacific Railway Ltd. - President & COO*

Steven, from a practical standpoint, if you are a Canadian shipper, think about the power of reaching market single line service East of the Mississippi that you previously hit a brick wall with in Chicago. If you're a US shipper, think about the same in reverse going to Western Canada. It is a very compelling service offering.

Steve Paget - *FirstEnergy Capital - Analyst*

Thank you, gentlemen. My next question follows up on your statement, Keith. Assuming the merger clears all hurdles, looking at the map of the combined CP-NS, let's think about a railroad with 11 Gulf Coast Atlantic ports, or sorry, 12, and one on the Pacific to the far Northwest. What does that give Canadian customers? Better access to Tidewater?

Keith Creel - *Canadian Pacific Railway Ltd. - President & COO*

It gives you better access to Tidewater. It gives you access to market that you cannot even scratch today. Major metropolises East of the Mississippi, seamless service. If you're a customer that owns assets that owns cars that currently have to go through a two line service, hand off so to speak, be it with either of the Eastern carriers, to our railroad or others. Think about the asset cost that just melts away when you've got one accountability,



you've got one very efficient network, you've got speed improvements, so mono roll, you've got reduction in tell in terminals, you've got less handling. It's very, very compelling from what it is does for them and that marketplace competing against their competitors, win market share and its very compelling to their bottom line.

Steve Paget - FirstEnergy Capital - Analyst

Thank you and those are my two questions.

Keith Creel - Canadian Pacific Railway Ltd. - President & COO

Thank you, Steve.

Operator

Steve Hansen, Raymond James.

Steve Hansen - Raymond James & Associates, Inc. - Analyst

Hi, guys, just a single one seeing that we're extended here. Given that the financial benefits seem pretty compelling, it does strike me that self-preservation and/or potentially the cultural impact might be one of Norfolk's potential reservations here. And I guess hence their cut to the bone commentary. In this context Hunter, Keith, I'd just ask that you maybe speak to your plans for the \$550 million in workforce productivity specifically and perhaps there's some historical context? What kind of roadblocks culturally you've encountered at CP and how those have turned out over time?

Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

I will start. I don't think there's been any special hurdles given an organization that's gone through the change as we have. Change is always difficult for people to deal with, all of us. But with all the change for an example, in the headcount, which right now is close to a third and that's just fact, I'm not bragging, it is just fact. I still think we can say there's very few, if any, people that want to work that cannot go and be fully engaged and employed.

This has been through various natural attrition in retirements and whatever, and I think that would be the same with NS. I'm not a big - I think somebody mentioned earlier, I'm not a big special charge guy. I'm not a big buyout guy. I'm not a big pay in New York doc. You don't get a lot of return on those bucks. So these are sound, fundamental good railroaders. They understand, they've been through change before. And I think the key with us, like with any organization, if we sit down and tell them what we are going to do and why we are going to do it, they get it and they will run for you. If they don't, then you have other issues.

Keith Creel - Canadian Pacific Railway Ltd. - President & COO

Let me, if I can, get a little bit more granular from an operating perspective. I will talk about things that I deal with day in and day out operating employees. (Inaudible) employees. You think about the culture issues and you think about the changes, it's certainly significant.

But at the same time, you think about where we are at today, three years, 3.5 years later, we've just ratified collective agreements on our US properties that are very progressive, hourly agreements, that are quality of life, certainly substantially more money. I would suggest that CP's locomotive engineers are extremely proud to be working into Elkhart, Indiana making \$48 hour and have a better quality of life. It's a very compelling value offer from quality of life and from compensation, that to me it just makes too much sense.



So down the line, that's an opportunity as well. Something that we'd certainly look at and take under advisement. So I think it is more, certainly more upside. If you are not afraid to come to work and give us eight hours of productive work, you're going to get eight hours of pay or 10 hours of pay. We certainly, if you're going to be the most productive railroader, we don't back away from making you the highest paid railroader.

Steve Hansen - *Raymond James & Associates, Inc. - Analyst*

That's helpful, guys. Thanks, that's it for me.

Hunter Harrison - *Canadian Pacific Railway Ltd. - CEO*

Thanks.

Operator

David Tyerman, Canaccord Genuity.

David Tyerman - *Canaccord Genuity - Analyst*

Good morning. Just one quick question. So Mr. Hunter Harrison, you are considered the pretty critical part of this, so two parts to that. One, how long do plan to stay to achieve what you are planning to do? And two, who would back you up?

Hunter Harrison - *Canadian Pacific Railway Ltd. - CEO*

I've said the other day and I think the Bloomberg's – the little bit I've got is invested in this organization. I'm not a quitter. If I go in and take this task on and we are successful, I'm going to see it through. And when I say see it through, I'm going to see it through to approval and see it through that we've got the ship pointed turned in the right direction.

Behind me to step right in and not lose a beat is Keith Creel, who's been on the call with us this morning. And I feel very confident that between us, we can see this through, can get this done, can get this accomplished. And so timeframe-wise, if I had to put a number on it, I would say somewhere around 2018, 2019, we will be done, have this thing humming. I will ride off into the sunset and Keith rides in.

Bill Ackman - *Canadian Pacific Railway Ltd. - Member of the Board & Pershing Square Capital Management Founder*

Hunter, just to follow-up the question. Let's assume the merger is ultimately not approved, so Keith is staying at CP, you're at Norfolk, how would you develop a – this has got the same question at the CP merger, we said how do you think about succession? How do you deal with that? Do you do it internally? Recruit from the outside? How do you banish the issue?

Hunter Harrison - *Canadian Pacific Railway Ltd. - CEO*

First, I'm going to try to keep my job. (Laughter). But seriously, I don't know if people understand that. But if this plan works and comes together, I'm going to be – I will be resigning from my responsibilities at Canadian Pacific, having to sever all financial ties and will become a free agent, if you will, at Norfolk Southern. And I guess I've got to prove myself again and it will be me alone and I will do the same thing in developing a team there. I'm sure there's good people there.

Would I look externally? Possibly, sure. You need to look at all sources that you can possibly look at. But once again, I don't have any – it is one of the advantages of having to work with as many different railroads as I've worked with in these kind of situations. I've got allegiance to everybody.

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And so, I'm just looking as I said earlier, to the best athlete that can – and if it doesn't, then I'm going to work as hard as I can to make Norfolk Southern the best railroad in the world and you are all going to have a tough competitor.

David Tyerman - Canaccord Genuity - Analyst

Thank you.

Operator

Benoit Poirier, Desjardins Capital.

Benoit Poirier - Desjardins Capital - Analyst

Thanks for taking that call and taking my question. Bill, how concerned are you that activists will step in and your shareholders will get (inaudible)? Assuming proposal with NSC doesn't work Hunter, and the shareholder are not engaged with that proposal, would you pursue M&A with other railroads?

Bill Ackman - Canadian Pacific Railway Ltd. - Member of the Board & Pershing Square Capital Management Founder

On the first part, I think that -- a few things. Number one, we are in an unprecedented, I would say commodity price environment, particularly with respect to thermal coal, things like that. I don't believe that there's a shareholder of NS who believes that Management's recent statements about getting to a 65% OR in five years are credible particularly in light of the environment. That, obviously, puts a lot of pressure on Norfolk over time.

And if I were a shareholder of the Company, even if I'm not an activist, I would say every shareholder today is an activist. Every big institution, I don't care whether you're VanGuard, State Street, Fidelity, Capital Research, you care about the companies you invest in. If you think they are not observing their fiduciary duty in considering a transaction they should consider, you're going to tell that to Management and you may tell that to the Board of Directors either over the phone or in writing. That, I think has a huge impact.

And then just the dynamics from an activist investor point of view, they are already have been a number of activists who have contacted us and Hunter. So, it is out there. I think it is a reasonably likely event. But I don't think it is going to have to go there. I think that there are a lot of reasons why this makes just tremendous sense and we structured it in a way to minimize regulatory risk, get a quick answer on the trust issue and have flexibility and optionality on whether we enter into a merger or not.

Again, we think it is more likely than not at the end of the day these entities merge and if they don't, it is literally a paper transaction to separate the companies and just spin one off the other. That's about as a low-risk transaction you can identify and you get the benefit of the greatest railroader of all-time as your compensation for going through the process. So I think that's going to be very, very appealing to shareholders.

And I think it can be very helpful for the analyst community to weigh in and for you to put together your own estimates in what this CP-NS, where it's going to trade come May of 2016 and after. And I think that's going to resonate meaningfully with the Board of Directors of NS and I think we can avoid all of this proxy and other stuff. I think this will ultimately at the end of the day be a friendly consensual transaction. They usually are.

Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

Benoit, just to the question of, if this doesn't work – other opportunities. I think we will not change our view of the potential that mergers have and I think it is important that even beyond the shareholder creation, I think personally, as a US citizen and as a North American, it is important for North America, it is important for the US.



Now are our options becoming a little more limited? Is this change that I'd try to create a little more difficult maybe than I thought? Yes. But I think that that's not something we come off our radar screen. It is not something we are obsessed with. It is not something that just doesn't work. We've got plenty to do to even enhance CP Railroad even further but it is something that I think will happen eventually.

Bill Ackman - Canadian Pacific Railway Ltd. - Member of the Board & Pershing Square Capital Management Founder

The other thing I'd say is our stock is incredibly cheap. And so, our other alternative uses for capital are to retire shares. That is a very value creating thing for us to do at the current price. One other thing I'd say, is one of the other comments made by NS was that this was quote-unquote, opportunistic timing. And I will point out to them that our stock is down at least as much as theirs is, if not more for the year, and we are issuing -- we view this as issuing very cheap paper. So it is expensive equity we are issuing, but because of the synergies and because of the relative share prices, this is still a transaction that makes tremendous sense.

Benoit Poirier - Desjardins Capital - Analyst

Okay, thank you very much for the time, gentlemen.

Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

Thanks, Benoit.

Bill Ackman - Canadian Pacific Railway Ltd. - Member of the Board & Pershing Square Capital Management Founder

One last question, Hunter, or do we keep going?

Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

One more.

Operator

Justin Long, Stephens.

Justin Long - Stephens Inc. - Analyst

Thanks for the time and I will keep it to one as well. Thinking about the \$1.8 billion in synergies, it seems like the pre-merger operational improvements are predicated on getting NS's metrics to industry averages. But could you talk about the methodology and confidence level in the post-merger synergies you've identified? Was your approach to make a conservative assumption on that and then try to refine that number as you complete the diligence process? Can you help me think through that?

Mark Erceg - Canadian Pacific Railway Ltd. - EVP & CFO

Yes. Certainly. So just for just an example, if you look at the support function area, we obviously have a very large, back-office so to speak, to keep track of all the movements of all the cars and everything that we do. Obviously, Norfolk Southern has a similarly large organization. As we've done our benchmarking, we believe that we are close to best-in-class as it relates to that.



And by putting in shared service centers at the right type of information support systems and things, we're very confident that (technical difficulties) we can take the support function numbers that we have and dramatically reduce those. We were very conservative there as well. We effectively looked at our support functions and we assume that the eliminations would take place with respect to that over natural attrition and we're very comfortable with that.

So we haven't overreached frankly, on any of these synergies. You heard Bill talk earlier about Mr. Harrison's track record, every time that he has put out numbers, he's gotten there sooner and quicker and with more value. So we stand by all of these areas. Each and every one, we went through every single metric case-by-case, line by line. We have a very credible case that we pulled together for this.

Justin Long - Stephens Inc. - Analyst

Okay, great. Thanks again for the time.

Operator

Scott Group, Wolfe Research.

Scott Group - Wolfe Research - Analyst

Hi, guys. I know it is been long so I appreciate the follow-up. I think most of us get the shareholder value here and from what you said today, I think we've been kind of dancing around one point on this. Bill, I know you just said you don't think it will come to this, but I want to ask you, Hunter, are you willing to go hostile? I understand it is not your preference, but are you willing to take this to a proxy contest if the Board doesn't engage? And if so, do you think you have the specific support of some of the larger shareholders that are out there?

Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

I think – the second part first. We have the support of some large shareholders.

Bill Ackman - Canadian Pacific Railway Ltd. - Member of the Board & Pershing Square Capital Management Founder

We haven't seen this deal yet, so I think the feedback you got Hunter, was they wanted their cash now as opposed to waiting two years. They wanted their stock now as opposed to waiting two years. I think they're going to be even more interested when they – but go ahead.

Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

I think that that answer is, yes. Number two, about the [ease] question (technical difficulty) that our Board has to address also. I told you that from my view, my perspective, is we are going to work very, very hard to get this story to the shareholder. Unless there's some compelling reason that I don't know about that this should not happen, call it what you want to, we are going to work and do everything at our disposal to get this to the shareholder and get a resolution to it. And if that calls for a proxy, so be it.

Scott Group - Wolfe Research - Analyst

Okay. All right, thank you, guys. I appreciate the time.

Operator

Mr. Harrison, there are no further questions at this time. Please continue.

Hunter Harrison - Canadian Pacific Railway Ltd. - CEO

You've worn me out. So thanks so much for joining us. And hopefully this has gone a little way towards clarifying some of the issues that are a little -- that some of you hadn't dealt with before and some of us hadn't dealt with before. So we will continue this endeavor and thanks for being with us.

Operator

This concludes today's conference call. You may now disconnect.

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EXHIBIT 3

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CP.TO - Canadian Pacific Railway Ltd Conference Call to Discuss
Revised and Enhanced Offer for Norfolk Southern Corp

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PRESENTATION

Operator

Good morning. My name is Jessa and I will be your conference operator today. At this time I would like to welcome everyone to Canadian Pacific's conference call today. The slides accompanying today's call are available at www.CPR.ca. (Operator Instructions)

I would now like to introduce Nadeem Velani, Vice President, Investor Relations, to begin the conference.

Nadeem Velani - *Canadian Pacific Railway Limited - VP, IR*

Good morning and thanks for joining us. I am pleased to have with me here today Hunter Harrison, our Chief Executive Officer; Keith Creel, President and COO; Mark Erceg, EVP and Chief Financial Officer; and joining us today Bill Ackman, CP Director and Founder of Pershing Square Capital Management.

Before we begin I want to remind you this presentation contains forward-looking information. The formal remarks will be followed by Q&A. In the interest of time, we would appreciate if you limit your questions to one.

It is now my pleasure to introduce our CEO, Hunter Harrison.

Hunter Harrison - *Canadian Pacific Railway Limited - CEO*

Thanks, Nadeem, and welcome to everyone. Thanks for joining us. In the interest of time, I am going to limit my initial remarks here.



What we are going to try to do today is add some clarity to a lot of questions we have had about the enhanced vehicle that we have put together for this transaction, and we have Mark Erceg and Bill Ackman who are going to talk to that. Mark is going to talk more on the technical terms. Bill is going to give us more a perspective from a shareholder perspective.

Then I'm going to have some comments at the end that is going to bring you up to speed on where I think this whole transaction is and where it is going. So thanks again for being with us. And with that let me turn it over to Mark.

Mark Erceg - Canadian Pacific Railway Limited - EVP & CFO

Thank you, Hunter. Last week we talked about the enormous value we are trying to unleash by combining these two great railroads. And as you may recall, we believe that the pre-merger operational improvements and what we are referring to as the post-merger combination synergies, can allow us to capture an incremental \$1.8 billion per year for CP and NSC's shareholders.

Importantly, the operational improvements, which represent over 70% of the value we have identified, are not contingent upon final STB approval. And as we stated last week, are conservative, given that we really are just looking to bring NSC in line with industry averages over a four-year period, which we are confident we can do. Now in contrast, the combination synergies only become available upon full STB approval, at which time they will also begin to phase in over four years.

Then in addition to operational improvements and combination synergies, we see an opportunity for meaningful tax efficiencies, which we believe will result in an effective tax rate below 30% for the combined entity. And we expect to uncover and monetize redundant or underutilized assets along the way, which we have not specifically factored into our analysis.

Now last week we also spent time explaining how we think about the relative attractiveness of our offer versus what I will refer to as the NSC standalone case, which is based on NSC's undisturbed share price of \$79 per share. Today, because of the offer we made, NSC is currently trading at approximately \$91 per share, which coincidentally is what the equity analyst community is saying NSC stock will be worth if NSC's management can actually deliver on the five-year plan they recently cobbled together, which calls for an OR of 65% by 2020 despite having been stuck at 70% for the last decade.

Now standing in stark contrast to their undisturbed share price, or, frankly, their current trading price, is the offer we have made of \$32.86 in cash and 0.451 shares in a new company, which we will refer to as CPNS, which would provide NSC shareholders with 47% pro forma ownership in that new company. That new company, we believe, would trade on a discounted fair value basis in May of 2016, which is when we expect the trust to close, somewhere between \$204 and \$237 per share, depending on whether or not the STB ultimately rejects or approves the final transaction.

What this means is that between the cash and stock consideration we have already offered NSC shareholders are looking at comparable value between \$125 and \$140 per share versus their undisturbed value of \$79 or their current share price of approximately \$91.

With that said, and because we are so confident in our ability to drive meaningful pre-merger operational efficiencies and post-merger combination synergies, and we are very confident that the stock market will award the combined company with a forward PE multiple reflective of the enormous value being created, we are increasing the value of our offer to NSC shareholders by as much as \$3.4 billion through the addition of a contingent value right, or CVR. For those of you who may not be familiar with a CVR, it is basically the right to receive additional benefits if a specified event occurs in the future.

So NSC shareholders will now receive \$32.86 in cash; 0.451 shares of stock in CPNS, which will own 100% of CP and NSC; and 0.451 of a CVR, which will have a maximum value of \$25.

Now in addition, since this will be a highly-liquid instrument with 137 million units outstanding, NSC shareholders will be able to sell their CVRs at or after the transaction closes into trust, which we anticipate could be as early as May 1, 2016.



The main benefit of a CVR is it protects NSC shareholders on the downside. For example, if CPNS's stock is trading at \$175, NSC shareholders would have \$33 in cash; they would have 0.451 shares in the new company, which will be worth \$79; and 0.451 of a CVR, which will be worth \$5, for a total value of \$116 per share. And if CPNS's stock is trading at \$150 per share, then the total value would be \$108 per share made up of \$33 of cash; 0.451 in the new company, which would be worth, we believe, \$68; and 0.451 of a CVR worth \$7.

You will recall that before the CVR the estimated total value of the consideration being offered to NSC shareholders was worth somewhere between \$125 and \$140 per share at the closing of the trust in May of 2016. With the addition of the CVR, we now estimate the total value of the consideration being offered to NSC shareholders to be worth somewhere between \$128 and \$141 per share, which represents a 61% to 78% effective premium to NSC's unaffected stock price of \$79. And we are now also guaranteeing a minimum value of \$116 if CPNS trades at \$175 and \$108 if CPNS trades at \$150, which we believe makes our revised proposal considerably more attractive.

The alternative of course, in the event NSC shareholders tell us to pack up our bags and go home – which, by the way, is not what we have been hearing when we speak with them – is NSC's share price, we believe, would quickly fall back to \$79 per share or perhaps lower. Or, in a best case scenario, it might remain at \$91 per share if NSC's management can actually deliver against the five-year plan they recently rolled out.

Versus those two alternatives, we believe that our offer is very compelling and warrants serious consideration. And so with that let me turn the call over to Bill Ackman who is going to give an investor's perspective next.

Bill Ackman - Pershing Square Capital Management - CEO and Director, Canadian Pacific Railway Limited

Thanks very much, Mark. So what we have tried to do is really simplify things by starting with a picture, and a picture, as they say, is worth 1,000 words. So really the way we think about this transaction is in two phases. There is what we call the management change transaction and in that transaction we are buying control of the NS railroad.

We are paying \$32.86 in cash. We are giving slightly less than half a share of this new company. We are giving the CVRs, which I'm going to give you some more detail on. And for that we are going to end up in control of the company and we are going to hire Hunter Harrison away from Canadian Pacific.

So very similar to the CP proxy contest except the difference in the CP proxy contest is we didn't pay a premium; we didn't pay \$33 a share in cash. So if you are an NS shareholder, you can say with the status quo or you can vote in favor of this transaction – we will call it the management change transaction – contingent only on the closing into a trust, which Hunter will discuss in a little more detail. We think it's a very, very high probability.

And if that happens, shareholders will go from owning NS to owning stock in a new company. That new company will be held 53% by Canadian Pacific shareholders; 47% by NS shareholders, who trade publicly on the New York exchange. CP will be held in trust. Keith Creel will run CP.

NS will be held out right. It will be controlled by the Board of CPNS and Hunter will be the CEO of the Company.

And this is a transaction – only thing required, again, is trust approval, which we expect in 60 to 90 days. If the trust is not approved, again it is legal fees that have been extended by both parties, and we think again a very low risk transaction. You get your money, your cash; you get your stock of CPNS; and you get your CVRs May 1 when it closes.

The second stage of the transaction we call the merger transaction, and this is the one which I would say is more complicated. It requires a longer STB approval. We still think it is likely to get approved. It is not a certainty that it gets approved. We expect it to be approved on or before December 31.

And again, here you see the CPNS initially owned 53% by CP shareholders, 47% by NS shareholders, and there are two paths here. If the STB does not approve the transaction, then the holding company, CPNS, is going to have to separate CP from NS and it will either spin CP to shareholders or spin NS to shareholders. But these will go back to being publicly-traded companies that trade on their respective New York Stock Exchanges and the TSX, in the case of CP.



They will keep their old ticker symbols and the shares will be held – if there were no change in the shareholder base, 53% of these shares would be held by the former CP shareholders, 47% by the NS shareholders. Now, obviously, over time there would be lots of movement in the share base, but they would become two separate public companies.

So the risk, if you will, if the merger is not approved is you go back to having two separate publicly-traded companies. During this whole period they have been operated entirely separately because CP has been kept in trust and the Board only overseas Hunter running the NS railroad.

The other path, the STB approval path, the path we think more likely. The merger closes; you have an integrated company. You see the new ticker symbol, CPNS, traded on the New York Stock Exchange as well as likely the TSX Exchange.

So just go back a page, just to review one more time. Management change transaction; all this is about is effectively CP is paying \$33 in cash, plus stock in the new company for the right to take control of the NS railroad and put Hunter in as CEO. If shareholders would prefer Hunter as CEO and they prefer a \$33 dividend, if you will, a cash payment, then this is a very straightforward transaction for them to approve.

And then you get, if you will, an option on the merger transaction. It is not guaranteed to be approved by the STB. It is going to be a process that will take 12 or 15 months for an approval, but it is additional upside and we think it is likely to get done. And, again, Hunter is going to discuss a little bit more about regulatory approvals.

So what has happened over the last several weeks, pretty clear that NS does not want to be acquired and what they have done is they have misled the investing public. The way they have misled the investing public is they have characterized our offer and the value of our offer by looking at the current trading price of CP. They multiply that times 0.451, they add the cash, and they say, well, that is only \$90 a share so that is grossly inadequate. By the way, that is equal to what NS hopes to achieve under their plan.

The problem with this methodology is shareholders are not – NS shareholders are not getting CP stock. They're getting stuck in, as I showed in the previous slide, a new company, CPNS, that is going to own both CP and NS. And it will be a very different company from CP.

Number one, it is going to own 100% of NS, which it will control outright. NS will have a new CEO, Hunter Harrison. It is going to have a lower operating ratio. It is going to have higher growth. It is going to have a new capital structure. It is going to have a little more leverage. It is going to earn higher returns on capital.

And we think, because of Hunter, because of the improvements in operations, because of the higher growth, because of the more attractive capital structure, it is going to have higher earnings estimates fairly materially and it is going to trade at a higher multiple because earnings are going to grow much more quickly.

We also think investors are going to add some value for the potential of the strategic synergies, which you only get if the ultimate merger takes place. And at that point it will be based on what people believe to be the probability.

The confusion I think comes from the fact that CP shareholders are going to get stock also in CPNS on a 1-for-1 ratio. The reason why you wouldn't use today's price for CP is today's price highly discounts the probability of the transaction. And the reason for that is that NS has told everyone, no way; we are not going to do this. And in fact, is doing everything they can – running down the hall to Congress, putting stories in the media, getting their consultants to say negative things about a transaction.

All of these things impair the trading price of CP because people say, well, the deal is not going to happen. As a result, the stock does not reflect any potential for this transaction to take place.

Now, as the potential – the perceived probability of the transaction increases – and we think we will do some of that today; hopefully, a lot. And I will explain a little bit in detail the offer. We expect CP stock to go up as people say this is more likely to become CPNS stock and it is going to be worth a lot more.



Real simply, my standard here was I have got to be able to explain this deal to my nine-year-old daughter. So \$32.86 in cash, that is pretty easy to understand; 0.451 shares of this new company, that is a little more complicated; and then 0.451 shares of the CVR, an instrument that a lot of people may not be familiar with, so I'm going to go into some detail there, and that will get you to a total value per share.

Let's talk about timeframe. We expect trust approval and closure of the transaction to take place on May 1. That is when you get your cash, that is when you get your 0.451 shares of CPNS, that is when you get your 0.451 CVRs, and if you are a CP shareholder, you get one share of this new company.

The CVRs will trade freely and they are like options. They will be listed on the exchange and they will be worth anywhere between zero and \$25 a share. And we will explain how that gets calculated. At the end, October 20 -- think about this as a long-life insurance policy on the trading price -- you will get a payment if the stock price is below \$175 a share.

So let's go through each piece, including the CVR. Value cash, that is pretty easy. The value of stock, how do we get there? We think the right methodology is basically to go out to 2021. 2021 is the year that we expect the synergies -- I'm sorry, the operational improvements that Hunter is going to execute will be fully executed. That is reflected in this \$18.70 per-share earnings.

We put a 16 multiple on those earnings and that gets us to a value for the Company as of 2020. What we do then is we discount that share price back to May 1, 2016, at a 9% discount rate. So we are taking that forward value and we are bringing it into the present, and that factor is a 0.679 factor. That gets you to an implied value of \$204 a share.

What is presumed in these numbers is that Hunter is running the company. Hunter executes his plan, the operational improvements are exercised; there are no merger synergies, just operational improvements. You just -- all you have done here is put in a new CEO, borrow some money, and paid out cash to shareholders. And you also own, of course, CP, which is then run by Keith Creel, and that executes its plan.

You get 0.451 shares of this \$204 stock and, therefore, the cash consideration is \$92. So call it \$33 in cash, \$92 in stock.

If that description was too complicated for you, we figured we would do it a little -- I'm sorry, I screwed up here. This page is -- no, I got it right. This is pre-merger. And then the next page we note the higher earnings estimate is \$20.54.

This assumes that the STB approves the transaction. You get the tax synergies; you get some of the synergies from the combination, both on the revenue and the cost side. And that takes your earnings to \$20.54 versus on the previous page \$18.77, so you pick up a nice piece of incremental earnings.

We think the company will also trade at a slightly higher multiple. With higher earnings there is more free cash flow conversion and rail stocks tend to trade at multiples of free cash flow. We discount this number back into the present, again at a 9% discount rate, getting you to \$237 and you multiply by the same exchange ratio and that gets you to \$107.

So \$107 if the merger is approved and, going back to the previous page, \$92 if the merger doesn't happen. In this case, of course, you don't get tax synergies, cost synergies. What ultimately happens is they are separated in a spinoff transaction.

Now we have done yet another way to think about it and call it a very simplistic and extremely conservative way to think about it. So what we do here is we just estimate 2017 earnings. I think analysts very easily can replicate the work we have done here and I'm sure they will do so.

We say let's assume that we hire Hunter and despite the fact he turned around Illinois Central, despite the fact he turned around Canadian National, despite the fact he turned around Canadian Pacific, he loses his touch and he has no impact on the NS railroad and what is achieved is the current -- what analysts are currently estimating NS will achieve and what analysts are currently estimating what CP will achieve.

So we take the current revenues and expenses; the only difference here to get to an earnings number is we are going to pay out this \$33 dividend. It is going to have a slightly different debt structure, 4 turns of leverage versus something in the, call it, 2, 2-ish range.



We have put a 15 to 18 multiple. That gets you to \$167 to \$200 a share, that same 0.451 exchange ratio. So in this, the Hunter fails scenario, you get \$75 to \$90 a share of this new CPNS company.

Now compare that with NS running with Hunter, so by 2017 you will notice there is only – we are only assuming by the end of the year that 47% of the synergies – I'm sorry, of the operational improvements have been realized. That has an impact of up out \$1.16 of incremental earnings. We put the same multiple and it gets you the various share prices and then a value of \$83 to \$100 a share.

So again here \$75 to \$90, \$83 to \$100. The most reasonable conservative case, of course, is that Hunter is successful, as he usually is. Compare these with the previous page \$107, \$92; you get similar numbers, slightly lower numbers.

Now let's talk about the CVR. The CVR, the basic terms of the CVR are the CVR protects you if the price of CPNS is below \$175 a share and it protects you down to a price of \$150 a share. The way to think about this is it is like an insurance policy.

The insurance policy will be outstanding until October of 2017. The insurance policy begins to protect you at \$175. If you remember, we think the stock is worth \$204 so there is a nice cushion there. But below \$175 you get this dollar-for-dollar protection, and protection goes down to \$150 a share.

The reason why we stop at \$150 is: one, we think it is extremely unlikely the stock drops below this price and, two, the Company is really not in the business of writing a catastrophic insurance policy. That is just too risky for any company.

Now this instrument is one that we think many of the long-only traditional shareholders – and even Pershing Square, ultimately, we will sell this security. The reason why we sell it is because we believe that the stock is going to be worth more than this, so we don't need the insurance.

The good news, though, is this will be a very liquid security – there will be 137 million interest units outstanding – and this is the kind of security that arbitrageurs, option traders love. There will be a lot of them outstanding; they will be issued May 1, 2016.

How do you think about what this is? Well, options I think people are pretty familiar with. This is equivalent to you are buying a put option that struck at \$175 a share and you are selling, or shorting, a put option at \$150. So you get the difference between the value of those instruments.

And the price that is used for the purpose of determining whether you get paid on the insurance is the price of CPNS between the time it is issued, May of 2016, and the time it expires October 20, 2017. So think about this as a 15-month, 16-month insurance policy; protects you in a downside case and is an insurance policy you can sell.

Let's talk about how we value it. Just a few points here. As I mentioned, 137 million of these will be outstanding. We expect them to be lifted on the New York Stock Exchange. These are easily valued by using an option pricing model. Any of the basic models will help you value this instrument.

The reason why we picked October 20, 2017, is there will be options that will be lifted with a similar date of expiration and there will be put options likely at \$175 and \$150. And so at that point in time you will be able to just look at the reference price of those options to help you come up with a value for this instrument.

So how do you value it? You value a CVR by subtracting the value of the \$150 put from the \$175 put. How do you value a put option? We use the Black-Scholes model and we use the following assumptions.

The duration is 18 months, that is the term from the May 1 closing of the deal through the option expiration on October 20. The reference price for determining whether you get paid is the last six months of this term, so there is a six-month peered where you look at the trading price to determine whether there is a payout. The reason for a six-month period is to make sure that there is no gamesmanship, if you will, about where that price is.



Volatility, of course, is an important option assumption. We use a 25% volatility. Currently CP is about a 29% vol, NS is about a 27% vol, and the combined company we believe will be about a 25% vol. And there is some detail in the appendix for people interested in options.

We assume dividends at \$0.02 a quarter, kind of a conservative dividend assumption, but we are actually going to build into these instruments a feature that says regardless of the dividend -- we can assign whatever dividend the Company decides -- it will not affect the value because there will be an adjustment to compensate for any dividends that are paid.

What is the value of this instrument? At \$125, which happens to be last night's closing price, the CVR is worth \$9.53 using these models. Now what does \$125 a share mean in terms of valuing of a new company? Well, it is about 10.2 times earnings. The earnings being \$12.29 with Hunter running the Company, that is with the operational improvements, or 11 times earnings with -- assuming that no synergies take place.

So if Hunter is not successful in turning around the railroad -- and he keeps giving me a stare when I say things like that -- it is again a very, very low valuation. The \$11 assumes no improvements in NS versus analyst guidance and assumes CP analyst guidance, so if this thing trades at 11 times unimproved earnings, or \$125 a share, the CVR is worth \$9.53.

If you look at the \$204 value, four columns over, this is the no STB approval. This is assuming a 16.6 multiple of -- the expected earnings we expect to achieve at that point in time of \$12.29. The CVR, you will notice, is worth only \$5.61.

And the reason for that, of course, is this is the put spreads and the higher the stock price is the less valuable the put spread. Of course, you would rather have a higher stock price because that means more value for shareholders.

And then we show various prices in between. The top end of the CVR range of \$175; again, on May 1 this CVR is worth \$4.76, even though if the stock closes at \$175 by the end of the contract it is worthless, because of the time value of money of the option.

So what is the total value of the offer? You get \$32.86 in cash. You get 0.451 shares of this new company, CPNS. We have given you a couple of different ways to think about that value. And we are giving you this CVR, or a put spread, to protect the value of your shares.

Let's add them up. If you take last night's closing price -- which again the stock price reflects a low probability of the deal happening, all the negative things that NS has said, many months away from the transaction, six months away from the transaction being closed -- the deal that we have just offered, CVR at \$9.53, is worth \$98.77. That happens to be a 25% premium to the \$79.14 unaffected price.

So if CP stock, which will become CPNS, doesn't increase, even though we've now -- the trust has been approved, Hunter has been installed as CEO, it is still going to trade at 10 times earnings, which again we think is an extremely remote scenario, you are still getting a 25% premium.

If you take \$150 a share, this is again a very -- going back to the previous page, two pages back, this is, call it, 12 times earnings with Hunter running the Company. Again, a very conservative multiple. The CVR at that point in time is worth \$7.24 and the cash and stock together gets you to \$107.75, or a 36% premium.

Go on what we expect the stock to trade at the STB -- assuming the STB does not approve the transaction, and shareholders are just making the assumption it doesn't happen, it is just a management change transaction. The total value of the cash, the equity, plus the CVR, which is only worth about \$2.50 because the stock then is trading at \$204 on May 1, the total value is 61%.

Again, I see there -- on the bottom of the page you can see the multiples, so pick your multiple of 2017 earnings -- 12, 14, 16, or 19. At 14 times earnings this deal is a 47% premium to the unaffected price, so again a massive premium. I don't understand how someone could say this is grossly inadequate unless they are attempting to mislead the shareholders of NS.

So how do we think about this? Why is CP willing to introduce the CVR? Number one, CP believes that the market will value this company the way it is run by Hunter at a meaningfully higher price, and that the CVR ultimately will require no payout by CP.



So it is a way to put your money where your mouth is and give shareholders an insurance policy, give shareholders something of value that they can sell immediately. It's the equivalent of a \$9.50 increase in cash to the bid. And it will be very liquid and easy to value.

And I encourage everyone who is not familiar with options or CVRs just to ask their option desk or call. I would expect the analysts to put out their own calculations, but you will find the Company's bankers and we came to a number within pennies in terms of estimating the CVR.

So where will the money come from in the event we are wrong and the stock market crashes in the middle of the period where the payment is due at the end and the stock is trading at this very, very low valuation? Well, that means that CP has to come up with as much as \$3.4 billion.

The good news is the payment is owed in October 20 – October 25, 2017. That \$3.4 billion will take the leverage at that time from 2.8 turns to 3.2 turns. The company will remain a solidly investment-grade company in that circumstance.

Based on our estimates for the value of CPNS using various methodologies – and we encourage analyst to come up with their own numbers, their own multiples -- the revised offer now is 61% to 78% premium using, I think, quite reasonable assumptions. With that I'm going to turn it back to Hunter.

Hunter Harrison - Canadian Pacific Railway Limited - CEO

Bill, thanks very much. Mark, that was very informative. You have convinced a nine-year-old daughter and an operating chief that this CVR is the right vehicle.

I think it is important right now that we -- that maybe we step back and take a look at what has transpired so far in this exercise. I guess, number one, it has turned where I hoped it wouldn't turn and so I think to review what has taken place, for some of you, would be helpful.

Let me start with the first thing that kicked some of this off and that was the potential meeting that we had with CSX. People said, well, why did you pursue this? Well, we really pursued it because of a lot of you on this call said to us there was great opportunity to create shareholder value. If we could take our operating metrics and lay over some other railroads that there was a lot of value creation there.

And we took a look at those numbers and everyone was right. We had moved to a point where both – I think most people would recognize that the two top railroads in North America now are both Canadian, one being Canadian National, one being Canadian Pacific. And there is probably some reason for that.

Let me just put it this way: We got a signal from the Board in Jacksonville that maybe we should visit and talk. And so we did. We visited for about two hours.

I am not sure why we went there -- or actually we met in New York -- because their view was -- at least their CEO's view. And I don't think I am putting words in his mouth, I think he said this publicly. Is that clearly this trust structure and regulatory hurdles could not be gotten over, so why worry about it?

We never talked about value creation; we never talked about impact on the shareholder, because there was different views. CSX, clearly, was of the view that there was no way this transaction could be approved or a trust structure.

Now, contrary to that today, as I understand it, and you can ask them better than me, they have effectively put their self in play. And for the right price they would contemplate a deal.

Now, I don't know what has happened to the trust hurdles and the regulatory, but they had potentially decided to get over them. But we clearly saw quickly that that was not going to work, and so we turned and did some analysis on Norfolk Southern at that time. The value creation and potential was even greater there and we were very excited about that.



So what happened? Well, I can't tell you; we are still investigating it, but there was some leaks and rumors got out that we were looking at Norfolk Southern. I immediately that weekend picked up the phone and called Mr. Squires and told him what had transpired, what we knew.

He brought to my attention that they already had heard earlier in the week, so it was no big surprise. But I said, you know, what do you think about sitting down and exploring this? And he agreed. I told him that the Board has had a great deal of discussion about making a formal proposal in the form of a letter document to send to them.

At his request he said please don't send the letter. That will put us in more of an adversarial position and it is not the right type of environment to be negotiating a deal. So I was able to convince our Board that that was not the thing to do; let me visit with Mr. Squires.

He said to me that he would like to bring four or five of his lieutenants and I could do the same, because there was some of these issues that, very candidly, he wasn't that familiar with. But before that meeting transpired he called and said he wanted to do it just one on one, so I invited him to my farm. He came out and we visited about the potential of the transaction and he said, effectively, could you go through some of the scenarios you have in mind? And I went through a lot of them.

One of the first ones was to say, you are welcome to be part of this team and to run one of these railroads. And he made it very clear to me; he said this is not about social issues, this is about creating shareholder value.

So we started down that road and I guess immediately got cut off at the pass. There was not the response that we expected and we didn't hear anything for a while. Then we finally sent a formal proposal.

Up till this time, with the exception of the meeting with Mr. Squires and I, their Board has refused to meet. They asked me what the plan was and I said, you know, we wanted to come here and not be so presumptuous that we had all the answers; to listen from your input, your concerns, and your thoughts. But that didn't work for us.

Then, as we go through the process and kind of what I will describe as the street fight environment I started – I hate to tell you that is the way I grew up as a street fighter, but if this is going to be a street fight, so be it.

I look up next and NS has brought onboard two hired guns I will refer to them, Mr. Nottingham and Mr. Mulvey, who are now advising Norfolk Southern. I am assuming for a price and you can ask them that, but I think they are getting some bad advice.

They have come out with a so-called white paper that said nothing could be worse than this transaction effectively; that it will not pass the mustard of, first of all, a trust. I would like you to listen to this closely, those of you that have been concerned about the trust approval. Since the Staggers Act of November 1980 there has been 144 requests of the Surface Transportation Board for a trust; 144 of them have been approved. So the odds are pretty good, at 144 to zero, that we could get a trust structure approved.

Now this is almost an exact model of what we saw at CN IC. We put the company in trust. I went to Montreal; there was never an issue raised about the trust. We got over the regulatory hurdles. There were virtually no issues there and the transaction was approved early, where the STB gave up some oversight as a result of how we had implemented the transition.

Now I understand, as I read today, that the two hired guns, who by the way aren't very good marksman either way, who are typical people that have been inside the Beltway too long. We wonder why the public has lost confidence and this is a good example. I think you will find, and you can ask him – don't rely on me – that Mr. Nottingham, for an example, has made a lot of other comments on the other side of the transaction advocating single line haul. So I think we have not gotten anywhere there.

Mr. Squires has said the price doesn't matter. So we are certainly not talking to them about the price because it doesn't matter and they won't meet with us, which makes it very difficult to do a transaction and to be able to create shareholder value.



From a regulatory approval standpoint, I have been in this business a long time and I have seen every merger come and go for about 45 years now, plus. And everything that I know of that the shippers have ever requested or asked for that the railroads have fought, we have been willing to put in our proposal.

Whether it is bottleneck – we have never supported bottleneck. Have we been outliers there? Yes, we have been outliers, but that is our view. Have we supported paper barriers? No. Has access scared us? No. And the access that we are advocating is what we call a modified control access in internal areas.

We have had some dialogue with the shipping public, very positive feedback at this point. Next week I believe it is our staff will be meeting with a lot of the shipper advocacy groups in Washington.

This is starting – and it appeared that this was grinding towards the end, but then we wake up two days ago and now Burlington Northern has kind of thrown their oar in the water. Why would they enter the fray? If this can't be approved – if you can't get a trust structure approved and you can't get regulatory approval, why would they care?

It appears to me that someone has given some advice, this thing could be approved. Someone has done some research on a trust to find out that, in spite of the fact that certain people say it can't be approved, 144 times out of 144 it has been approved. So I think there is some reason that our friends at Burlington Northern are a little bit concerned about the transaction and what it might bring.

I don't know why they are worried about down-the-road effects if it can't be approved. So we did this, as I started off with, for shareholder value creation. But (technical difficulty) NS shareholder, as far as whether we are going to get approval and proceed and create all the appropriate positive things that the transaction can bring.

We have heard very little substance of why the transaction would be bad, with the exception of questioning my integrity which I take good exception to, but I will handle that myself.

So I thought that this might add a little context to where this whole transaction stands today. And all I can tell you, in my view the clock is ticking and it is ticking down, and it is time for us to take some action here if we are going to see this transaction through.

So with those remarks, which I will probably read about in the paper in a few minutes or in the morning, Jesse, we will be happy to take calls from the audience.

QUESTIONS AND ANSWERS

Operator

(Operator Instructions) Fadi Chamoun, BMO Capital Markets.

Fadi Chamoun - BMO Capital Markets - Analyst

Good morning. I'm going to take a wild guess here; NS will probably reject this enhanced offer. So I mean this looks like it did on the last call in terms of the offer, that it is going to go most likely the proxy route. So first, how does this process move forward? Is there an avenue to call for a vote before the AGM, if you can sort of give us your thought on that?

Secondly, why did you feel that this CVR structure is necessary? Did you have feedback from shareholders of finance probably on the prior offer, which seemed –? The prior offer seemed pretty good to begin with. Why did you feel like you have to enhance the offer with this CVR structure?



Bill Ackman - Pershing Square Capital Management - CEO and Director, Canadian Pacific Railway Limited

I will give the shareholder perspective. What is interesting about the CVR is it gives very significant value to shareholders, unless we are right. What I mean by that is: If we are right and that stock trades at \$200 and above, this CVR isn't worth very much. What we're trying to do is get to the world and the shareholders and the company and the Board as fiduciaries for shareholders to focus on what the transaction is about.

The transaction is about what is the value of the combined company; what is it worth? And the CVR is a way of calling the question. Canadian Pacific is basically putting down \$3.4 billion of chips on the table and saying we are willing to bet \$3.4 billion that this stock is above \$175 a share.

And at \$175 a share, if you go to the little chart that is up on the webcast, deal is worth \$116.55. We think it is more than that, but this is a 47% premium and we are betting \$3.4 billion that we are right on that number. We are not betting that money recklessly. If we have to pay that money, we have got the resources and the financial commitment in order to do so.

But I think what this does is it really focuses the world on what the new company is worth and the cost ultimately to CP, we think, is going to be zero. It is a way to deliver meaningfully more value to shareholders at very small cost to CP, so it was a modification that Hunter was willing to agree to and I think it is one that benefits shareholders. It is, I think, a helpful device to get people to focus on what this transaction is about.

One thing I think you can do, and really all of the analysts can do here, is: What is CPNS worth? Don't take our word for it. You guys are good analysts; combine these two companies, look at what you think the synergies are. Haircut them or add to them if you think it is appropriate, and tell the shareholders what they can own come May 1, 2016.

They're going to get \$33 of cash, they are going to get 0.451 shares of that company, and they are going to get an insurance policy that I think are worthless. And what I mean by that is I think we are never going to have to pay out on that insurance policy. If you are a smart investor and you believe the same, well, you can sell that insurance policy the day the deal closes to an option trader who doesn't really care about what the stock is worth, but who can make money trading around this little instrument. So it's kind of a way where everyone wins.

Let me make one more point about fiduciary duty, because I think that has been a bit ignored here. What has happened so far is we put out our additional offer and it was rejected, and I have said in the last conference call that I thought it was appropriate for the first offer to be rejected because there were contingencies. People had to wait for their money.

But we went back to the well, we did some work and we figured out how to do a transaction that required only a trust approval where people could get their cash and their stock on May 1. That is a very different deal; it is a massive improvement in the transaction.

That transaction was rejected before we even explained it. In fact, Chip Nottingham, who wrote this white paper saying this deal could never happen, assumed we were going to put NS in trust for the purposes of analysis as opposed to CP. And if you want to get a sense of how these consultant reports are, literally, paid for, we dug up a transcript of a call that Chip Nottingham did with a Wall Street analytical firm. This was done in October 2014 and the context was the CP CSX transaction.

At that point Chip wasn't working for anyone. He was actually being paid to give his independent advice as to whether a transaction like CP CSX could get approved. And here is what he said; I will read to you from that transcript.

He said if CP and CSX were to merge it would create a scenario where you could have a third major competitor in that market – again, here is referring to the Bakken volumes moving to the East Coast – that would actually be able to seamlessly, with no handoffs and no handovers, avoid the Chicago bottleneck, which is a notorious delay point in shipping from East to West and West to East. The CP CSX network would be able to bypass Chicago, but also be able to do so with one carrier movement across the country from Pacific Northwest to the East Coast for oil and gas exploration areas back and forth.



Clearly, if you are just focused on the energy sector it is a merger that has some attractive points to it. I will point out that the two railroads involved don't have much overlap in track currently, and that is a plus if you are looking at getting a merger approved. Very few, if any, rail customers who are currently served by both CP and CSX would face going from a two-carrier scenario to a one-carrier scenario.

The resulting merger would create a large rail carrier, but that large rail carrier would not be significantly bigger than the Union Pacific or the BNSF, so it would not create a dominant industry titan, but arguably add a third very large player to the two that already exist in UP and BNSF.

The most interesting thing about Chip's statement that he made when he was not being paid by NS, but paid for his independent advice, is that if you replace CSX with NS in this paragraph, you get to what we have been saying all along.

Fadi Chamoun - BMO Capital Markets - Analyst

Okay. And on how this process moves forward from here, assuming you have to go the proxy route?

Bill Ackman - Pershing Square Capital Management - CEO and Director, Canadian Pacific Railway Limited

Sure. I will cover that, and if Paul Guthrie wants to add or Hunter or whomever.

The Company has an annual meeting. Proxies need to be submitted for that annual meeting by February 14, at which point shareholders could put a resolution saying the Board of NS should engage and see if they can negotiate a transaction.

The simplest way for a shareholder to put pressure on the board of NS is to have a shareholder resolution that says, up or down, shareholders should – the Board should engage with Canadian Pacific and see if a deal that can be negotiated that is attractive. Simplest, easiest way to put pressure on the Board. And by the way, I think shareholders would overwhelmingly approve that resolution.

Two, the more aggressive way, of course, is for a shareholder to propose a replacement slate of directors and that would be voted upon by the annual meeting which would take place typically in mid-May. The company has an ability to delay the meeting a couple of months, but companies that generally delayed meetings to prevent their shareholders from voting, boards get thrown out for doing things like that. So I think this would get resolved by May.

There is a special meeting provision, but in light of the time frames I think the annual meeting is the most likely timeframe, and the simplest one, for getting a transaction done from a proxy perspective.

Fadi Chamoun - BMO Capital Markets - Analyst

Okay.

Hunter Harrison - Canadian Pacific Railway Limited - CEO

Fadi, I would only add to that at this point I think that -- I am hopeful that, and have not given up, on the ability to sit down still with the Norfolk Southern folks and hammer out a deal, or at least explore it, that is in both our shareholders' interests. I just don't understand the rationale of saying we won't talk.

Now there is a company that says they are going to be at 65% by 2020, which hadn't been able to do it the last 10 years. Has had a lot of turnover and loss at the top and I, very frankly – that is more your folks' job than mine – I, very frankly, don't see how they are going to get there from here.



And people forget something, once this jockeying that we are talking about is resolved in some manner, we got to run railroads. We got to serve customers. We got to serve shareholders and people are losing side of that. This is not the end game here, this is the beginning. So I would just leave those thoughts with you.

Bill Ackman - Pershing Square Capital Management - CEO and Director, Canadian Pacific Railway Limited

Actually one point I wanted to make relating to your question. If you are on the board of NS, and CP makes the offer it just made; the offer is contingent only on a trust. You have heard from Hunter that 144 out of 144 trust transactions have been approved by the STB since the Staggers Act was put in place in 1980. You have to be pretty confident that this thing can get approved.

The offer is \$33 in cash. It is stock in a new company that, on a very conservative basis, is worth 50% with the cash more than the unaffected price of the stock. That a railroad executive that has the best record in the history of railroading who is prepared to step in immediately and run the company. And CP has sweeten the offer with an instrument that gives people an insurance policy if the stock price drops, which we now at October 20, 2017, a 15-, 16-month insurance policy.

Now, if I am on this Board of Directors, what I would do is I would say, you know what, we shouldn't just have our PR team issue a press release before the Board has even considered the transaction. In fact, the CEO shouldn't be authorized to issue a press release before the Board – the Board should issue a press release saying we have received the offer. We will study it carefully.

We will have our advisors at Morgan Stanley and Bank of America do some analysis. We will ask questions of CP to the extent there is anything that we don't understand. We will deliberate carefully; we will observe our duty of care.

We will focus on what is the best interest of our shareholders and our other constituencies, and then we will be responsive. And if it makes sense to sit down, they will sit down with us. That is what an appropriate Board of Directors acting consistent with their fiduciary duty would do, and if I were a member or a shareholder of NS, I would insist upon it.

And if the Board instead issues a one-page letter saying the transaction grossly undervalues the company, meanwhile the stock is stuck at \$79 a share and a 70% OR, then what I would do is I would throw out at Board of Directors at the next annual meeting.

What happened to the Board of CP is we had the exact same thing take place. We have the Board say, you know what, we don't believe you; you are wrong. We've got a better plan. And we said, no, we have got the greatest railroad executive of all time. He has got an incredible track record. And they said, you know what, we won't even meet with him.

One thing I encourage you to do, if you want to get a sense of how this thing plays out, we left on the web the CP Rising website, CPrising.ca, and we have a video transcript of the town hall that we did explaining the transaction. It is the same movie all over again.

Here they have Chip Nottingham on a made-as-instructed report and in that case they had [Oliver Wyman] who said it was impossible for Hunter to achieve the results that he said he would achieve.

Look, we don't want to go the route of throwing out the Board of Directors. What we want to do is sit down with sensible people, see that there is some value here, a deal can be struck; get something signed up as a Christmas present to the shareholders of both companies. And then push forward and get a trust approved, put Hunter in as CEO, and work real hard to make this one of the greatest railroads in North America.

Operator

Brandon Oglenski, Barclays.



Brandon Oglenski - Barclays Capital - Analyst

Good morning, everyone, and thanks for taking my question. I guess can you guys talk up out the confidence level you have that a trust could be approved with Hunter moving over to Norfolk? Because I think that might be a sticking point.

Is there a possibility that STB can say, okay, we don't mind the trust but the management change goes above and beyond the independency of running these railroads separately? Is that a risk or a concern if I am a Norfolk holder?

Bill Ackman - Pershing Square Capital Management - CEO and Director, Canadian Pacific Railway Limited

Sure. I think we can answer that very simply. If tomorrow we let Hunter out of his employment contract, Hunter is an American, he is a free agent. And if Hunter sold his stock in CPN and gave up his pension in CP, any railroad in North America or, frankly, Australia could hire Hunter to go work for them. The STB has no authority over one employee going from one company to another.

Now if Hunter had some secret side deal with Canadian Pacific, where he is going to violate the law – once Hunter sells his stock in CP, once he walks away from his pension and he goes over to NS and he gets a chunk of stock options in NS and he gets a pension from NS, he is going to do exactly the same thing he did when he left CN and he went to CP. He is going to do everything he can to make NS the best railroad in North America.

And what I can tell you is this guy is fiercely competitive. He has been fiercely competitive against the railroad he used to run and he is going to be fiercely competitive against the railroad that he used to run in this case.

Hunter, do you have a point of view?

Hunter Harrison - Canadian Pacific Railway Limited - CEO

I would – number one, it questions my integrity, which I honor greatly. Number two, I would refer you to the CN Illinois Central.

I was CEO at Illinois Central. We put Illinois Central in trust. I went to Canada to be the number two operator – operating chief to run the railroad, because we felt like that was the most value creation.

Now, there were a lot of things that went on at Illinois Central after I left that I didn't, frankly, like, there wasn't anything I could do about it. I knew what the law was, I knew what the regs were, and we dealt with it. The trustee was down there doing his job.

Why would I jeopardize a transaction like this and my integrity to violate this –? How are you going to take a railroad this size and violate the law and not be caught? It is impossible.

I mean, nobody has brought that up in 144 cases. I don't know if I have got a wanted poster or what. It just doesn't make any sense.

Bill Ackman - Pershing Square Capital Management - CEO and Director, Canadian Pacific Railway Limited

The fact that Hunter is a legendary CEO has no bearing on the fact that once he sells his stock in CP and gives up his pension and moves over to NS he is only going to be NS's CEO. Why would he jeopardize the reputation he has built over the course of a 50-year career for what? As we pointed out, the vast majority of the value here is created just with the management change.

Hunter Harrison - Canadian Pacific Railway Limited - CEO

The other thing I would add is this – and as you go along the way this is not as important – but when you do this in a trust structure, to Bill's term earlier, you become a free agent. And if the transaction is not approved, guess where you are? You are in the street. You have no job, no affiliation.



And you don't take that risk unless you think you can produce and the transaction can be approved and the trust can be approved and you can follow the law.

Bill Ackman - Pershing Square Capital Management - CEO and Director, Canadian Pacific Railway Limited

And lastly, once Hunter leaves CP and goes to NS, if the transaction is not approved, Hunter is still the CEO of NS. He is not going back to CP, he is done. Next question.

Operator

David Vernon, Bernstein.

David Vernon - Bernstein - Analyst

Good morning. Just maybe a process question or maybe if you could just highlight why you might not be able to go to the STB right now and just lay this out and say this is what you want to do and maybe have them opine on whether they think the trust structure would be amenable. I think that might actually make this issue go away.

I'm just wondering if there is a reason why you can't go to the STB and ask for some type of approval or ruling on the ability to put CP in trust, create the holding company and then either tender or go through a proxy battle for the shareholder approval to do the merger.

Paul Guthrie - Canadian Pacific Railway Limited - Special Counsel to the CEO

It is Paul Guthrie responding to this. As we have explained several times and was explained again this morning, the law in this area is perfectly clear. There is no doubt about this; this is simply an attempt that we heard yesterday from Norfolk Southern's advisor to further have an excuse to avoid dealing with us face to face. If they have legal concerns, they can address them face to face with us.

There is no need to go to the STB, as I say, the law is perfectly clear. When we go to the STB, we will go to the STB with confidence that we will get a decision, an impartial decision made by the present members of the STB rather than formal members, and it will be in our favor.

Bill Ackman - Pershing Square Capital Management - CEO and Director, Canadian Pacific Railway Limited

The STB is not going to give you a pretend answer. When you are in a position to apply for a trust, you apply for a trust. They evaluate it and they give you an answer. They are not in the business of speculating on potential transactions. They are in the business of – when there is an application made they are going to do their job.

Operator

Scott Group, Wolfe Research.

Scott Group - Wolfe Research - Analyst

Thanks. Morning, Hunter. Curious what some of the – if you are considering any other alternatives besides a proxy. At some point do you consider going back to CSX and seeing if they might be interested, given some of the management changes they have had.



You have got BN talking like they would be open to a possible deal, so now you have got two rails out of -- now two rails that might be interested in a deal. Could a deal with BNSF make sense? Just how you are thinking about maybe other options or are you just kind of steadfast and focused just on NS?

Hunter Harrison - *Canadian Pacific Railway Limited - CEO*

We are focused right here. Look, we looked at the other alternatives. And as I have shared with you, I don't know what their positions are because they talk out of both sides of their mouth.

I said in the interview the other day: If somebody wants to talk to me, my phone is on the hook. Just pick up the phone and call. You don't have to put some wire in the paper, talk to me. I learned a long time ago never to say never, but our focus right now is this transaction. It is one step at a time and we will see what happens.

Scott Group - *Wolfe Research - Analyst*

Do you think your approach can work with a Western US rail?

Hunter Harrison - *Canadian Pacific Railway Limited - CEO*

Yes. I mean, well, look, from a legal standpoint, certainly. Now, from a business standpoint is that it is practical and much larger, and I don't know that they are looking for a partner and so forth. But from a legal standpoint there would be end-to-end, a couple of places a little more overlap.

But everybody is speculating; I have a great deal of confidence in the Service Transportation Board. As Paul said, the law is the law. This is not a political exercise, this is a legal exercise. Are we doing what is required, enhancing competition and doing the things required? And the answer is, yes.

We have always said if it is in the interest of the shareholder, we'd take it under advisement. So if somebody calls, we will talk to them. Maybe you know something we don't.

Bill Ackman - *Pershing Square Capital Management - CEO and Director, Canadian Pacific Railway Limited*

Interesting thing to think about; imagine for a moment you are a shareholder of NS and the Board is behaving and the management behaving the way they are behaving. And that leads CSX, which might have had a change of heart about a transaction, to call up Hunter and then we negotiate a deal with CSX and we announce that at Christmas or January or whatever.

How are you going to feel as an NS shareholder now, when you could have done a transaction with CP, you could have had Hunter as your CEO, and because of the way your Board screwed around -- not even considering a transaction, not even meeting, not even studying, not even having your advisors look at a transaction --? They rejected the last deal within 15 minutes of the press release where we put out the proposal. That is not consistent with fiduciary duty.

I think the Board of NS would have some explaining to do and might have some significant liability in a circumstance like that.

Scott Group - *Wolfe Research - Analyst*

All right. Thank you, guys.



Operator

Tom Wadewitz, UBS.

Tom Wadewitz - UBS - Analyst

Good morning and thanks for all the perspective on the new structure and so forth.

Hunter, I think my questions are really for you. When we look at the CP analogy and the proxy fight and what you did at CP, you did have the ability to bring in a lot of your team that were former CN or people from the industry. And I think that is more powerful if you have some of your team to work with as opposed to just yourself, right?

So is that a significant – do you say, hey, it is kind of tough if I go to NS and I'm trying to drive all of these changes and I am really the only guy there putting this through? Obviously you have a very, very strong track record historically. But how do we think about that?

Then I guess, I don't know if this is related or not, but the resistance of the US rails I think relates to their concern about access provision. And I wonder if you could compare the access in Canada with reciprocal switching. Is that a lot different than what you are looking to do in the US?

If the systems run a lot different, then maybe that is a way of saying, well, the risk isn't that bad from the access. So I guess those two topics. Appreciate it.

Hunter Harrison - Canadian Pacific Railway Limited - CEO

The first, the personnel, Tom, and I'm just thinking out loud here, but it is not like I have recruited a whole lot of people from the past and brought over to CP. Most of them that have come from other rails, mostly our friends at [Burns and Northern], have not been members of my team in the past. Now Keith obviously was. He was the big fish and we landed the big one.

But you know, I have said all along from day one, and I said this day one to Mr. Squires, this is not -- I am not trying to go to Norfolk Southern to scorch the Earth or anything. I'm looking for good athletes, good railroaders, and I am sure that organization is full of them. I think, my view from the outside looking in here, is they need a little different leadership and maybe different strategies. It is not that there is not the athletes there.

I am not dependent upon that I have got to go get whoever to make this thing work. If I have got any strengths, I know this business a little bit, I'm not a bad leader, and I am a pretty good coach/mentor and maybe that is what is needed the most. There is plenty of people there, I think. There is plenty of talent there. Maybe the bowl needs to be just mixed a little bit.

That is why the first thing I did was to say to Mr. Squires, do you want to be part of this team? I'm not saying I am picking it, but would your -- and that is when I got the other response. So the personnel is fine.

The reciprocal switching and the interswitching in Canada are totally different. Interswitching, or reciprocal switching in the US, effectively went away with the Staggers Act. What was overnight a \$75 reciprocal switch, turned into an over market of \$600 or \$700.

It was not governed by some mileage, like the Canadian. It is a direct radius from. It made no sense how you drew the map and so that is why -- if you looked at the core or the inner-city as the measuring point from, there might be an industry 10 miles from there that was not open to switching and there might be one 50 miles away that was. Each individual railroad negotiated with customers as they located on whether they were open or closed to reciprocal switching.

So it is a totally different model and in Canada, right now, it is not used very much. I would say that the main factor is that it is a safety net that is at the shipper's disposal if they so desire. It would be much more in play in the US.



And so all we are saying is this, if we are serving a customer and we are the only game in town, we are the only one that can physically reach them and they feel like we are not doing the job, their decision -- not ours, not some arbitrary. They have the right to bring in brand C and let them service the customer.

If we do our job from a service standpoint, do what we say we are going to do with a competitive price, we will be fine. And that is the way competition ought to be. If we don't do our job, we are not looking for some artificial protection. And that is what I think, with due respect, some of the other carriers are looking for.

So you are really apples and oranges with interswitching and reciprocal switching and what we are proposing with modified access.

Tom Wadewitz - UBS - Analyst

So is it fair though then to say that there would be more revenue at risk? You can handle it, you run the railroad a certain way and I understand that, but for another carrier that would have concern, if these rules were applied, there would be some significant revenue at risk in the US (multiple speakers)?

Hunter Harrison - Canadian Pacific Railway Limited - CEO

Yes. If they don't do the job, it ought to be at risk. I mean that is what the act says: to enhance competition. Not guarantee some carrier that whether they do the job or not they are going to have the business. That is not enhancement of competition.

What they don't want, they don't want to go back to the Service Transportation Board and have to justify the enhanced positions. They like it the way they got it. That is just fact. And if you don't believe that, ask them.

Tom Wadewitz - UBS - Analyst

That all makes sense. I appreciate the explanation, Hunter. Thanks for the time.

Operator

Allison Landry, Credit Suisse.

Allison Landry - Credit Suisse - Analyst

Good morning, thanks. In the white paper you published yesterday in the first point it was stated that the denial of trust would restrict shareholders' ability to realize the full value of their investment and that intrusive regulatory action would deviate from past precedent. Could you clarify that statement? Because it seems to suggest that the STB would also consider the interest of shareholders, which seems to be inconsistent with the public interest and premature control statutes.

Hunter Harrison - Canadian Pacific Railway Limited - CEO

To that part, Allison, let me comment and maybe the legal guys. But I would say shareholders are part of the public and there is nothing wrong with serving the shareholders' interest. If the shareholders don't want to invest in a rail system, I don't know where the capital is going to come from. We are going to be in a hell of a shape in this country.



Allison Landry - Credit Suisse - Analyst

Okay. And then as a follow-up, NS brought this up last evening, do you plan on seeking a declaratory order from the STB to confirm that the voting trust structure which places CT as opposed to -?

Hunter Harrison - Canadian Pacific Railway Limited - CEO

No, no. That was what Paul was talking to. Look, we are not asking for any special treatment. There is a process in the law that says here is what you do. And the first thing that would happen if we went to look for a declaratory judgment here, they would say you are getting special treatment. Nobody else has ever applied for this.

We are willing to submit our application and play by the rules, and whatever they say we will deal with. That is fine. That is just grasping when they don't have anything else to grasp for.

Bill Ackman - Pershing Square Capital Management - CEO and Director, Canadian Pacific Railway Limited

Why don't you ask NS why this trust won't be approved when the last 144 have been approved? I think that is a good question for them. If there answer is because Hunter Harrison is CEO of Canadian Pacific, then that is not a particularly good answer.

Allison Landry - Credit Suisse - Analyst

Understood. Thank you.

Operator

Steven Paget, FirstEnergy.

Steven Paget - FirstEnergy Capital - Analyst

Thank you and good morning. Mr. Harrison, forgive me, but I would like to ask about your health as shareholders will be relying on you, and you alone, to fix NS. If the trust is approved are you ready to clean out the leadership and fix the Company?

Hunter Harrison - Canadian Pacific Railway Limited - CEO

Clean out the leadership, what does that mean?

Steven Paget - FirstEnergy Capital - Analyst

Make leadership changes.

Hunter Harrison - Canadian Pacific Railway Limited - CEO

Yes, I mean I am ready to make whatever changes needed to be made but, look, if you go back and look at my history over time, I am old because I like to play with the hand I am dealt. But if there need to be changes made, I am certainly not averse to making changes as some would tell you that are on the street. They don't want change then they got a problem.



To my health, I think you knew that I had a little setback and had some lower extremity surgery and I had a bout with pneumonia. I have overcome most of that and there were some questions raised and my doctors furnished to the Board and others that I am willing to go and I'm ready to work. It is the best thing for me. We might see about my health if they call me a liar one more time.

Steven Paget - *FirstEnergy Capital - Analyst*

Thank you. That answers my question and that is my one.

Hunter Harrison - *Canadian Pacific Railway Limited - CEO*

Thank you.

Operator

Chris Wetherbee, Citi.

Chris Wetherbee - *Citigroup - Analyst*

Thanks, guys, for taking the question. Was just curious to get your take on how you view the BNSF comments from last week from a competitive standpoint. Do you view that as sort of a bit of a backstop competitive offer, just given the sense of how you think about the landscape in terms of your approach to NS specifically?

Hunter Harrison - *Canadian Pacific Railway Limited - CEO*

Look, let me give you my opinion. I don't know, number one, for sure. I think they are trying to muddy the water. They would like to have a status quo and I think they have got some advice that, look, they are going to probably pull this off and what does that mean to us.

And so as I said the other day, look, if our deals don't work and somebody else does a merger -- I am for mergers, I'm not going to oppose it. So I just think they are, once again, as I said I think yesterday -- these interviews start to run together. Matt said in October 2014, I think, that the single line haul was the gold standard. I don't disagree with him, but now that somebody is about to get a single line haul the standards are changing.

I just think that he looked at it that it didn't cost anything to throw some mud in the water and it doesn't concern me at all.

Bill Ackman - *Pershing Square Capital Management - CEO and Director, Canadian Pacific Railway Limited*

Maybe I could just give some perspective, because I know Mr. Buffett pretty well and I know Berkshire Hathaway pretty well. If you look at our deal, we are proposing to put CP in trust for Hunter to go run NS, where the vast majority of the value creation takes place during the operating turnaround.

How can Berkshire put in a competitive -- how can BNSF put in a competitive offer to that? Is Buffett going to agree to put BNSF into trust? Who is going to leave BNSF to go run NS waiting for an approval? I can't see Mr. Buffett doing that.

The only currency they have to offer is cash, because BNSF is a private company. Mr. Buffett has plenty of cash, but he is not known for overpaying. And I think shareholders -- the way you get to the big values here come from owning the combined company and participating in the value creation over the next several years. That is not something you can get in a BNSF transaction.



So I just think it is not – it doesn't make sense. Could they propose a transaction that is subject to a merger approval, where shareholders have to wait two years for the money and they may or may not get it? I think they could; I don't think that would be competitive with our transaction, so I just don't see how they can be competitive here.

Chris Wetherbee - Citigroup - Analyst

That is great, that makes sense. Thanks very much for the time, guys. Appreciate it.

Operator

Walter Spracklin, RBC.

Walter Spracklin - RBC Capital Markets - Analyst

Thanks very much. Good morning, everyone. Thanks for taking my question.

I guess – and maybe this is more for Bill. You have done some pretty good explanation and description of, to the Norfolk Southern shareholder, how the additional items that you have added to this bid have provided additional each time more and more downside risk protection for the Norfolk Southern shareholder. Could you – there might be some concern that what you are giving away on the downside to the Norfolk Southern shareholder is at the expense of a CP shareholder.

Perhaps you could give us a little bit of a look into what the scenario, if a trust is approved but a merger is not, what CP would look like post the disgorgement of a Norfolk Southern?

Bill Ackman - Pershing Square Capital Management - CEO and Director, Canadian Pacific Railway Limited

It's going to look just as we've described it here. We've not changing the amount of cash we're offering shareholders upfront. We are not changing the exchange ratio.

What we are giving is an insurance policy that if CP stock is below – not CP, CPNS stock, the new company. In October of 2017, on that last six months of this period that determines whether a payment is made, if that stock is below \$175 a share – again, this is not –. We value the Company in May of this year at \$204 a share and payment is only made if the stock is below \$175, 15 months later after Hunter has been in there turning around the railroad.

So we think the probability of the payment being made is extremely small from CP's perspective, but if it had to be made this is still a good deal for CP shareholders. That is really how we think about it.

Let me just be clear about disgorgement, because disgorgement sounds like a horrible, complicated, messy, ugly thing. If you go back to – I'm going to flip back to the little slide at the very beginning.

You start with the entities being put in trust. Hunter being put in as CEO of NS. NS is owned and controlled by the CPNS hold co. Full Board overseeing the turnaround of that railroad, Hunter Harrison in place.

You have got Keith Creel running CP. CP is running very well. Keith is our designee CEO; Hunter has only got a year and a half left on his contract anyway, so we are obviously preparing for that business to be run without Hunter. And actually originally Hunter – we extended him an extra year because he had more fight in him. As you have heard, he has got a lot more fight in him.

But what happens is, you flip to page 4, it doesn't get approved we've got two years to separate the two companies. What that is really – we could do it more quickly if we wanted to. It's just filing a document with the SEC, a typical spinoff document.

The railroads have been run completely independently and they have to be. In some ways, it is the easiest spinoff you could ever do. Most spinoffs are done where you have got a business that is embedded in a corporation. Then they have got to separate it and do all the complicated accounting to separate the two and then they spin them off to shareholders. And it takes a long time.

Here you could put together the spinoff prospectus and then six months after the trust – the merger was not approved, you get two new stock certificates in the mail, one for CP and one for NS, and you're done.

Walter Spracklin - RBC Capital Markets - Analyst

I guess where I am going is that – Norfolk Southern went in at a premium and had a significant cash payout to Norfolk Southern shareholders at the beginning. Your estimation is that the Norfolk Southern in this spinout would be equal to that cash payment, the CVR, and the lack of a premium on the way out, such that CP would look very much like it did before all of this? Or would we see CP with a lot more leverage on it in that scenario?

Bill Ackman - Pershing Square Capital Management - CEO and Director, Canadian Pacific Railway Limited

Sure. So couple things. Number one – and Mark should speak to the leverage levels. You have what the leverage levels will be, but basically by the time a spinoff has to happen, which is two years after 2017 under the regs, we use all of our free cash flow to delever I think we are well less than 2 turns.

Mark Erceg - Canadian Pacific Railway Limited - EVP & CFO

Correct, correct. The simple reality is this transaction right now contemplates us being at roughly 4 times leverage, which is very, very manageable. We have looked at every possible scenario where, if we put an entity into trust and eventually have to sell that out: one, as Bill mentioned, we have a minimum of two years to do that.

The other thing I would add is we have the ability to do that over time. We don't have to sell 100% or spinout 100% of the entity all at once. You can do that in phases, you can do that in chunks.

The cash generative abilities of the combined entity and, frankly, either railroad by itself is such that we could easily delever. By 2017 we would actually be below 3 turns. So the leverage is not a concern. There is no harm that could occur to either one of these two corporations irrespective of what might come our way.

This is really all about getting that \$2 billion of value for the shareholders. That is what we need to keep focusing on because that is what the real size of the prize is and it is worth getting after.

Bill Ackman - Pershing Square Capital Management - CEO and Director, Canadian Pacific Railway Limited

I think I can be a little clearer than what I said before. On May 1, assume that both companies go to 4 turns of leverage, CP and NS. And let's assume for a moment the holding company has no leverage on it. It's the simplest version and I think it is the most likely version.

Let's assume both companies take 100% of their free cash flow and they use that free cash flow to deleverage, so NS is delevering, CP is delevering. By 2017, they are down – the complex is down to less than 3 turns of leverage and we still have two more years on which to spin them off, where you can get leverage down probably below 2 turns over that period of time. And then both companies get delivered out to shareholders.

I don't, off the top of my head, have the separate estimates for each railroad, but the bottom line is the NS shareholders today which wholly owns NS are going to get stock in two companies. Those two shares together will be worth something in order of \$300 a share. You're going to make a lot of money if this deal doesn't happen, because this is a very accretive transaction combining them and taking out \$1.3 billion of operational synergies.

Even though there is a premium, it is still a very value-creating transaction for CP shareholders, because they are going to own one share of the new company, and for NS because they are going to own 0.451 shares of the new company and get \$33. So there is no scenario that we envision where we are not going to make a lot of money, which is why we want to do this deal.

What is really interesting about this deal is in a typical merger the operational and other synergies come when the merger closes. Here this is – I've tried to describe it a little better – this is a management change transaction. We are putting Hunter in and he is turning around a railroad.

We are buying that railroad based on its existing earnings. We are adding some leverage to it and we are using the leverage to pay cash to shareholders, plus some cash from us. And then we are putting Hunter in to run it.

And so it is like this is CP making an investment in NS railroad, and if the merger doesn't ultimately get approved, we just separate the two, but it has still been a great investment. There is no scenario in which we see this as not a very profitable investment for CP. Of course, because we are delivering stock consideration, that is very good for NS because the NS shareholders are going to make a lot of money alongside us.

Mark Erceg - Canadian Pacific Railway Limited - EVP & CFO

And, frankly, that is what the CVR is all about. We are so confident we are willing to put an additional \$3.4 billion of consideration into this, because we are so confident in the value creation that is in front of us.

Bill Ackman - Pershing Square Capital Management - CEO and Director, Canadian Pacific Railway Limited

As a result, we think it is very unlikely we are going to have to make that payment. Does that make sense?

Walter Spracklin - RBC Capital Markets - Analyst

That makes sense. Thanks for the clarification. That is my question. Thank you.

Operator

Alex Vecchio, Morgan Stanley.

Alex Vecchio - Morgan Stanley - Analyst

Hunter, can we kind of come back to the Chicago debate? Because I think that was a sticking point for NS. They argued that a merger would result in worse congestion around Chicago. We saw a letter from Senator Durbin in Illinois to the STB to take very close attention to Chicago and assess any potential negative implications of a merger.

So maybe we can kind of – maybe you can reiterate why, in fact, the deal does make sense; in terms of Chicago, the service can improve, congestion will be reduced? Because that seems to be a debated point here and I think it would be helpful to just reiterate the point around Chicago.



Hunter Harrison - Canadian Pacific Railway Limited - CEO

Well, I guess first thing is someone has got to decide what they want to do in Chicago. In my view, if you start with security, Chicago is the last place in the world you want to add rail traffic to. The main lines of the railroads there go right by McCormick Place, the biggest convention center in the world, right by Soldier Field. I don't think that is good.

All we have heard in the rail industry is get rid of congestion in Chicago. Now this congressional delegation, which, by the way, I wrote back yesterday and said I would love to sit down with you. I'm getting mixed messages. You are concerned about the congestion in Chicago, but now you are saying we are going to lose jobs to Canada.

Well, we are flexible if we understand what somebody wants. We have got a facility, for example, in Chicago that the Regional Transit Authority wants to use eminent domain to condemn it, which would have a negative impact. So people have got to understand whether they want commerce or Chicago, whether they are concerned about jobs, whether they want an efficient transportation system, and then we can adjust accordingly to the degree we can.

We have got certain common carrier obligations, but it is just like when these issues get political, it is very hard to deal with them. We have some plans. For an example, one of the plans of several that we are looking at and considering, that we would route some traffic away from Chicago that would go over the Albany Gateway in New York down the coast, and would avoid the heartland in Chicago.

But if people want all of the traffic in Chicago, we don't have the infrastructure in Chicago to handle it. If you want to add infrastructure in there, then you can't get zoning to add it. And the smartest thing that, in my view, Canadian National ever did was they spent \$300,000 and bought the E&E railroad around Chicago so they would have their own railroad.

But I guess that is one that Keith talked to the other day very -- and he has been working on the plan; he knows Chicago as well as anybody. So we are very flexible there. If someone just tells us what they would like to do why, and we can accommodate that probably.

Alex Vecchio - Morgan Stanley - Analyst

Okay. That makes sense. Very helpful, thank you.

Operator

Brandon Oglenski, Barclays.

Brandon Oglenski - Barclays Capital - Analyst

Thanks for getting my second question in. Hunter, earlier I was not questioning your integrity at all, but just the way a trust could (multiple speakers).

Hunter Harrison - Canadian Pacific Railway Limited - CEO

I understand that. You are the man.

Brandon Oglenski - Barclays Capital - Analyst

Bill, I guess money talks here, right? I understand the CVR, but even by your own math, I mean if things work it's only worth a few bucks on an option value framework. And given where Norfolk sees the value of your offer relative to where you guys see it, I don't think this is going to push the Board to say, oh my goodness, now we've fixed it; let's go hold hands and get this thing done.



So why not potentially up the equity ownership of this combined company? If the synergies are going to be so great – I mean It should be very accretive for a CP holder – isn't there a little bit more that you could do on the equity side for a Norfolk holder?

Bill Ackman - Pershing Square Capital Management - CEO and Director, Canadian Pacific Railway Limited

No. And let me just make a point here. You said that CVR, in your scenario, is only worth a couple buck. Well, if you go to page 21, the scenario in which the CVR is only worth \$2.53 is the scenario in which the stock is at \$204 a share.

If the stock of CPNS on May 1 at \$204 a share, the deal is worth \$127.29. That is a 61% premium, so that is it. That is plenty of premium, that is a great deal; it's a homerun.

Remember, when someone is selling a company they want you to pay a stupid price. When someone is buying a company they want to buy it at the cheapest price they can. But a deal happens when someone proposes a deal at a fair price. And by the way, when you are paying in stock and you are receiving stock in a transaction, you don't want the buyer to be stupid because most of the consideration here is in stock.

So we have designed a transaction where we are sharing the value that is being created between both companies. Again, don't rely on our math. Take CP, add NS; put in the capital structure; calculate your own earnings for 2017, 2018, 2020; build a model, which I am sure you have done or you are doing; and you tell me whether our \$204 number is right or wrong.

At \$175 our offer is a 47% premium. You are right; the CVR is only worth \$4.76 and that scenario. So this is – I haven't seen a strategic deal of this size with a premium of 60%-plus, so that is about as good as it is going to get.

I think if we had someone we could sit down and negotiate with and there were some tweaks here and there, things they wanted, things we could deliver --. If I were this Board I wouldn't want my last act to be being thrown out by the shareholders, I would want my last act to be negotiate a deal that is in the best interest of the holders.

But Hunter is done. I got that message from him and we are not going to spend shareholders money in a way that we don't -- we are the largest shareholder (technical difficulty). We have got multiple billions of dollars invested here. We view this as a very long-term investment for us and so we are not going to do something dumb.

What we need here and where you should call into question is shareholders need to pick up the phone and call the directors, called the lead director of NS and tell them what you want them to do. If what you are saying here -- shareholders are saying they don't want this deal, then we are going to go talk to another railroad. If the shareholders say they want this deal, we are ready to negotiate and get this thing done and get this thing done immediately. Mr. Squires can exit with his head held high; there is a spot for him if he wants to work. We are prepared to respect the tradition and history of the railroad.

This will be a great thing for the NS shareholders, for CP shareholders, and for the country, so we would love to make it happen.

Hunter, you've probably got a last word.

Hunter Harrison - Canadian Pacific Railway Limited - CEO

I have probably said too much, but it is too late for that. But hopefully we did add some clarity today and I appreciate, Bill, your help here. It has been well for all of us. Mark, good job.

All I can emphasize is my view here is similar to what Bill said, this is in the hands of the shareholder at this point. If they are not going to come to the table and they are not going to talk and they are not going to enter a dialogue with us, then the only way it is going to happen is you show support for this transaction. If you don't want it to happen, all you got to do is tell us, and as Bill said, we got other things to do.



It is up to you. I would look at it in a little more simple way. If you look at where they are today and you look and say there is some M&A premium built in there, and if this doesn't go through and if we walk, it is not going to stay where it is and I don't see a lot of foundation.

Look, here is where they are saying – where they get to in their plan is we are already 6 points better than that. We have got a five-year running start. Who are you going to bet on? If you want to bet on them, so be it. Ball is in your court. Have a great day, thanks.

Operator

This concludes today's conference call. You may now disconnect.

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EXHIBIT 4

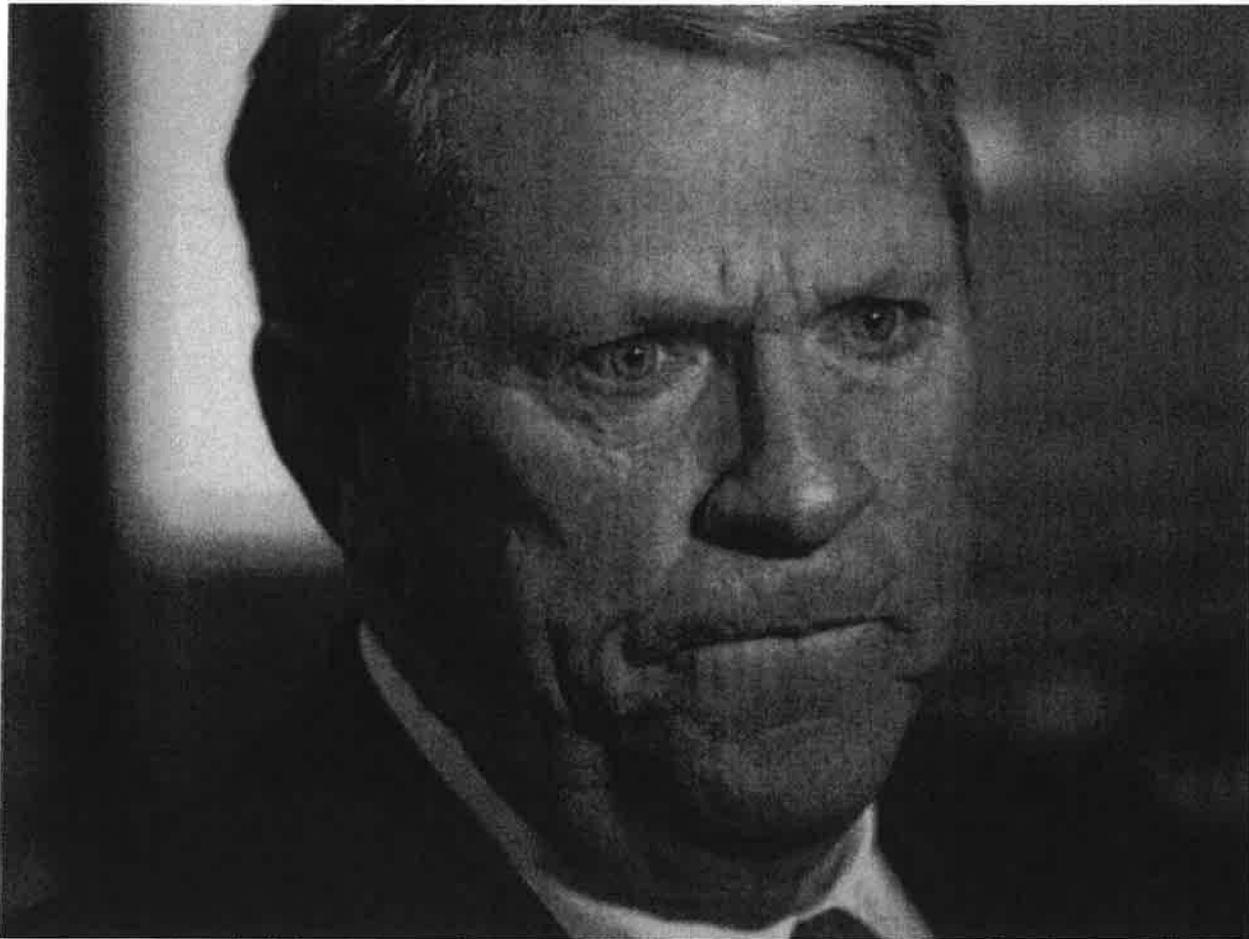
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CP Rail may cut as many as 6,000 jobs: Harrison



SCOTT DEVEAU | March 6, 2013 6:30 PM ET
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"One thing that has marked this past nine months, or year, is change, and if you don't like change at Canadian Pacific it's not the place be," Harrison said. "We've had a lot of change and there's going to be a lot more."

CP Rail job cuts: 6,000 workers could be let go, Hunter Harrison says

A restructuring underway at Canadian Pacific Railway Ltd. is ahead of target, but job losses at the company could reach 6,000 workers, chief executive Hunter Harrison said Wednesday, more than the 4,500 he had originally projected.

“One thing that has marked this past nine months, or year, is change, and if you don’t like change place be,” he said at a investor conference in New York. “We’ve had a lot of change and there’s gc

Mr. Harrison said the railway has already reduced its head count by more than 3,000 workers, a worker and consultant positions and their duties were consolidated under a permanent workforc

If you don’t like change at Canadian Pacific it’s not the place be. We’ve there’s going to be a lot more

The company’s efforts to streamline its operations by closing yards and changing how trains are l those cuts, he said.

But Mr. Harrison said he believed the number of job losses could reach upward of 30% of the ori receiving a paycheque at the railway when he took over.

“It certainly could be [6,000],” he said.

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Rivals CP Rail and CN Rail forge executive poaching accord

CP Rail CEO ‘gorging’ on efficiency opportunities

But he said a number of factors would play into that, including how quickly the railway could ph how much new business is won.

He said the streamlining of CP’s operations is already finding its way to the bottom line and that believed the company could potentially reach an operating ratio close to 70% this year. (Operati ratio is an important gauge of the railway’s profitability measuring operating costs as a percentag of revenue where the lower the number, the better.)

CP has had the worst operating ratio of all North American top-tier railways in recent years, whic led to a proxy battle that resulted in Mr. Harrison’s appointment as chief executive last June.

Mr. Harrison said he aims to reduce the company’s operating ratio to the mid-60s b 2016, and moving that needle to the low 70s – or below – by the end of 2013 would mark an acceleration of his efforts toward that goal.

Mr. Harrison said he believed that 2013 target was possible provided the railway achieves the hig single-digit revenue growth it is expecting this year, which he said includes an assu

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approved.

He acknowledged, however, there would be some upside if the pipeline is rejected and oil companies explore alternative forms of transport.

“We’ve said low 70s. But if things come together – everything hits – is there a probability that we said. “We’re going to continue to see the operating ratio go down. It’s just how quick we’re going to see crude going to come on, and if we get high-single digit revenue growth, it’s pretty likely we could hit that barrier.”



CP has had the worst operating ratio of all North American top-tier railways in recent years, which led to a proxy battle that resulted in Mr. Harrison's appointment as chief executive last June. Jeff McIntosh/The Canadian Press

Mr. Harrison said he believed, despite the job losses, CP's workforce has embraced the rapid changes in recent months.

“There has been a lot accomplished, but there's a lot more to do,” he said, adding that someone has to take the lead to change a corporate culture.

“I'll just tell you what Margaret Mead said. She said you do it one funeral at a time, and hopefully we can get there,” he added.

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But he said culture change takes longer than a year to complete, and he said nearly 3,000 CP employees had six-hour sessions about the changes.

Mr. Harrison said the most significant change that has occurred at the railway in recent months is the departure of the president and chief operating officer, and likely successor to Mr. Harrison, who was poached from the Canadian Pacific Railway Co., in exchange for a promise from CP not to poach about 60 of its rival top executives there.

Mr. Harrison said Mr. Creel has hit the ground running.

"I kind of went through Canada maybe like Sherman went through Atlanta, and he's been sort of fine-tuning," Mr. Harrison said. "As soon as he's ready, which will be soon, he's going to be given



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Business

Canadian Pacific to cut 1,000 jobs through attrition

CEO Hunter Harrison still pushing for merger with Norfolk Southern, but faces tough battle.

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JOE KLAMAR / AFP/GETTY IMAGES FILE PHOTO

Faced with depressed demand for metal, coal and other commodities, Calgary-based Canadian Pacific responded by furloughing workers and running faster trains.

By: Vanessa Lu Business reporter, Published on Thu Jan 21 2016



Ghomeshi trial proves one thing: we need a different system: Porter



'Where are our Syrian refugee families?'

Given the weak economy has resulted in a drop in demand for commodity shipments, Canadian Pacific Railway said it plans to cut another 1,000 jobs this year.

CEO Hunter Harrison made the announcement during a conference call with analysts on Thursday, after reporting fourth-quarter earnings that were strong, but still fell short of analyst forecasts.

“We feel with some productivity gains, there are probably 1,000 additional heads to come out, potentially in '16,” Harrison said, noting the job cuts could begin by the middle of the second quarter.

It would impact employees across the company, including both unionized and management staff, but a spokesman noted job cuts would be handled through attrition, given more than 2,000 people leave the company annually.

“As market conditions improve over the longer term, we would look to bring back employees in order to meet market demand,” said CP spokesman Martin Cej said in an email.

Harrison took over the top job at the Calgary-based railway after a bitter proxy fight in 2012. He estimated that “6,000 to 7,000 jobs” have been eliminated to date, mostly through attrition. At the end of 2015, CP had about 13,000 employees.

Harrison also boasted that the promises made during the proxy fight have been achieved, including getting to an operating ratio of 65 per cent by 2016.

At the time, that target was widely questioned and considered too ambitious. Harrison noted CP’s operating ratio, an industry measure of efficiency, was even better at 59.8 per cent in 2015.

Executives including Keith Creel, president and chief operating officer, emphasized the company’s focus will be on controlling operating expenses and capital costs, because they can’t predict revenue growth, due to the economic slowdown.

At the same time, CP continues to push for a merger with Norfolk Southern railway, which operates in the eastern United States.

But Norfolk Southern has rebuffed a takeover, even though CP has sweetened its offer, first extended last November.

CP has argued that rail mergers are needed in order to ease rail congestion, especially around Chicago, where freight trains can get stuck for 30 hours, and move goods more efficiently across the United States.

CP’s earlier attempt for a merger with Florida-based CSX was abandoned in 2014.

Rival rail CEOs have charged a merger between CP and Norfolk Southern would limit competition and hike prices. A merger would also face the hurdle of winning U.S. government approval.

Earlier this week, CP took the unusual step of asking the U.S. Department of Justice to look into whether top executives at railways such as CSX and Union Pacific were working together to thwart CP's bid.

Several have openly said that they don't support a CP-Norfolk Southern merger.

Questions have arisen about whether the U.S. Surface Transportation Board would approve such a merger, which has already been publicly opposed by some U.S. members of Congress.

Harrison alluded to political influence when he suggested that CP is waging an uphill battle, facing a stacked deck.

"If somebody has an ace up their sleeve, and they're not playing by the rules, then we understand that," he said. "We would have to adjust accordingly."

CP has not said whether it would then launch a proxy battle with Norfolk Southern, which reports earnings next week.

One analyst, however, pointed out that given CP's stock price has been dropping as other railroads are falling, would CP consider dropping its bid.

CP's shares in Toronto closed at \$149.84 on Thursday, way down from a high last March of \$245.05.

Harrison conceded that CP is reviewing its plans – and it could decide to abandon the merger, and pursue an aggressive stock buyback plan to boost the price.

"We could just run the railroad. It has worked well for us, and life goes on," he said.

CP by the numbers:

Full year 2015 results:

Record revenues: \$6.71 billion

Adjusted diluted EPS: \$10.10, up from \$8.50 in 2014

Net profit: \$1.35 billion

Free cash: \$1.16 billion

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1970 - 1993

October 6, 1994

The Honorable Vernon A. Williams
Acting Secretary
Interstate Commerce Commission
12th and Constitution Avenue, N.W.
Room 2215
Washington, D.C. 20423

Re: Illinois Central Corp.--Common Control--Illinois
Central R.R. Co. And The Kansas City Southern Ry.
Co., P.D. 37556-- Request For Informal Opinion-
Voting Trust Arrangement

Dear Secretary Williams:

The unions which have previously been referred to in the above-referenced proceeding as the "Allied Rail Unions" or "ARU"^{1/} are writing in opposition to the August 16, 1994 letter of the Illinois Central Corp. ("IC") requesting an opinion from the Office of the Secretary which would "informally" sanction IC's immediate control of Kansas City Southern Railway Company ("KCSR") through the placement of the Illinois Central Railroad ("ICR") in a voting trust pending Commission approval IC's common

^{1/} The Unions referred to collectively as the Allied Rail Unions are: American Train Dispatchers Department/BLE; Brotherhood of Maintenance of Way Employees; Brotherhood of Railroad Signalmen; Hotel Employees and Restaurant Employees International Union; International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers; International Brotherhood of Electrical Workers; International Brotherhood of Firemen & Oilers; and Sheet Metal Workers' International Association. There is no legal entity known as the ARU, each organization is participating in these proceedings in its own name, the collective description of "Allied Rail Unions" is used only for convenience of reference.

control of KCSR and the Illinois Central Railroad Company ("ICR").^{1/}

INTRODUCTION

If IC actually proceeds with its plan to place ICR in a voting trust and acquire control of KCSR in advance of Commission approval of that action, the ARU will contend that the scheme is violative of the ICA. Section 11343 of the Act, and its predecessor §5, demonstrate Congress' clear intent to prevent acquisitions of control over rail carriers in the absence of governmental approval. Because the cunning of corporate schemers often exceeded the reach of the statute, the Act was amended in 1940 to ensure that corporate manipulations would not permit evasion of the law. Thus in *Gilbertville Trucking Co. v. United States*, 371 U.S. 115, 123-125 (1962) (footnotes and citations omitted) the Supreme Court stated that:

Congress, in passing §5(4) and the supplementary §5(5) [predecessor to current Section 11343] and 6), was primarily concerned with reaching the elaborate corporate devices used to centralize control over the railroads "without Commission supervision and in defiance of the will of Congress." Although Congress had intended the Transportation Act of 1920 to provide complete supervision, the Act proved inadequate to reach the holding company system . . .

. . . On its face, §5(4) proscribes not just corporate and legal devices, but control effectuated "in any other manner whatsoever." Any doubt as to the scope of this phrase was

2/ IC has requested an opinion from the Secretary that implementation of the planned arrangement would not be violative of the "policy against unauthorized acquisition of control of a regulated carrier." The ARU note that what is at issue here is not just a policy against unauthorized acquisitions of control over additional carriers but an explicit statutory command which constitutes a major purpose of the ICA. In that regard the Allied Rail Unions question the utility of the informal opinion process and they dispute the assumption that an opinion from the Secretary could have any legal effect whatsoever. However, since the Commission's regulations sanction IC's request, the Allied Rail Unions submit this response to IC's request.

removed when Congress added the definition of "control" to §1(j)(b) of the Act in the Transportation Act of 1940, 54 Stat 899-900. This section states that for purposes of §5 and other sections, "control" "shall be construed to include actual as well as legal control, whether maintained or exercised through or by reason of the method of or circumstances surrounding organization or operation" We have construed this language to encompass every type of control in fact and have left to the agency charged with enforcement the determination from the facts whether "control" exists, subject to normal standards of review.

This purpose of the statute was unaffected by subsequent amendments to the ICA or by recodification.

The Allied Rail Unions will argue that the application of the statute required by Gilbertville and its predecessors requires rejection of the IC's scheme because it involves IC's *de facto* control over two carriers without that arrangement undergoing the full public scrutiny required by the Act's statutory restrictions on control arrangements. Moreover, the Allied Rail Unions are concerned that when the Commission finally addresses the proposed transaction, the Commission will be presented with a *fait accompli* as the result of the immediate implementation of the improper voting trust arrangement. They are further concerned that efforts to obtain effective remedies for this serious violation of the statute will be impeded by the IC's reliance on the imprimatur of the Office of the Secretary and the reality of many months of actual operations. This entire scheme is a throw-back to the time preceding the enactment of the 1920 amendments to the ICA. The attempt to obtain the Secretary's pre-approval of this arrangement is reminiscent in its audacity of the type of railroad industry scams and abuses of governmental processes chronicled in Charles Francis Adams' *Chapters of Erie*, which preceded the creation of the Commission. The Allied Rail Unions respectfully submit that, upon consideration of the language and purposes of the ICA and its history, the Office of the Secretary should reject IC's request for an "informal opinion" which could later be used as leverage for a favorable ruling on the common control of the two carriers and as a shield against attempts to obtain redress for actions taken pursuant to this unlawful scheme.

DISCUSSION

In its request for an informal opinion, IC states that it plans to obtain control over KCSR and to assign its three top

executives to the highest positions of KCSR while placing ICR in a voting trust arrangement, IC then will apparently run on "automatic pilot" as the second tier of ICR officials assume responsibility for running the ICR while IC undergoes the formality of Commission approval of its common control of both carriers. In the meantime, the former IC officials will take actions to allegedly "improve the efficiency of [KCSR] operations and [its] service to customers," even though these same officials acknowledge KCSR to be a "well-run railroad." In comments to the press, IC officials have been less circumspect, stating that IC plans to bring Illinois Central's operating practices to KCS and suggesting that KCS is "undermanaged" and the "IC is going to send a SWAT team over to KCS and try to drive efficiencies there." See *Journal of Commerce* July 20, 1994. However, IC's August 16 letter brazenly asserts that these changes will have absolutely no relationship to the common control transaction. Additionally, while the process of statutory review is pending, the two railroads will engage in a detailed level of communications sufficient to permit the filing of consolidated reports to the Securities and Exchange Commission and the IRS.

Thus, at the time the IC files its application with the Commission, it will control the KCSR in fact while IC's hand-picked managers implement a pre-conceived strategy for ICR and communicate regularly with the people who were their former bosses and who will be their future bosses. In essence, while IC is seeking approval of its *de jure* common control over the ICR and KCSR it will already have such common control *de facto* in every manner possible except for the formalities of titles of management.

Because IC has presented only a brief description of its plans and a scanty discussion of supposed authority for its actions, and because the merits of IC's plan should be addressed by the Commission, the ARU will also make only a brief presentation to the Office of the Secretary which should be sufficient to provide some balance to the Secretary's consideration of the request for an informal opinion in advance of implementation of the voting trust arrangement. In the remainder of this letter, the ARU will demonstrate that IC's plan is violative of the ICA, that the precedent cited in IC's letter does not support its request for an opinion and that members of these unions will be adversely affected if the voting trust arrangement is implemented.

1. The use of a voting trust as planned by IC is improper. It is important to recognize that in this case the purchaser is not acquiring stock of an additional carrier and putting that stock in a voting trust pending Commission approval of the common control transaction. Instead, the purchaser is placing the stock of the carrier it already controls (ICR) in a trust while it assumes immediate *de facto* control over the additional carrier

for which control approval is being sought at the Commission. While the Allied Rail Unions believe that the voting trust is an inherently suspect device with respect to any carrier control transaction, given the language, history and purpose of the ICA, they respectfully submit that it is clearly improper when used as is planned here.

When a purchaser places a newly acquired corporation in a voting trust, there is at least the possibility that the trust will prevent the purchaser from actually assuming control of the acquired corporation until Commission approval of the common control of the carriers is obtained. However, when a purchaser actually assumes control of a newly acquired corporation and places an already owned corporation in a trust it is only through deliberate self-deception that one can believe that the trust is an effective mechanism to prevent unlawful common control while agency proceedings are ongoing.

Here, the three top officers of IC and ICR will move over to the KCSR to immediately implement changes in KCSR operations, leaving their subordinates behind to continue to run ICR in accordance with pre-established plans under the eye of a trustee who will be gone once those three top officers of IC return. Moreover, the two corporations will share information sufficient to allow the filing of consolidated SEC reports and tax returns. It would be stunningly naive to conclude that this situation is one in which the voting trust device would be effective protection against the exercise of common control over these two railroads prior to actual Commission approval. If IC consummates its control over KCSR prior to Commission approval, it will do so in violation of Section 11343.

Assertions of good faith, good will and alleged high standards of business ethics of those involved are, of course, insufficient as a matter of law to permit a violation of the statute. Such assertions are also inadequate as a matter of experience, given the Commission's findings of breaches of the voting trust established by the Santa Fe Southern Pacific Corporation with respect to the common control of the Atchison, Topeka and Santa Fe Railway and the Southern Pacific Railroad in Finance Docket No. 30400. Surely those involved there were no less persons of good faith, good will and high ethics, than are the IC officials involved here, but that did not prevent the violations of the trust in that case.

Thus both law and past experience demonstrate that the voting trust arrangement planned by IC is improper and the Secretary therefore should not issue an opinion, even an informal one, which could be viewed as sanctioning such arrangement.

2. The precedent cited by IC does not support its request for an opinion that its actions will not be violative of the ICA. In support of its request for an opinion that its planned actions would not violate the statute, IC has cited only a handful of authorities, none of which is discussed in any detail. In the absence of a detailed discussion of how these decisions and opinion letters supposedly justify the opinion sought by IC, the ARU will offer only general comments regarding the cited authorities.

It is astonishing that the transaction most cited by IC is the Santa Fe Southern Pacific transaction. Given the abysmal failure of the voting trust arrangement in that case, it is remarkable that IC would even intimate that the Secretary look at that transaction as a basis for permitting the arrangement planned in this case. The Allied Rail Unions respectfully submit that the abuses of the voting trust in that case demonstrate precisely why IC's request for an opinion letter should be denied.

The other authorities cited by IC do not advance its position. This proceeding involves two Class I carriers; none of the transactions cited by IC, except the ill-fated SFSP transaction, involved two Class I carriers. Nor does it appear that any of the cited transactions other than the SFSP transaction involved carriers which were competitors. Because the implications for an improper control arrangement involving two competing Class I railroads are so significantly different from the implications of an improper control relationship involving non-competing, small motor carriers or small short line railroads, it cannot be said that the decisions and opinion letters in such cases support issuance of the requested opinion letter in the instant case.

Given the Commission's experience in the SFSP transaction, and the significant differences between this transaction and the other cited transactions, it is readily apparent that the citations provided by IC are not sufficient to permit the Secretary to issue an opinion that establishment of the voting trust would insulate IC from a rather obvious and significant violation of the statute.

3. IC's implementation of common control over ICR and KCSR would have serious adverse consequences for members of the Allied Rail Unions. IC's request for an opinion letter acknowledges that it plans to implement changes in operations and service once IC's officers take charge of KCSR. And, as is noted above, when speaking more candidly, IC officials have indicated that such changes would be significant; those changes necessarily would affect members of these unions. Interestingly, IC contends that these changes would be "stand alone" changes and "independent of

and unrelated to" the proposed common control. This is a patently specious and self-serving assertion which flouts common sense.

In the absence of IC control of KCSR, the three top IC officials would be in no position to affect any changes in KCSR operations and service. The fact that KCSR is a successful carrier demonstrates that there is no basis for an assumption that the planned changes would have occurred without IC's acquisition of control over KCSR, or that there is a need for a "management SWAT team" to implement efficiencies. Indeed, the tenor IC's comments to the press further demonstrate that the changes planned are the result of the perceptions of IC officials, not the effectuation of some pre-existing plan of KCSR and are in rather obvious anticipation of ICC approval as were Santa Fe's actions on SP.

The principal reason for the claim that the planned changes would be independent of the common control transaction is clearly that IC intends to argue that employees affected by its actions prior to an approval of the common control transaction would not be entitled to protective benefits imposed in connection with such an approval. The Secretary's office should refuse to sanction this cynical and improper attempt to manipulate an evasion of the statutorily mandated employee protective conditions.

A second reason for this claim, and for the entire request for an opinion letter, is certainly that IC is hedging against the possibility that its application for common control will be denied and a request will be made for employee protections with respect to actions taken while the application is pending. IC is surely aware that the Commission has been considering a request for protections for employees affected by the failed SFSP transaction. See *Railway Labor Executives' Association v. ICC*, 958 F.2d 252 (9th Cir. 1992). By requesting an opinion letter finding that its plan is not violative of the statute, IC seeks a preemptive defense to any claim for employee protective conditions under Section 11344(c) arising as a result of rejection of its application. In responding to any such claim, IC could cite the opinion letter as proof that, even if its actions were improper, it did all it could to comply with the law and acted in good faith. The Allied Rail Unions strongly urge the Secretary to refrain from providing any support to IC's preemptive defense. A final point in this regard is that the experience of the Commission in Santa Fe Southern Pacific demonstrates that employees can be seriously adversely affected by actions taken under a voting trust and that once such actions occur, the Commission has a difficult time in formulating effective remedies for their effects on employees.

CONCLUSION

The foregoing demonstrates that the planned voting trust arrangement is clearly improper and should not be legitimized in any way, even by an informal, non-binding opinion letter from the Secretary; that the authorities relied upon by IC do not support its request for an opinion letter; that members of these unions will be injured in the event that the requested opinion letter is issued and that a defense to employee claims appears to be a driving force behind the request for an opinion letter. Finally, it must be recognized that even though an opinion from the Secretary would not be legally binding, it certainly will create momentum for ultimate Commission sanction of the voting trust; since, as time passes, IC will obtain greater and greater control over KCSR and it will be more difficult for the Commission to reject the transaction as such control is effectuated.

For all of these reasons, the Allied Rail Unions respectfully submit that the Secretary should not issue the opinion letter sought by IC. If IC truly believes that it may avoid unlawful common control of two carriers by putting its existing carrier subsidiary in a voting trust while it assumes control over another carrier, it should seek a declaratory order from the Commission formally authorizing, with necessary conditions, such an arrangement. E.g., *Reliance Group Holdings--Petition for Declaratory Order*, 366 I.C.C. 446 (1982). Otherwise it should not act until the Commission rules on its application as is required by the statute. IC cannot reasonably expect to engage in such an aggressive and risky strategy under cover of a preliminary determination that its strategy is proper. The request for a letter from the Secretary suggesting that IC would not violate the statute if it proceeds with acquisition of control over KCSR while putting ICR into a voting trust should be denied and IC should be directed to seek formal approval of the proposed voting trust prior to its acquisition of KCSR stock.

Respectfully,

HIGHSAW, MAHONEY & CLARKE, P.C.

By: 
Richard G. Edelman
Counsel for Allied Rail
Unions

cc: Robert P. vom Eigen

EXHIBIT 7



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History

The Norfolk and Portsmouth Belt Line Railroad Company is a Class III terminal switching railroad, incorporated in the State of Virginia as the Southeastern and Atlantic Railroad Company on March 4, 1896, currently operating over 26 miles of road in the Hampton Roads communities of Norfolk, Portsmouth and Chesapeake. The Belt Line adopted its current corporate name on January 12, 1898 and acquired and absorbed the Elizabeth River Railroad in 1910. The Belt Line was originally formed by eight railroads and today is jointly owned by the Norfolk Southern Corporation, headquartered in Norfolk, Virginia (57% ownership), and the CSXT Corporation, headquartered in Jacksonville, Florida (43% ownership). The eight original railroads were Norfolk & Western RR, Chesapeake & Ohio RR, Southern Railway Co., New York, Philadelphia & Norfolk RR, The Atlantic & Danville RR, Atlantic Coast Line, Norfolk & Southern RR, Seaboard Air Line RR.

The principal business of the Belt Line entails interchanging cars between connecting line haul carriers and various marine terminals and industries located along its tracks. The Belt Line currently operates one main classification yard located in the South Norfolk area of Chesapeake, Virginia. The General Office, T&E, and Maintenance of Way facilities are also located in South Norfolk. In addition to its own tracks, the Belt Line utilizes certain tracks of its proprietary roads in accordance with trackage rights agreements.

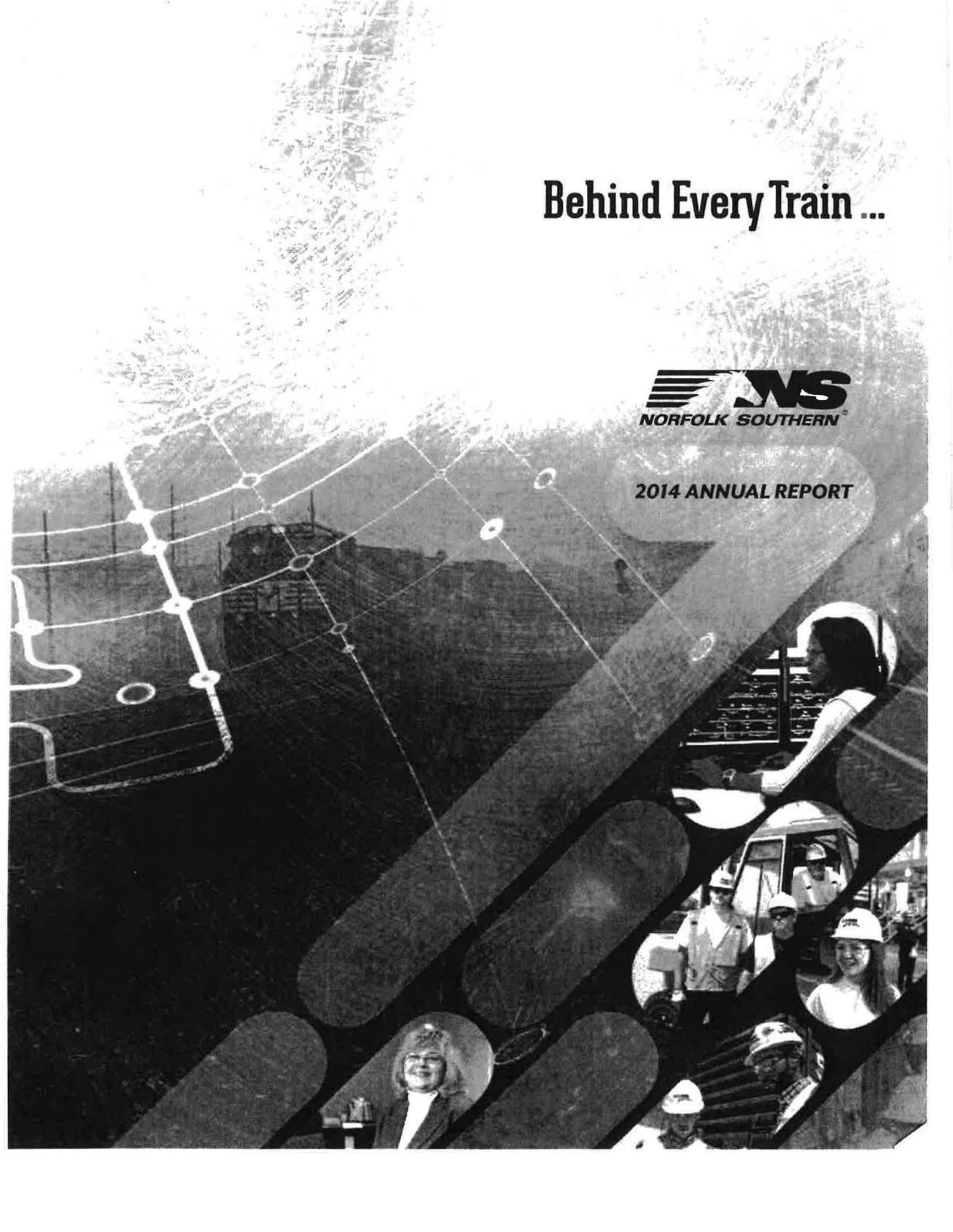
Industries on the Belt Line enjoy good competitive transportation links to the world. The Belt Line prides itself on safe railroad operations and dependable, cost effective railroad service. The Belt Line is structured for timely customer service which adds to the competitiveness of its customers in the marketplace. The Belt Line currently serves 24 industries and interchanges with both of the owners as well as the Bay Coast Railroad and the Chesapeake and Albemarle Railroad.

EXHIBIT 8

Behind Every Train ...



2014 ANNUAL REPORT



UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, DC 20549

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
for the fiscal year ended DECEMBER 31, 2014

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
for the transition period from _____ to _____

Commission file number 1-8339



NORFOLK SOUTHERN CORPORATION
(Exact name of registrant as specified in its charter)

Virginia
(State or other jurisdiction of incorporation)
Three Commercial Place
Norfolk, Virginia
(Address of principal executive offices)
Registrant's telephone number, including area code:

52-1188014
(IRS Employer Identification No.)
23510-2191
Zip Code
(757) 629-2680

Securities registered pursuant to Section 12(b) of the Act:

Title of each Class	Name of each exchange on which registered
Norfolk Southern Corporation Common Stock (Par Value \$1.00)	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: NONE

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes (X) No ()

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. Yes () No (X)

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or Section 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes (X) No ()

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulations S-T during the preceding 12 months. Yes (X) No ()

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of the Form 10-K or any amendment to this Form 10-K. (X)

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer or smaller reporting company. See definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer (X) Accelerated filer () Non-accelerated filer () Smaller reporting company ()

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes () No (X)

The aggregate market value of the voting common equity held by non-affiliates at June 30, 2014, was \$31,787,780,476 (based on the closing price as quoted on the New York Stock Exchange on that date).

The number of shares outstanding of each of the registrant's classes of common stock, at January 31, 2015: 307,411,965 (excluding 20,320,777 shares held by the registrant's consolidated subsidiaries).

DOCUMENTS INCORPORATED BY REFERENCE:

Portions of the Registrant's definitive proxy statements to be filed electronically pursuant to Regulation 14A not later than 120 days after the end of the fiscal year, are incorporated herein by reference in Part III.

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PART I

NORFOLK SOUTHERN CORPORATION AND SUBSIDIARIES

Item 1. Business and Item 2. Properties

GENERAL – Our company, Norfolk Southern Corporation, is a Norfolk, Virginia based company that owns a major freight railroad, Norfolk Southern Railway Company. We were incorporated on July 23, 1980, under the laws of the Commonwealth of Virginia. Our common stock (Common Stock) is listed on the New York Stock Exchange (NYSE) under the symbol “NSC.”

Unless indicated otherwise, Norfolk Southern Corporation and its subsidiaries, including Norfolk Southern Railway Company, are referred to collectively as NS, we, us, and our.

We are primarily engaged in the rail transportation of raw materials, intermediate products, and finished goods primarily in the Southeast, East, and Midwest and, via interchange with rail carriers, to and from the rest of the United States. We also transport overseas freight through several Atlantic and Gulf Coast ports. We provide comprehensive logistics services and offer the most extensive intermodal network in the eastern half of the United States.

We make available free of charge through our website, www.nscorp.com, our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and all amendments to those reports as soon as reasonably practicable after such material is electronically filed with or furnished to the U.S. Securities and Exchange Commission (SEC). In addition, the following documents are available on our website and in print to any shareholder who requests them:

- Corporate Governance Guidelines
- Charters of the Committees of the Board of Directors
- The Thoroughbred Code of Ethics
- Code of Ethical Conduct for Senior Financial Officers
- Categorical Independence Standards for Directors
- Norfolk Southern Corporation Bylaws

RAILROAD OPERATIONS – At December 31, 2014, our railroads operated approximately 20,000 miles of road in 22 states and the District of Columbia.

Our system reaches many individual industries, electric generating facilities, mines (in western Virginia, eastern Kentucky, southern and northern West Virginia, western Pennsylvania, and southern Illinois and Indiana), distribution centers, transload facilities, and other businesses located in our service area.



Corridors with heaviest freight volume:

- New York City area to Chicago (via Allentown and Pittsburgh)
- Chicago to Macon (via Cincinnati, Chattanooga, and Atlanta)
- Appalachian coal fields of Virginia, West Virginia, and Kentucky to Norfolk, Virginia and Sandusky, Ohio
- Cleveland to Kansas City
- Birmingham to Meridian
- Memphis to Chattanooga

Investment in Conrail

Through a limited liability company, we and CSX Corporation (CSX) jointly own Conrail Inc. (Conrail), whose primary subsidiary is Consolidated Rail Corporation (CRC). We have a 58% economic and 50% voting interest in the jointly owned entity, and CSX has the remainder of the economic and voting interests. We are amortizing the excess of the purchase price over Conrail's net equity using the principles of purchase accounting, based primarily on the estimated useful lives of Conrail's depreciable property and equipment, including the related deferred tax effect of the differences in book and tax accounting bases for such assets, as all of the purchase price at acquisition was allocable to Conrail's tangible assets and liabilities.

At December 31, 2014, based on the funded status of Conrail's pension plans, we decreased our proportional investment in Conrail by \$12 million. This resulted in expense of \$11 million recorded to "Other comprehensive loss" and a combined federal and state deferred tax asset of \$1 million.

At December 31, 2013, based on the funded status of Conrail's pension plans, we increased our proportional investment in Conrail by \$37 million. This resulted in income of \$34 million recorded to "Other comprehensive income" and a combined federal and state deferred tax liability of \$3 million.

At December 31, 2014, the difference between our investment in Conrail and our share of Conrail's underlying net equity was \$529 million. Our equity in the earnings of Conrail, net of amortization, included in "Purchased services and rents" was \$39 million for 2014. For 2013 and 2012, this amounted to \$42 million and \$34 million and was included in "Other income – net."

CRC owns and operates certain properties (the Shared Assets Areas) for the joint and exclusive benefit of NSR and CSX Transportation, Inc. (CSXT). The costs of operating the Shared Assets Areas are borne by NSR and CSXT based on usage. In addition, NSR and CSXT pay CRC a fee for access to the Shared Assets Areas. "Purchased services and rents" and "Fuel" include expenses for amounts due to CRC for operation of the Shared Assets Areas totaling \$144 million in 2014, \$146 million in 2013, and \$147 million in 2012. Future minimum lease payments due to CRC under the Shared Assets Areas agreements are as follows: \$36 million in each of 2015 through 2019 and \$160 million thereafter. We provide certain general and administrative support functions to Conrail, the fees for which are billed in accordance with several service-provider arrangements and approximate \$8 million annually.

In 2014, we converted approximately \$147 million of our accounts payable into the long-term advance from Conrail included in "Other Liabilities." "Accounts payable" includes \$56 million at December 31, 2014, and \$187 million at December 31, 2013, due to Conrail for the operation of the Shared Assets Areas. "Other liabilities" includes \$280 million and \$133 million at December 31, 2014 and 2013 for long-term advances from Conrail, maturing 2044 and 2035 that bear interest at an average rate of 2.9% and 4.4%, respectively.

The New York Times

Bill Ackman Bets Again on Valeant, Taking a Seat on the Board

Andrew Ross Sorkin

DEALBOOK MARCH 21, 2016

Bill Ackman earned his reputation as an elite investor by making big, concentrated bets. Credit Misha Friedman for The New York Times

After reaping the best returns of any hedge fund manager in 2014, Bill Ackman appeared on the cover of Bloomberg Markets magazine, grinning, with the headline, “How Do You Like Bill Ackman Now?”

Well, these days, about 47 percent less.

That is the amount Mr. Ackman’s funds are down from their highs as he miscalculated, several times over, his investment in Valeant Pharmaceuticals, which has turned into an unmitigated disaster.

On Monday, Valeant said it would restate its earnings, asked a former chief financial officer to resign from the board over “improper conduct” and pushed its chief executive, J. Michael Pearson, to step down. And Mr. Ackman, who made his name — and billions — spotting financial fraud but missed any signs of chicanery at Valeant, joined the board, hoping to salvage his investment, which had fallen 86 percent in the last year.

With the hedge fund “It Boy” dethroned, the schadenfreude on Wall Street is thick.

Mr. Ackman has earned his reputation as an elite investor by making big, concentrated bets. He has had huge wins, like a 77-fold return in the mall owner General Growth Properties and successful activist campaigns like a recent one in Canadian Pacific railroad. But he has also become a lightning rod over failed investments like those in the retailer J. C. Penney and his long fight, thus far unsuccessful, to bring down the supplements maker Herbalife.

Now, deep in the red, Mr. Ackman will have to generate returns between 50 percent and about 70 percent in his various funds to earn a performance fee, typically 20 percent of the profits that account for most of a hedge fund manager’s compensation. This will take a near miracle — or a very long time. The preternaturally optimistic Mr. Ackman thinks that he can save Valeant and that he will recover.

But here’s the conundrum: Mr. Ackman’s pain is not just his own.

The damage wrought by Mr. Ackman's wrong-way bet has had a cascade effect across Wall Street, not just for those who followed Mr. Ackman into Valeant, but everyone who threw their lot in with his fund, Pershing Square Capital Management. Mr. Ackman is causing agita across the globe.

There is Deutsche Bank's London office, which helped underwrite a public offering for Mr. Ackman's funds in 2014. Pershing's fund opened at \$25 a share; it now trades at \$13.18.

Then there is UBS, which also led Mr. Ackman's offerings. One of Mr. Ackman's friends is Mark Axelowitz, a managing director of UBS Private Wealth, which hosts an annual charity event with Mr. Ackman. Mr. Axelowitz and the firm put some of their clients into Pershing.

Those two banks, by the way, received about \$100 million in fees for their work on the Pershing initial public offering.

At the time of the I.P.O., the famous Rothschild Bank and its wealth management unit bought \$274 million worth of Pershing stock on behalf of its clients. A unit of Qatar's investment fund also took a \$141 million stake. The Blackstone Group bought into the offering and worked as an adviser to Pershing.

Even Mr. Ackman's former nemesis Carl Icahn has taken a hit via his stake in the insurance giant American International Group, which has a stake in Mr. Ackman's fund. Mr. Icahn received an A.I.G. board seat after pressing the insurer to break itself up. A.I.G. has announced plans to reduce its exposure to hedge funds, slashing its \$11 billion investment in half. It remains unclear whether Mr. Ackman's fund is among those it plans to eliminate. (How A.I.G. — which was bailed out by the federal government in 2008 — ever wound up with such concentration in risky hedge funds is a question for another day.)

But it's not just wealthy investors who have been burned by Mr. Ackman. Several public pension funds that manage money for teachers, police and firefighters, including some from New Jersey and Massachusetts, have stakes in Pershing Square. They are counting their losses at a time when many pension funds are re-evaluating whether they should be in hedge funds in the first place.

Then there are eyebrows being raised in New York real estate circles. Last year, Mr. Ackman, with the Georgetown Company, agreed to buy 787 11th Avenue, where he plans to move Pershing Square. He is expected to build a tennis court on the roof. Mr. Ackman is an avid tennis player.

While nobody has said the development is in jeopardy, some real estate agents have already begun speculating about the future of the project. There is gossip over whether he will have to take a loss on a \$91.5 million apartment he bought in One57 overlooking Central Park that he said he purchased as an investment in the hope of selling for a profit. And now, luxury Manhattan real estate appears to have peaked.

Mr. Ackman sees his putrid performance as a blip. He has privately told some colleagues that he believes he can get back to even within a year. But he may have to turn it around sooner — May is the next window for investors to ask Mr. Ackman for their money back.

Correction: March 22, 2016

An earlier version of this column misstated an action taken by Valeant Pharmaceuticals. The company asked a director to resign. It did not force the director, Howard B. Schiller, who is its former chief financial officer and onetime interim chief executive, to resign, and Mr. Schiller has declined to do so.

A version of this article appears in print on March 22, 2016, on page B1 of the New York edition with the headline: Many Burned by Ackman's Bold Bet. [Order Reprints](#) | [Today's Paper](#) | [Subscribe](#)