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Seneca Foods Corp
Form 10-Q
October 23, 2014
UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D. C. 20549

Form 10Q

QUARTERLY REPORT UNDER SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934

For the Quarter Ended September 27, 2014 Commission File Number 0-01989

Seneca Foods Corporation

(Exact name of Company as specified in its charter)

New York 160733425

(State or other jurisdiction of (I. R. S. Employer
incorporation or organization) Identification No.)

3736 South Main Street, Marion, New York 14505
(Address of principal executive offices) (Zip Code)

Company's telephone number, including area code 315/926-8100

Not Applicable

Former name, former address and former fiscal year,
if changed since last report

Indicate by check mark whether the Company (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Company was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes 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 Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes No

Indicate by check mark whether the Company is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer Accelerated filer Non-accelerated filer Smaller reporting company

Indicate by check mark whether the Company is a shell company (as defined in Rule 12b-2 of the Exchange Act).

Yes No

The number of shares outstanding of each of the issuer's classes of common stock at the latest practical date are:

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Class	Shares Outstanding at October 17, 2014
Common Stock Class A, \$.25 Par	8,717,440
Common Stock Class B, \$.25 Par	2,015,673

Seneca Foods Corporation
 Quarterly Report on Form 10-Q
 Table of Contents

	Page
PART 1	FINANCIAL INFORMATION
Item 1	Financial Statements:
	<u>Condensed Consolidated Balance Sheets-September 27, 2014, September 28, 2013 and March 31, 2014</u>
	1
	<u>Condensed Consolidated Statements of Net Earnings-Three and Six Months Ended</u>
	September 27, 2014 and September 28, 2013
	2
	<u>Condensed Consolidated Statements of Comprehensive Income-Three and Six Months Ended</u>
	September 27, 2014 and September 28, 2013
	2
	<u>Condensed Consolidated Statements of Cash Flows-Six Months Ended</u>
	September 27, 2014 and September 28, 2013
	3
	<u>Condensed Consolidated Statements of Stockholders' Equity-Six Months Ended</u>
	September 27, 2014
	4
	<u>Notes to Condensed Consolidated Financial Statements</u>
	5
Item 2	<u>Management's Discussion and Analysis of Financial Condition and Results of Operations</u>
	11
Item 3	<u>Quantitative and Qualitative Disclosures about Market Risk</u>
	17
Item 4	<u>Controls and Procedures</u>
	18
PART II	<u>OTHER INFORMATION</u>
Item 1	<u>Legal Proceedings</u>
	19
Item 1A	<u>Risk Factors</u>
	19
Item 2	<u>Unregistered Sales of Equity Securities and Use of Proceeds</u>
	19
Item 3	<u>Defaults Upon Senior Securities</u>
	19
Item 4	<u>Mine Safety Disclosures</u>
	19
Item 5	<u>Other Information</u>
	19

Item 6 Exhibits 19

SIGNATURES 21

SENECA FOODS CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(In Thousands, Except Per Share Data)

	Unaudited September 27, 2014	Unaudited September 28, 2013	March 31, 2014
ASSETS			
Current Assets:			
Cash and Cash Equivalents	\$14,037	\$17,139	\$13,839
Accounts Receivable, Net	80,981	96,089	76,964
Inventories			
Finished Goods	591,841	655,058	304,955
Work in Process	18,358	8,450	12,353
Raw Materials and Supplies	121,328	95,146	133,942
Total Inventories	731,527	758,654	451,250
Deferred Income Taxes, Net	8,314	10,946	8,412
Refundable Income Taxes	1,439	-	-
Other Current Assets	21,614	36,398	33,594
Total Current Assets	857,912	919,226	584,059
Property, Plant and Equipment, Net	189,397	184,882	183,917
Deferred Income Tax Asset, Net	-	5,205	-
Other Assets	17,380	1,010	877
Total Assets	\$1,064,689	\$1,110,323	\$768,853
LIABILITIES AND STOCKHOLDERS' EQUITY			
Current Liabilities:			
Notes Payable	\$4,880	\$4,392	\$12,255
Accounts Payable	243,624	298,517	71,219
Accrued Vacation	11,206	11,057	10,997
Accrued Payroll	10,917	13,481	7,516
Other Accrued Expenses	35,086	37,861	26,111
Income Taxes Payable	-	468	913
Current Portion of Long-Term Debt	2,449	2,101	2,277
Total Current Liabilities	308,162	367,877	131,288
Long-Term Debt, Less Current Portion	342,154	322,959	216,239
Deferred Income Taxes, Net	1,126	-	339
Other Long-Term Liabilities	29,406	44,889	27,355
Total Liabilities	680,848	735,725	375,221
Commitments and Contingencies			
Stockholders' Equity:			
Preferred Stock	2,119	5,410	5,332
Common Stock, \$.25 Par Value Per Share	3,010	2,955	2,958
Additional Paid-in Capital	96,528	93,135	93,260
Treasury Stock, at Cost	(39,095)	(31,764)	(29,894)
Accumulated Other Comprehensive Loss	(11,252)	(22,548)	(11,252)
Retained Earnings	332,531	327,410	333,228
Total Stockholders' Equity	383,841	374,598	393,632
Total Liabilities and Stockholders' Equity	\$1,064,689	\$1,110,323	\$768,853

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

1

SENECA FOODS CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF NET EARNINGS

(Unaudited)

(In Thousands, Except Per Share Data)

	Three Months Ended		Six Months Ended	
	September	September	September	September
	27,	28,	27,	28,
	2014	2013	2014	2013
Net Sales	\$312,161	\$336,628	\$552,204	\$568,755
Costs and Expenses:				
Cost of Product Sold	295,357	314,249	518,404	526,696
Selling and Administrative	16,203	15,856	31,922	31,775
Plant Restructuring	-	347	-	501
Other Operating (Income) Loss	(85)	(607)	194	(788)
Total Costs and Expenses	311,475	329,845	550,520	558,184
Operating Income	686	6,783	1,684	10,571
Loss (Earnings) From Equity Investment	80	-	(286)	-
Interest Expense, Net	1,417	1,548	2,486	3,375
(Loss) Earnings Before Income Taxes	(811)	5,235	(516)	7,196
Income Taxes (Benefit) Expense	(233)	(1,368)	169	(754)
Net (Loss) Earnings	\$(578)	\$6,603	\$(685)	\$7,950
(Loss) Earnings Applicable to Common Stock	\$(576)	\$6,387	\$(684)	\$7,685
Basic (Loss) Earnings per Common Share	\$(0.05)	\$0.59	\$(0.06)	\$0.71
Diluted (Loss) Earnings per Common Share	\$(0.05)	\$0.59	\$(0.06)	\$0.71

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

SENECA FOODS CORPORATION AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME

(Unaudited)

(In Thousands)

	Three Months		Six Months Ended	
	Ended	September	September	September
	September	September	September	September
	27,	28,	27,	28,
	2014	2013	2014	2013
Comprehensive (loss) income:				
Net (loss) earnings	\$(578)	\$6,603	\$(685)	\$7,950
Change in pension and post retirement benefits (net of tax)	-	-	-	-
Total	\$(578)	\$6,603	\$(685)	\$7,950

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

2

SENECA FOODS
CORPORATION
AND
SUBSIDIARIES

CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS

(Unaudited)

(In Thousands)

	Six Months Ended	
	September	September
	27, 2014	28, 2013
Cash Flows from Operating Activities:		
Net (Loss) Earnings	\$(685)	\$7,950
Adjustments to Reconcile Net (Loss) Earnings to		
Net Cash Used in Operations:		
Depreciation & Amortization	11,142	11,679
Gain on the Sale of Assets	(56)	(869)
Impairment Provision	-	501
Deferred Income Tax Expense (Benefit)	885	(4,654)
Changes in Operating Assets and Liabilities:		
Accounts Receivable	(4,017)	(13,156)
Inventories	(280,277)	(279,084)
Other Current Assets	11,980	(11,099)
Income Taxes	(2,352)	(3,632)
Accounts Payable, Accrued Expenses		
and Other Liabilities	186,713	244,010
Net Cash Used in Operations	(76,667)	(48,354)
Cash Flows from Investing Activities:		
Additions to Property, Plant and Equipment	(16,665)	(8,412)
Proceeds from the Sale of Assets	270	970
Purchase Equity Method Investment	(16,308)	-
Net Cash Used in Investing Activities	(32,703)	(7,442)
Cash Flow from Financing Activities:		
Long-Term Borrowing	199,232	261,823
Payments on Long-Term Debt	(73,145)	(206,949)
(Payment) Borrowings on Notes Payable	(7,375)	4,392
Other	69	137
Purchase of Treasury Stock	(9,201)	(560)
Dividends	(12)	(12)
Net Cash Provided by Financing Activities	109,568	58,831
Net Increase in Cash and Cash Equivalents	198	3,035
Cash and Cash Equivalents, Beginning of the Period	13,839	14,104
Cash and Cash Equivalents, End of the Period	\$14,037	\$17,139

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

SENECA FOODS CORPORATION AND SUBSIDIARIES
 CONDENSED CONSOLIDATED STATEMENTS STOCKHOLDERS' EQUITY

(Unaudited)

(In Thousands)

	Preferred Stock	Common Stock	Additional Paid-In Capital	Treasury Stock	Accumulated Other Comprehensive Loss	Retained Earnings
Balance March 31, 2014	\$ 5,332	\$ 2,958	\$ 93,260	\$(29,894)	\$ (11,252) \$333,228
Net loss	-	-	-	-	-	(685)
Cash dividends paid on preferred stock	-	-	-	-	-	(12)
Equity incentive program	-	-	50	-	-	-
Stock issued for profit sharing plan	-	1	56	-	-	-
Preferred stock conversion	(3,213)	51	3,162	-	-	-
Purchase treasury stock	-	-	-	(9,201)	-	-
Balance September 27, 2014	\$ 2,119	\$ 3,010	\$ 96,528	\$(39,095)	\$ (11,252) \$332,531

The accompanying notes are an integral part of these unaudited condensed consolidated financial statements.

Notes to Condensed Consolidated Financial Statements
(Unaudited)
September 27, 2014

1. Unaudited Condensed Consolidated Financial Statements

In the opinion of management, the accompanying unaudited condensed consolidated financial statements contain all adjustments, which are normal and recurring in nature, necessary to present fairly the financial position of Seneca Foods Corporation (the "Company") as of September 27, 2014 and results of its operations and its cash flows for the interim periods presented. All significant intercompany transactions and accounts have been eliminated in consolidation. The March 31, 2014 balance sheet was derived from the audited consolidated financial statements. The results of operations for the three and six month periods ended September 27, 2014 are not necessarily indicative of the results to be expected for the full year.

During six months ended September 27, 2014, the Company sold \$36,766,000 of Green Giant finished goods inventory to General Mills Operations, LLC ("GMOL") for cash, on a bill and hold basis, as compared to \$52,199,000 for the six months ended September 28, 2013. Under the terms of the bill and hold agreement, title to the specified inventory transferred to GMOL. The Company believes it has met the criteria required for bill and hold treatment.

The accounting policies followed by the Company are set forth in Note 1 to the Company's Consolidated Financial Statements in the Company's 2014 Annual Report on Form 10-K.

Other footnote disclosures normally included in annual financial statements prepared in accordance with accounting principles generally accepted in the United States have been condensed or omitted. These unaudited condensed consolidated financial statements should be read in conjunction with the financial statements and notes included in the Company's 2014 Annual Report on Form 10-K.

All references to years are fiscal years ended or ending March 31 unless otherwise indicated. Certain percentage tables may not foot due to rounding.

Subsequent Event—After the September 27, 2014 quarter end closing, the Company announced the closing of a plant in the Midwest. This plant closing will have no material impact on the financial position or results of operations of the Company.

Reclassifications—Certain previously reported amounts have been reclassified to conform to the current period classification.

In April 2014, the Company purchased a 50% equity interest in Truitt Bros. Inc. ("Truitt") for \$16,308,000. The purchase agreement grants the Company the right to acquire the remaining 50% ownership of Truitt in the future under certain conditions. Truitt is known for its industry innovation related to packing shelf stable foods in trays, pouches and bowls. Truitt has two state-of-the-art plants located in Oregon and Kentucky. This investment is included in Other Assets in the Condensed Consolidated Balance Sheets. This is a level 3 investment and is accounted for using the equity method of accounting.

First-In, First-Out ("FIFO") based inventory costs exceeded LIFO based inventory costs by \$158,955,000 as of the end of the second quarter of fiscal 2015 as compared to \$147,449,000 as of the end of the second quarter of fiscal 2014. The change in the LIFO Reserve for the three months ended September 27, 2014 was an increase of \$5,919,000 as compared to an increase of \$8,637,000 for the three months ended September 28, 2013. The LIFO Reserve increased by \$5,570,000 in the first six months of fiscal 2015 compared to an increase of \$14,435,000 in the first six months of fiscal 2014. This reflects the projected impact of an overall lower cost increase expected in fiscal 2015 versus fiscal 2014.

Notes to Condensed Consolidated Financial Statements
(Unaudited)
September 27, 2014

Maximum borrowings under the Revolver total \$300,000,000 from April through July and \$400,000,000 from August through March. The Revolver balance as of September 27, 2014 was \$302,220,000 and is included in Long-Term Debt in the accompanying Condensed Consolidated Balance Sheet since the Revolver matures on July 20, 2016. The Company utilizes its Revolver for general corporate purposes, including seasonal working capital needs, to pay debt principal and interest obligations, and to fund capital expenditures and acquisitions. Seasonal working capital needs are affected by the growing cycles of the vegetables and fruits the Company processes. The majority of vegetable and fruit inventories are produced during the months of June through November and are then sold over the following year. Payment terms for vegetable and fruit produce are generally three months but can vary from a few days to seven months. Accordingly, the Company's need to draw on the Revolver may fluctuate significantly throughout the year.

The increase in average amount of Revolver borrowings during the first six months of fiscal 2015 compared to the first six months of fiscal 2014 was attributable to the Truitt investment of \$16,308,000 made in the first quarter of fiscal 2015 and reduced operating results.

General terms of the Revolver include payment of interest at LIBOR plus a defined spread.

The following table documents the quantitative data for Revolver borrowings during the second quarter and year-to-date periods of fiscal 2015 and fiscal 2014:

	Second Quarter		Year-to-Date	
	2015	2014	2015	2014
	(In thousands)		(In thousands)	
Reported end of period:				
Outstanding borrowings	\$302,220	\$282,000	\$302,220	\$282,000
Weighted average interest rate	1.45 %	1.68 %	1.45 %	1.68 %
Reported during the period:				
Maximum amount of borrowings	\$302,220	\$292,578	\$302,220	\$292,578
Average outstanding borrowings	239,585	227,234	205,880	192,360
Weighted average interest rate	1.42 %	1.70 %	1.49 %	1.71 %

During the six month period ended September 27, 2014, there were 207,365 shares, or \$3,213,000, of Participating Preferred Stock (at Stated Value), converted to Class A Common Stock. During the six-month period ended September 27, 2014 the Company repurchased 292,395 shares or \$9,201,000 of its Class A Common Stock as Treasury Stock. As of September 27, 2014, there are 1,307,439 shares or \$39,095,000 of repurchased stock. These shares are not considered outstanding. During the three-month period ended June 28, 2014, there were 1,720 shares, or \$56,000 of Class B Common Stock issued in lieu of cash compensation under the Company's Profit Sharing Bonus Plan.

Notes to Condensed Consolidated Financial Statements
(Unaudited)
September 27, 2014

6. The net periodic benefit cost for the Company's pension plan consisted of:

	Three Months		Six Months Ended	
	Ended September 27, 2014	September 28, 2013	September 27, 2014	September 28, 2013
	(In thousands)			
Service Cost	\$1,868	\$ 1,863	\$3,736	\$ 3,726
Interest Cost	2,032	1,890	4,064	3,780
Expected Return on Plan Assets	(2,740)	(2,373)	(5,480)	(4,745)
Amortization of Actuarial Loss	31	584	61	1,167
Net Periodic Benefit Cost	\$1,191	\$ 1,964	\$2,381	\$ 3,928

No contributions were required or made in the three and six month periods ended September 27, 2014 and September 28, 2013.

During the six months ended September 27, 2014, the Company sold unused fixed assets which resulted in a gain of \$56,000 as compared to a gain of \$869,000 during the six months ended September 28, 2013. In addition, during the six months ended September 27, 2014, there was a \$250,000 charge related to an environmental remediation. These items are included in other operating income in the Unaudited Condensed Consolidated Statements of Net Earnings.

In May 2014, the FASB issued ASU 2014-09, Revenue from Contracts with Customers, which requires an entity to recognize the amount of revenue to which it expects to be entitled for the transfer of promised goods or services to customers. The ASU will replace most existing revenue recognition guidance in U.S. GAAP when it becomes effective. The new standard is effective for the Company on April 1, 2017 (beginning of fiscal 2018). Early adoption is not permitted. The standard permits the use of either the retrospective or cumulative effect transition method. The Company is evaluating the effect that ASU 2014-09 will have on its consolidated financial statements and related disclosures. The Company has not yet selected a transition method nor has it determined the effect of the standard on its ongoing financial reporting. There were no other recently issued accounting pronouncements that impacted the Company's condensed consolidated financial statements. In addition, the Company did not adopt any new accounting pronouncements during the quarter ended September 27, 2014.

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Notes to Condensed Consolidated Financial Statements
(Unaudited)
September 27, 2014

9. Earnings (loss) per share for the Quarters Ended September 27, 2014 and September 28, 2013 are as follows:

	Q U A R T E R		Y E A R T O D A T E	
	Fiscal 2015	Fiscal 2014	Fiscal 2015	Fiscal 2014
	(In thousands, except per share amounts)			
Basic				
Net (loss) earnings	\$(578)	\$6,603	\$(685)	\$7,950
Deduct preferred stock dividends paid	6	6	12	12
Undistributed (loss) earnings	(584)	6,597	(697)	7,938
(Loss) earnings attributable to participating preferred	(8)	210	(13)	253
(Loss) earnings attributable to common shareholders	\$(576)	\$6,387	\$(684)	\$7,685
Weighted average common shares outstanding	10,774	10,748	10,787	10,750
Basic (loss) earnings per common share	\$(0.05)	\$0.59	\$(0.06)	\$0.71
Diluted				
(Loss) earnings attributable to common shareholders	\$(576)	\$6,387	\$(684)	\$7,685
Add dividends on convertible preferred stock	5	5	10	10
(Loss) Earnings attributable to common stock on a diluted basis	\$(571)	\$6,392	\$(674)	\$7,695
Weighted average common shares outstanding-basic	10,774	10,748	10,787	10,750
Additional shares issuable related to the equity compensation plan	4	4	4	4
Additional shares to be issued under full conversion of preferred stock	67	67	67	67
Total shares for diluted	10,845	10,819	10,858	10,821
Diluted (loss) earnings per common share	\$(0.05)	\$0.59	\$(0.06)	\$0.71

10. As required by Accounting Standards Codification ("ASC") 825, "Financial Instruments," the Company estimates the fair values of financial instruments on a quarterly basis. The estimated fair value for long-term debt (classified as Level 2 in the fair value hierarchy) is determined by the quoted market prices for similar debt (comparable to the Company's financial strength) or current rates offered to the Company for debt with the same maturities. Long-term debt, including current portion had a carrying amount of \$344,603,000 and an estimated fair value of

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\$345,651,000 as of September 27, 2014. As of March 31, 2014, the carrying amount was \$218,516,000 and the estimated fair value was \$219,981,000. The fair values of all the other financial instruments approximate their carrying value due to their short-term nature.

Notes to Condensed Consolidated Financial Statements
(Unaudited)
September 27, 2014

In June 2010, the Company received a Notice of Violation of the California Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as Proposition 65, from the Environmental Law Foundation ("ELF"). This notice was made to the California Attorney General and various other government officials, and to 49 companies including Seneca Foods Corporation whom ELF alleges manufactured, distributed or sold packaged peaches, pears, fruit cocktail and fruit juice that contain lead without providing a clear and reasonable warning to consumers. Under California law, proper notice must be made to the State and involved firms at least 60 days before any suit under Proposition 65 may be filed by private litigants like ELF. That 60-day period has expired and to date neither the California Attorney General nor any appropriate district attorney or city attorney has initiated an action against the Company. However, private litigant ELF filed an action against the Company and 27 other named companies on September 28, 2011, in Superior Court of Alameda County, California, alleging violations of Proposition 65 and seeking various measures of relief, including injunctive and declaratory relief and civil penalties. The Company, along with the other named companies, vigorously defended the claim. A responsive answer was filed, the discovery process was completed and a trial on liability was held beginning in April of 2013 in accordance with court schedules. The trial was completed on May 16, 2013 and, on July 15, 2013 the judge issued a tentative and proposed statement of decision agreeing with the Company, and the other defendants, that the "safe harbor" defense had been met under the regulations relating to Proposition 65 and the Company will not be required to place a Proposition 65 warning label on the products at issue in the case. The trial decision was finalized and the decision was appealed by ELF with a filing dated October 3, 2013. The appeal is progressing in accordance with the schedule set by the California Court of Appeal, First Appellate District, Division One. The Company is unable to determine the scope or the likelihood of success of the appeal. The Company, along with other defendants are planning on vigorously defending the appeal filed by ELF. With the successful defense of the case, the remedies portion of the case was not litigated. So far, our portion of legal fees in defense of this action have been sizable, as would be expected with litigation resulting in trial, and the appeal, but have not had a material adverse impact on the Company's financial position, results of operations, or cash flows. Additionally, in the ordinary course of its business, the Company is made party to certain legal proceedings seeking monetary damages, including proceedings invoking product liability claims, either directly or through indemnification obligations, and we are not able to predict the probability of the outcome or estimate of loss, if any, related to any such matter.

The effective tax rate was (32.8)% and (10.5)% for the six month periods ended September 27, 2014 and September 28, 2013, respectively. Due to the year to date pre-tax loss, the 22.3 percentage point decrease in the effective tax rate represents an increase in tax expense as a percentage of book income when compared to the same quarter last year. The major contributor to this increase is the re-establishment of the valuation allowance related to the New York State Investment Tax Credit which created a \$384,000 charge (74.4 percentage points). The valuation allowance was re-established due to a change in the law. This is a discrete item and therefore was required to be booked in the quarter ended June 28, 2014. This difference was partially offset by the impact of 1) the expiration of the research and experimentation credit, work opportunity tax credit, fuel tax credit, California enterprise zone credit, and the California hiring credit (36.8 percentage points) and 2) an \$81,000 credit (15.7 percentage points) related to interest received on tax refunds recorded during the quarters ended June 28, 2014 and September 27, 2014.

During the second and fourth quarters of fiscal 2014, the Company entered into some interim lease notes which financed down payments for various equipment orders at market rates. As of September 27, 2014, some of these interim notes had not been converted into operating leases since the equipment was not placed in service. These notes, which total \$4,880,000 and \$4,392,000 as of September 27, 2014 and September 28, 2013, respectively, are included in Notes Payable in the accompanying Condensed Consolidated Balance Sheets. These notes are

expected to be converted into operating leases within the next twelve months.

9

ITEM 2 MANAGEMENT'S DISCUSSION AND ANALYSIS
OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

September 27, 2014

Seneca Foods Corporation (the "Company") is a leading provider of packaged fruits and vegetables, with facilities located throughout the United States. The Company's product offerings include canned, frozen and bottled produce and snack chips. Its products are sold under private label as well as national and regional brands that the Company owns or licenses, including Seneca®, Libby's®, Aunt Nellie's®, READ®, and Seneca Farms®. The Company's canned fruits and vegetables are sold nationwide by major grocery outlets, including supermarkets, mass merchandisers, limited assortment stores, club stores and dollar stores. The Company also sells its products to foodservice distributors, industrial markets, other food processors, export customers in over 80 countries and federal, state and local governments for school and other food programs. In addition, the Company packs Green Giant®, Le Sueur® and other brands of canned vegetables as well as select Green Giant® frozen vegetables for General Mills Operations, LLC ("GMOL") under a long-term Alliance Agreement.

The Company's raw product is harvested mainly between June through November. The Company experienced unfavorable growing conditions related to our pea and green bean harvest this summer reflecting a combination of high temperatures and uneven moisture. These difficult growing conditions unfavorably impacted pea and green bean crop yields and plant recovery rates which resulted in unfavorable manufacturing variances.

Subsequent Event—After the September 27, 2014 quarter end closing, the Company announced the closing of a plant in the Midwest. This plant closing will have no material impact on the financial position or results of operations of the Company.

Investment—In April 2014, the Company purchased a 50% equity interest in Truitt Bros. Inc. ("Truitt") for \$16,308,000. The purchase agreement grants the Company the right to acquire the remaining 50% ownership of Truitt in the future under certain conditions. Truitt is known for its industry innovation related to packing shelf stable foods in trays, pouches and bowls. Truitt has two state-of-the-art plants located in Oregon and Kentucky.

Results of Operations:

Sales:

Second fiscal quarter 2015 results include net sales of \$312,161,000, which represents a 7.3% decrease, or \$24,467,000, from the second quarter of fiscal 2014. The decrease in sales is attributable to a sales volume decrease of \$36,038,000, partially offset by higher selling prices/sales mix of \$11,571,000. The decrease in sales is primarily from a \$15,561,000 decrease in GMOL sales, a \$9,048,000 decrease in Canned Fruit sales, and a \$1,693,000 decrease in Frozen sales, partially offset by a \$827,000 increase in Canned Vegetable sales and a \$174,000 increase in Snack sales. The GMOL sales decrease primarily reflects the acceleration of sales under the Green Giant Alliance in the prior year resulting from earlier maturities of certain commodities while the comparable Green Giant Alliance sales occurred in the third quarter of the current fiscal year.

Six months ended September 27, 2014 include net sales of \$552,204,000, which represents a 2.9% decrease, or \$16,551,000, from the first six months of fiscal 2014. The decrease in sales is attributable to a sales volume decrease of \$38,177,000, partially offset by higher selling prices/sales mix of \$21,626,000. The decrease in sales is primarily from a \$19,684,000 decrease in GMOL sales, a \$10,823,000 decrease in Canned Fruit sales, and a \$2,003,000 decrease in Frozen sales, partially offset by a \$12,383,000 increase in Canned Vegetable sales and a \$549,000 increase in Snack sales.

ITEM 2 MANAGEMENT'S DISCUSSION AND ANALYSIS
OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS
September 27, 2014

The following table presents sales by product category (in millions):

	Three Months Ended September 27, 2014
Canned Vegetables	\$176.6
GMOL*	49.6
Frozen	23.0
Fruit Products	53.5

In addition to the above factors, in the course of its meetings, the USF board of directors reviewed and considered a wide variety o

Table of Contents

The USF board of directors also considered countervailing factors in its deliberations concerning the original merger, including:

The USF board of directors recognized that there can be no assurance about future results, including results expected or considered

The foregoing discussion of the information and factors considered by the USF board of directors is not exhaustive, but includes all

Opinion of Morgan Stanley & Co. Incorporated, Financial Advisor to USF, dated February 27, 2005

Morgan Stanley acted as sole financial advisor to USF in connection with the original merger. USF's board of directors selected M

Morgan Stanley's opinion dated February 27, 2005 was delivered in connection with the original merger and was not provided in

Table of Contents

The full text of Morgan Stanley's opinion, dated February 27, 2005, which set forth, among other things, the assumptions

In connection with rendering its opinion dated February 27, 2005, Morgan Stanley, among other things:

In arriving at its opinion, Morgan Stanley assumed and relied upon without independent verification the accuracy and completeness

Table of Contents

original merger would be consummated in accordance with the terms set forth in the original merger agreement, without any waiver

In arriving at its opinion, Morgan Stanley was not authorized to solicit, and did not solicit, interest with respect to a business combination

The following is a summary of the material financial analyses performed by Morgan Stanley in connection with its opinion of February 27, 2005

In arriving at its opinion dated February 27, 2005 regarding the fairness of the consideration to be paid to holders of USF common stock

Historical Share Price Analysis

Morgan Stanley performed an historical share price analysis to obtain background information and perspective with respect to the historical share price

Table of Contents

The following table displays the implied percentage premium of the \$47.47 implied blended merger consideration as of February 2

Consideration Value as of 2/22/05
\$47.47

Analyst Price Targets

Morgan Stanley analyzed the analyst price targets for USF to derive an implied value for USF. Morgan Stanley gathered the public

Comparable Companies Analysis

Morgan Stanley performed a comparable company analysis, which attempts to provide an implied value for Yellow Roadway and

Morgan Stanley reviewed the following selected multiples for USF, Yellow Roadway and each of the comparable companies:

Edgar Filing: Seneca Foods Corp - Form 10-Q

Morgan Stanley calculated these financial multiples and ratios based on publicly available financial data as of February 18, 2005. T

Table of Contents

A summary of the range of market trading multiples of the comparable companies and those multiples calculated for USF is set forth below.

Metric

Price / 2004 Earnings
Price / 2005 Earnings
Aggregate Value / 2004 EBITDA
Aggregate Value / 2005 EBITDA

Morgan Stanley noted that for purposes of its analysis, the ranges of multiples for the comparable company group were quite large.

Based upon and subject to the foregoing, Morgan Stanley calculated an implied valuation range for USF common stock of approximately 10x to 15x 2004 Earnings.

Although the comparable companies in this analysis were compared to USF for purposes of this analysis, Morgan Stanley noted that the comparable companies were not directly comparable to USF.

Discounted Equity Value Analysis

Morgan Stanley analyzed USF by discounting future estimates of the USF share price. For its discounted equity value analysis, Morgan Stanley used a discount rate of 10%.

Precedent transactions analysis

Morgan Stanley analyzed USF relative to the values that have been paid in precedent transactions using two approaches: precedent transactions analysis and market multiples analysis.

Table of Contents

Precedent purchase price multiples

Using publicly available information, Morgan Stanley reviewed the implied enterprise values and purchase price multiples in the f

Acquiror

Yellow Corporation
Overnite Corporation
Roadway Corporation
FedEx Corporation
FedEx Corporation

All multiples for the selected transactions were based on publicly available financial information. Financial data for USF was base

Premiums paid in precedent transactions

Morgan Stanley also analyzed the implied value of USF by analyzing the average premium paid for U.S. public targets over the pa

USF Discounted Cash Flow Analysis

Morgan Stanley also analyzed USF using a discounted cash flow analysis. This type of analysis is designed to provide insight into

Leveraged Buyout Analysis

Morgan Stanley also analyzed USF from the perspective of a potential purchaser that was not a trucking company, but rather was p

Table of Contents

financial forecasts described above. For purposes of an investor's desired internal rates of return, Morgan Stanley assumed a range

Pro Forma Analysis

Morgan Stanley analyzed the pro forma impact of the original merger on Yellow Roadway's pro forma earnings per share and its

Morgan Stanley performed a variety of financial and comparable analyses for purposes of rendering its opinion. The preparation of

In performing its analyses, Morgan Stanley made numerous assumptions with respect to industry performance, general business, re

Table of Contents

The merger consideration contemplated by the original merger agreement was determined through arm's-length negotiations between

The opinion of Morgan Stanley was one of the many factors taken into consideration by the USF board of directors in making its decision

See the discussion beginning on page 56 of "Opinion of Morgan Stanley & Co. Incorporated, Financial Advisor to USF, dated March 2011"

Table of Contents

Background of the Amended Merger

Following the announcement of the merger on February 27, 2005, Yellow Roadway and USF held an analyst call that was open to

Also after the announcement of the merger, USF and Yellow Roadway commenced preparation of the original proxy statement/pro

On March 9, 2005, Yellow Roadway filed a Current Report on Form 8-K and a Form 425 with the SEC, including a transcript of a

Yellow Roadway made the required filing under the HSR Act on March 14, 2005, and USF made its filing under the HSR Act on M

USF and Yellow Roadway filed a preliminary proxy statement/prospectus with the SEC on April 1, 2005. The SEC staff advised th

On April 7, 2005, USF announced that it expected first quarter diluted earnings per share to be at a level that was below the expect

The waiting period under the HSR Act terminated on April 14, 2005 without any request by the Federal Trade Commission or U.S

On April 22, 2005, the SEC declared effective Yellow Roadway's registration statement that contained the original proxy stateme

On April 28, 2005, the Yellow Roadway completed its evaluation of the USF first quarter financial performance and internal finan

On the afternoon of April 28, 2005, Mr. Zollars asked Mr. Liska if he would be willing to support a revision to the terms of the ori

Table of Contents

the merger, the more accretive the diluted earnings per share would be for Yellow Roadway shareholders. Mr. Liska indicated that

During the late afternoon of April 29, 2005, the USF board of directors met telephonically to discuss the proposed revisions to the

Over the weekend of April 30 and May 1, 2005, USF and Yellow Roadway, together with their outside legal advisors, finalized the

On May 1, 2005, the Yellow Roadway board of directors met telephonically and approved the amended merger agreement. That sa

On May 2, 2005 USF and Yellow Roadway issued a joint press release announcing the execution of the amended merger agreement

USF's Reasons for the Amended Merger

In the course of reaching its decision to approve the amended merger agreement, the USF board of directors consulted with USF's

The principal factors supporting the decision to enter into the amended merger agreement included the following:

Table of Contents

The USF board of directors also considered as a negative factor the fact that under the amended merger agreement USF stockholders

The USF board of directors also considered the fact that some directors and officers have interests in the amended merger as individuals

The USF board of directors recognized that there can be no assurance about the future results, including results expected or considered

The foregoing discussion of the information and factors considered by the USF board of directors in entering into the amended merger agreement

USF's reasons for entering into the original merger agreement are set forth in this proxy statement/prospectus under "USF's Reasons for the Merger"

Recommendation of the USF Board of Directors

After consideration of the factors discussed above, including the terms of the amended merger agreement and the amended merger agreement

THE USF BOARD OF DIRECTORS UNANIMOUSLY RECOMMENDS THAT USF STOCKHOLDERS VOTE FOR

Opinion of Morgan Stanley & Co. Incorporated, Financial Advisor to USF, dated May 1, 2005

Morgan Stanley has acted as sole financial advisor to USF in connection with the amended merger. USF's board of directors selected Morgan Stanley as its financial advisor

Table of Contents

The full text of Morgan Stanley's opinion, dated May 1, 2005, which sets forth, among other things, the assumptions made

In connection with rendering its opinion, Morgan Stanley, among other things:

In arriving at its opinion, Morgan Stanley assumed and relied upon without independent verification the accuracy and completeness

Table of Contents

amended merger would be consummated in accordance with the terms set forth in the amended merger agreement, without any wa

In arriving at its opinion, Morgan Stanley was not authorized to solicit, and did not solicit, interest with respect to a business comb

The following is a summary of the material financial analyses performed by Morgan Stanley in connection with its opinion of May

In arriving at its opinion regarding the fairness of the consideration to be paid to holders of USF common stock, Morgan Stanley ca

Historical Share Price Analysis

Morgan Stanley performed an historical share price analysis to obtain background information and perspective with respect to the

Table of Contents

The following table displays the implied percentage premium of the \$44.52 amended implied blended merger consideration as of A

Consideration

Value as of 4/28/05

\$44.52

Comparable Companies Analysis

Morgan Stanley performed a comparable company analysis, which attempts to provide an implied value for USF by comparing it t

Morgan Stanley reviewed the following selected multiples for USF, Yellow Roadway and each of the comparable companies:

Morgan Stanley calculated these financial multiples and ratios based on publicly available financial data as of April 28, 2005. The

A summary of the range of market trading multiples of the comparable companies and those multiples calculated for USF and Yell

Metric

Price / 2004 Earnings

Price / 2005 Earnings

Aggregate Value / 2004 EBITDA

Aggregate Value / 2005 EBITDA

Morgan Stanley noted that for purposes of its analysis, the ranges of multiples for the comparable company group were quite large

Table of Contents

comparable company analysis on USF, a representative multiple range based on: (i) the per share price divided by 2004 earnings o

Based upon and subject to the foregoing, Morgan Stanley calculated an implied valuation range for USF common stock of approxi

Although the comparable companies in this analysis were compared to USF for purposes of this analysis, Morgan Stanley noted th

Precedent transactions analysis

Morgan Stanley analyzed USF relative to the values that have been paid in precedent transactions using two approaches: precedent

Precedent purchase price multiples

Using publicly available information, Morgan Stanley reviewed the implied enterprise values and purchase price multiples in the f

Acquiror

Yellow Corporation
Overnite Corporation
Roadway Corporation
Fedex Corporation
Fedex Corporation
Yellow Corporation

All multiples for the selected transactions were based on publicly available financial information. Financial data for USF were base

Premiums paid in precedent transactions

Morgan Stanley also analyzed the implied value of USF by analyzing the average premium paid for U.S. public targets over the pa

Table of Contents

transactions with an aggregate value of over \$100 million, the average premium paid was 41.1%. Morgan Stanley applied this procedure

USF Discounted Cash Flow Analysis

Morgan Stanley also analyzed USF using a discounted cash flow analysis. This type of analysis is designed to provide insight into

Pro Forma Analysis

Morgan Stanley analyzed the pro forma impact of the amended merger on Yellow Roadway's pro forma earnings per share and its

Morgan Stanley performed a variety of financial and comparable analyses for purposes of rendering its opinion. The preparation of

Table of Contents

In performing its analyses, Morgan Stanley made numerous assumptions with respect to industry performance, general business, re

The consideration was determined through arm s-length negotiations between USF and Yellow Roadway and was approved by U

The opinion of Morgan Stanley was one of the many factors taken into consideration by the USF board of directors in making its d

Morgan Stanley is an internationally recognized investment banking and advisory firm. Morgan Stanley, as part of its investment b

Pursuant to an engagement letter dated as of August 11, 2004 and the addendum dated January 12, 2005, USF has agreed to pay M

Summary of Significant Changes in the Amended Merger Agreement

The significant changes to the original merger agreement include the following:

Table of Contents

Under the terms of the original merger agreement, 50% of the shares of USF common stock would have been converted into \$45.0

Interests of Certain Persons in the Amended Merger

In considering the recommendation of the USF board of directors with respect to the amended merger, USF's directors and execut

Executive Retention Pool. USF adopted an executive retention program that, subject to the terms and conditions therein, authorizes

Table of Contents

Agreements with Paul J. Liska. On February 7, 2005, USF and Paul J. Liska entered into a letter agreement, which represented the

Under the terms of the letter agreement, should Mr. Liska be terminated other than for cause (as defined in the letter agreement)

Pursuant to a separate agreement entered into between USF and Mr. Liska, USF will pay Mr. Liska at the effective time of the am

Severance Protection Agreements

Upon the consummation of the amended merger, if the employment of an officer who is party to a severance protection agreement

As condition to receiving such benefits, the officer must deliver an effective waiver and release of any claims against USF. Certain

Table of Contents

For purposes of the severance protection agreements, a merger (including the amended merger with Yellow Roadway) shall not co

The severance protection agreements expire on December 31, 2005, with annual evergreen provisions beginning in January 200

The following table sets forth the estimated amount of severance and other benefits that USF's named executive officers will rece

Severance Payment
Retention Bonus
Pro Rata Bonus
Transaction Fee
Contractual Payment
CAP Plan
Stock Options
Restricted Stock
PSUs*
Benefits Continuation
Outplacement
Gross-Up Adjustment
Reimbursement of Excise Taxes

*

Based on 4,891 PSUs granted to Mr. Liska as of 1

Table of Contents

The following table sets forth the change in value of the USF stock options, restricted stock and PSUs owned by each of the person

Stock Options*
Restricted Stock
PSUs**
Gross-Up Adjustment
Reimbursement of Excise Taxes

*

**

Funding under the USF Grantor Trust Agreement

Upon announcement of the original merger, a lump sum contribution of the present value of certain employees remaining accrued

Treatment of Stock Options, Restricted USF Shares and Phantom Stock Units

Each option to purchase USF shares granted under a USF stock plan that is outstanding immediately prior to the effective time of t

Each such unexercised USF option with an exercise price that is equal to or greater than the deemed per share merger consideration

Each share of restricted USF stock granted under a USF stock plan that is outstanding immediately prior to the effective time will b

Table of Contents

The following table sets forth the amounts that USF's named executive officers and directors will receive pursuant to the amended

Name

Executive Officers

Paul J. Liska

Thomas E. Bergmann

Edward R. Fitzgerald

Steven Caddy

Douglas R. Waggoner

Directors

Morley Koffman

Stephen W. Lilienthal

Anthony J. Paoni

Michael L. Thompson

Neil A. Springer

Glenn R. Richter

*

Table of Contents

The following table sets forth the change in value of the USF stock options, restricted stock and PSUs owned by each of the directors and executive officers of USF as of the end of the reporting period.

Stock Options*

Restricted Stock

PSUs**

*

**

Other Provisions Relating to USF Directors and Executive Officers

Pursuant to the terms of the amended merger agreement, one of the seven members of the USF board will be appointed as a director.

Under the terms of the amended merger agreement, Yellow Roadway has agreed to indemnify and hold harmless all past and present directors and executive officers of USF.

For a period of six years after the effective time of the amended merger, Yellow Roadway has agreed that it will provide USF with a letter of intent to purchase all shares of USF common stock, including shares of USF common stock beneficially owned, as of the record date, approximately 0.8% of the outstanding USF common stock, in the event that any such director or executive officer of USF is terminated or ceases to be a director or executive officer of USF.

USF directors and officers beneficially owned, as of the record date, approximately 0.8% of the outstanding USF common stock, in the event that any such director or executive officer of USF is terminated or ceases to be a director or executive officer of USF.

Accounting Treatment

The amended merger will be accounted for as a business combination using the purchase method of accounting. Yellow Roadway will account for the acquisition of USF as an acquisition of a business.

Regulatory Approvals

Yellow Roadway and USF received notice of the termination of the waiting period under the Hart-Scott-Rodino Act on April 14, 2015.

Table of Contents

However, at any time before or after completion of the amended merger, the Antitrust Division of the DOJ or the FTC may, howev

Other than as we describe in this document, the amended merger does not require the approval of any other U.S. federal or state or

Board of Directors and Management of Yellow Roadway Following the Amended Merger

Immediately following the amended merger, the Yellow Roadway board will increase from ten directors to eleven directors. The Y

Appraisal and Dissenters' Rights

Under the DGCL, any USF stockholder who does not wish to accept the merger consideration has the right to dissent from the am

Holders of record of USF common stock who do not vote in favor of the amended merger agreement and who otherwise comply w

THE FOLLOWING DISCUSSION IS NOT A COMPLETE STATEMENT OF THE LAW PERTAINING TO APPRAISA

Under Section 262 of the DGCL, holders of shares of USF common stock who follow the procedures set forth in Section 262 of th

Under Section 262 of the DGCL, when a proposed merger is to be submitted for approval at a meeting of stockholders, the corpora

Table of Contents

This proxy statement/prospectus constitutes the required notice to the holders of these USF shares and the applicable statutory provisions.

A holder of USF shares wishing to exercise his or her appraisal rights (a) must not vote in favor of the amended merger agreement.

Only a holder of record of USF common stock is entitled to assert appraisal rights for the USF shares registered in that holder's name.

ALL WRITTEN DEMANDS FOR APPRAISAL SHOULD BE SENT OR DELIVERED TO USF CORPORATION, 8550

Within ten days after the consummation of the amended merger, the surviving entity will notify each stockholder who has properly

Within 120 days after the consummation of the amended merger, but not thereafter, the surviving entity or any stockholder who has

Within 120 days after the consummation of the amended merger, any stockholder who has complied with the requirements for exercise

Table of Contents

surviving entity a statement setting forth the aggregate number of USF shares not voted in favor of adoption of the amended merger

If a petition for an appraisal is filed timely, after a hearing on the petition, the Delaware Chancery Court will determine the stockholder's

The Delaware Chancery Court will determine the amount of interest, if any, to be paid upon the amounts to be received by stockholders

Any holder of USF common stock who has duly demanded an appraisal in compliance with Section 262 of the DGCL will not, after

If any stockholder who properly demands appraisal of his or her USF common stock under Section 262 of the DGCL fails to perfect

Failure to follow the steps required by Section 262 of the DGCL for perfecting appraisal rights may result in the loss of these rights

Delisting and Deregistration of USF Common Stock

If the amended merger is completed, the shares of USF common stock will be delisted from the Nasdaq National Market and will be

Table of Contents

Federal Securities Laws Consequences; Resale Restrictions

All shares of Yellow Roadway common stock that will be distributed to USF stockholders in the amended merger will be freely tra

This proxy statement/prospectus does not cover any resales of the Yellow Roadway shares to be received by USF s stockholders i

Table of Contents

The following discussion summarizes material U.S. federal income tax consequences of the amended merger to U.S. holders. This

As used in this summary, a "U.S. holder" includes:

If a partnership (including for this purpose any entity treated as a partnership for U.S. federal income tax purposes) is a beneficial o

THIS SUMMARY IS NOT A SUBSTITUTE FOR AN INDIVIDUAL ANALYSIS OF THE TAX CONSEQUENCES OF T

Tax Consequences of the Amended Merger to U.S. Holders of USF Common Stock

The Amended Merger

In general, U.S. holders of USF shares who receive cash and Yellow Roadway shares in exchange for their USF shares pursuant to

Table of Contents

A U.S. holder will have an aggregate tax basis in shares of Yellow Roadway common stock received in the amended merger equal

The holding period of the Yellow Roadway shares received by a USF stockholder pursuant to the amended merger will begin on the

Holders of USF shares are entitled to dissenters' rights under Delaware law in connection with the amended merger. If a U.S. holder

Backup Withholding

United States federal income tax law requires that a holder of USF shares provide the exchange agent with his or her correct taxpayer

To prevent backup withholding, each holder of USF shares must complete the Substitute Form W-9 which will be provided by the

The Substitute Form W-9 must be completed, signed and returned to the exchange agent.

Table of Contents

The following is a summary of the material provisions of the amended merger agreement, a copy of which is attached as *Annex A* to this prospectus.

You should not rely upon the representations and warranties in the amended merger agreement or the description of them in this prospectus.

Upon the terms and subject to the conditions of the amended merger agreement, and in accordance with the DGCL, at the effective time of the amended merger, Sub and USF will merge with and into USF.

The closing date of the amended merger will occur no later than the first business day following the date on which all conditions to the amended merger agreement have been satisfied.

Contemporaneously with the closing of the amended merger agreement, Sub and USF will file a certificate of merger with the Secretary of State of the State of New York.

At the effective time of the amended merger, Sub will merge with and into USF and the separate corporate existence of Sub will cease.

Amended Merger Consideration

Upon the effectiveness of the amended merger, each share of USF common stock (other than any shares owned directly or indirectly by Sub) will be converted into one share of Yellow Roadway common stock.

No fractional shares of Yellow Roadway common stock will be issued in the amended merger. All Yellow Roadway shares that are owned by Sub will be rounded up to the nearest whole share.

Table of Contents

Yellow Roadway anticipates issuing approximately 9 million shares of Yellow Roadway common stock to USF shareholders pursuant to the amended merger agreement.

Exchange Procedures

At the effective time of the amended merger, Sub will deposit with the exchange agent, for the benefit of the holders of USF common stock, the net proceeds of the offering.

Exchange of Shares

As soon as reasonably practicable after the effective time of the amended merger, the exchange agent will mail to each holder of USF common stock a copy of the proxy card and the instructions for the exchange of shares.

The exchange agent will deliver to Yellow Roadway any (i) shares of Yellow Roadway common stock to be issued in the amended merger, and (ii) any shares of Yellow Roadway common stock to be issued in the amended merger.

If any certificates for shares of Yellow Roadway common stock are to be issued in a name other than that in which the USF stock certificates were issued, the exchange agent will deliver to Yellow Roadway the certificates for such shares.

USF STOCK CERTIFICATES SHOULD NOT BE RETURNED WITH THE ENCLOSED BLUE PROXY CARD. INSTRUCTIONS FOR THE EXCHANGE OF SHARES ARE SET FORTH IN THE PROXY CARD.

Directors and Officers of the Surviving Entity After the Amended Merger

Under the amended merger agreement, certain specified officers of Yellow Roadway will be the directors of the surviving entity at the effective time of the amended merger.

Table of Contents

Representations and Warranties

The amended merger agreement contains customary and substantially reciprocal representations and warranties made by each party.

The amended merger agreement also contains additional representations and warranties of Yellow Roadway relating to, among other

Many of the representations and warranties of USF and Yellow Roadway, as well as the closing condition relating to adverse chan

Table of Contents

Under the terms of the amended merger agreement, the representations and warranties were required to be made by each party only

The representations and warranties contained in the amended merger agreement will not survive the amended merger agreement. S

Covenants and Agreements

Operating Covenants USF

Prior to the effective time of the amended merger agreement USF has agreed that it and its subsidiaries will conduct their operation

Table of Contents

Table of Contents

Operating Covenants Yellow Roadway

Prior to the effective time of the amended merger agreement Yellow Roadway has agreed that it and its subsidiaries will conduct th

Table of Contents

Conduct of Business of Sub

Prior to the effective time of the amended merger agreement, the parties have agreed that Sub will not engage in any activities of a

No Solicitation

USF has agreed that, except as expressly permitted by the amended merger agreement, it will not, and will instruct and use its reaso

Table of Contents

Notwithstanding anything described above, USF may, to the extent the USF board of directors determines in good faith, after cons

As used in the amended merger agreement, acquisition proposal means any proposal or offer:

As used in the amended merger agreement, superior proposal means any bona fide written acquisition proposal made by a third

No Change in USF Recommendation or Alternative Acquisition Agreement

The amended merger agreement generally provides that the USF board of directors shall not:

Table of Contents

Notwithstanding the restrictions above, the USF board of directors may withdraw or modify its approval or recommendation with

During such 72-hour period, USF is required to cooperate with Yellow Roadway with respect to such superior proposal with the in

Deletion of No Change in Yellow Roadway Recommendation Provision

Because approval from Yellow Roadway's stockholders is no longer required to consummate the merger, the amended merger ag

Covenant to Use Reasonable Best Efforts to Obtain All Necessary Regulatory Approvals

The parties are required to use their respective reasonable best efforts to take all actions necessary to consummate the amended me

Treatment of USF Stock Options

USF stock options will be cancelled as of the effective time of the amended merger agreement. For purposes of discussing the treat

Table of Contents

Nasdaq National Market. Holders of USF stock options with an exercise price less than the deemed per share merger consideration

(

USF stock options with an exercise price that is equal to or greater than the deemed per share merger consideration will be cancelled

Treatment of USF Phantom Stock

Each phantom stock award under a USF benefit plan will become fully vested as of the effective time and USF shall pay to the holder

Employee Benefit Matters

For the period beginning at the effective time of the amended merger and ending on December 31 of the calendar year in which the

Indemnification and Insurance

Each of USF's certificate of incorporation, and Yellow Roadway's certificate of incorporation and bylaws, contains a provision e

Table of Contents

Following the effective time of the amended merger, Yellow Roadway and the surviving entity will indemnify, defend and hold ha

In the amended merger agreement, Yellow Roadway and the surviving entity agreed to indemnify, defend and hold harmless, and a

If any of these parties are entitled to indemnification:

If an indemnified party must bring an action to enforce rights or to collect money due under the amended merger agreement and is

For six years after the effective time of the amended merger, Yellow Roadway will also maintain in effect directors and officers

Table of Contents

Section 145 of the DGCL authorizes a court to award or a corporation's board of directors to grant indemnification to directors and

Affiliate Agreements

USF has agreed to use its reasonable best efforts to cause each of its affiliates, as defined by Rule 145 under the Securities Act of 1933,

Financing

Approximately \$835 million (based on the number of shares of USF common stock outstanding as of February 27, 2005) will be received

The amended merger agreement does not include a financing condition.

Additional Agreements

The amended merger agreement contains additional agreements between Yellow Roadway and USF relating to, among other things,

Table of Contents

Certain agreements in the amended merger agreement will survive the effective time of the amended merger.

Conditions Precedent

Because approval from Yellow Roadway's stockholders is no longer required in order to consummate the amended merger, the cl

Furthermore, the companies have agreed that the conditions to closing regarding the accuracy of each party's representations and

As a result, the closing conditions to the amended merger are as follows:

Table of Contents

For purposes of the amended merger agreement, material adverse effect is defined to exclude effects resulting from, or arising in

Amended Termination Rights

The companies' rights to terminate the amended merger agreement have been modified to reflect the changes to the closing conditions

As a result, the amended merger agreement may be terminated:

Table of Contents

Amended Termination Fees and Expenses

USF must pay a termination fee of \$26 million to Yellow Roadway if the amended merger agreement is terminated:

Table of Contents

Because approval from Yellow Roadway's stockholders is no longer a condition to closing, the provisions relating to the payment

Whether or not the amended merger is consummated, each of Yellow Roadway, Sub and USF will bear its own costs and expenses

Amendment

Yellow Roadway, Sub and USF may amend the amended merger agreement at any time before the effective time of the amended m

Waiver

Yellow Roadway, Sub and USF may to the extent legally allowed waive compliance with any of the agreements or conditions cont

Table of Contents

General Development of Yellow Roadway's Business

Yellow Roadway Corporation (also referred to in this section as Yellow Roadway, we or our), one of the largest transport

On December 11, 2003, we successfully closed the acquisition of Roadway Corporation (Roadway). Roadway became Roadwa

Incorporated in Delaware in 1983 and headquartered in Overland Park, Kansas, we employed approximately 50,000 people as of D

Yellow Transportation

Yellow Transportation Inc. (Yellow Transportation) is a leading transportation services provider that offers a full range of regio

Yellow Transportation offers a full range of services for the movement of industrial, commercial, and retail goods and provides tra

Yellow Transportation, founded in 1924, serves more than 400,000 manufacturing, wholesale, retail and government customers thr

Table of Contents

and Hawaii. Shipments range from 100 to 40,000 pounds, with an average shipment size of 1,000 pounds traveling an average distance of 1,000 miles.

As of December 31, 2004, approximately 23,000 Yellow Transportation employees are dedicated to operating the system that supports our business.

Based in Overland Park, Kansas, Yellow Transportation accounted for 47% of our total operating revenue in 2004, 92% of our total operating revenue in 2003.

Roadway Express and Reimer Express

Roadway Express

Roadway Express, Inc. ("Roadway Express") is a leading transportation services provider that offers a full range of regional, national and international transportation services.

Founded in 1930, Roadway Express, through its extensive network of 366 terminals with 13,745 doors located throughout North America, provides a wide range of transportation services.

Roadway Express freight services include apparel, appliances, automotive parts, chemicals, food, furniture, glass machinery, metal products, pharmaceuticals, and other goods.

Table of Contents

Roadway Express employed approximately 23,000 employees as of December 31, 2004. At that date, it owned 6,457 tractors and 2

Reimer Express

Founded in 1952, Reimer Express, a wholly owned subsidiary of Roadway Express, offers Canadian shippers a selection of direct

New Penn

Roadway Next Day Corporation owns 100% of New Penn Motor Express, Inc. (*New Penn*), which provides regional, next-day

Founded in 1931, New Penn is a regional, next-day, ground LTL carrier of general commodities. Through a network of 23 termina

Meridian IQ

Meridian IQ, Inc. (*Meridian IQ*) is a non-asset-based global transportation management company that plans and coordinates the

Meridian IQ delivers a wide range of global transportation management services, with the ability to provide customers improved r

Meridian IQ offers the following services:

Table of Contents

At December 31, 2004, Meridian IQ had approximately 650 employees, including 125 located in the U.K. and 20 in Peru. Meridian

On March 1, 2005, Meridian IQ acquired the Shanghai-based GPS Logistics Group. The acquisition, which added the resources of

Yellow Roadway Technologies

Yellow Roadway Technologies, Inc. is headquartered in Overland Park, Kansas and has approximately 300 employees. Yellow Ro

Recent Developments

On April 21, 2005, Yellow Roadway announced results of operations for the quarter ended March 31, 2005. Yellow Roadway rep

Table of Contents

Directors and Executive Officers

The following table sets forth information with respect to each director of Yellow Roadway. No director has any family relationships

Name; Past Service

Cassandra C. Carr

Director since 1997

Howard M. Dean

Director since 1987

Frank P. Doyle

Director since 2003

John F. Fiedler

Director since 2003

Dennis E. Foster

Director since 2000

John C. McKelvey

Director since 1977

Phillip J. Meek

Director since 2003

William L. Trubeck

Director since 1994

Carl W. Vogt

Director since 1996

William D. Zollars

Director since 1999

Table of Contents

The names, ages and positions of the executive officers of Yellow Roadway as of April 15, 2005 are listed below. Officers are app

Name

William D. Zollars

Donald G. Barger, Jr.

Daniel J. Churay

James D. Staley

Robert L. Stull

James L. Welch

Steven T. Yamasaki

Bhadresh A. Sutaria

The terms of each officer of the company designated above are scheduled to expire on May 19, 2005, the date of Yellow Roadway

Table of Contents

Beneficial Ownership of Yellow Roadway's Common Stock

Significant stockholders

As of May 2, 2005, the persons known to us to be beneficial owners of more than 5% of the Company's outstanding shares of common stock are:

-
- (1)
 - (2)
 - (3)
 - (4)
 - (5)

Table of Contents

Directors and Executive Officers

Share ownership of directors and executive officers is as of May 2, 2005, and includes:

Also, see footnote (2) below regarding adjusted amounts and percentages arising out of grants of performance share units.

Name

Cassandra C. Carr

Howard M. Dean

Frank P. Doyle

John F. Fiedler

Dennis E. Foster

John C. McKelvey

Phillip J. Meek

William L. Trubeck

Carl W. Vogt

William D. Zollars

Donald G. Barger, Jr.

James D. Staley

Robert L. Stull

James L. Welch

All Directors and Executive Officers as a Group (17 persons)

- *
- (1)
- (2)

Table of Contents

- (3)
- (4)
- (5)
- (6)
- (7)
- (8)
- (9)

Table of Contents

General Development of USF's Business

USF Corporation (also referred to in this section as "USF," "we" or "our") is a Delaware corporation formed as a holding company.

USF provides comprehensive supply chain management services in four business segments through its operating subsidiaries. In the

In December 2003, we began offering transportation and logistics services in Mexico and across the United States / Mexico border.

In May 2004, we shut down Red Star, our former Northeast carrier. Subsequent to the closure of Red Star we announced plans to enter

On February 25, 2005, USF sold 100% of the stock of USF Processors Inc. for \$4.5 million in cash to Carolina Logistic Services Inc.

LTL Trucking

LTL shipments are defined as shipments of less than 10,000 pounds. Typically, LTL carriers transport freight along scheduled routes.

LTL carriers are generally categorized as regional, interregional or long-haul carriers, depending on the distance freight travels from

Our LTL trucking subsidiaries principally compete against regional, interregional and long-haul LTL carriers. To a lesser degree, we

Table of Contents

airlines. Significant barriers to entry into the regional LTL market exist as a result of the substantial capital requirements for termin

Our LTL trucking subsidiaries three primary LTL service products are USF Premier® (Premier), USF PremierPlus® (PremierPlus

Holland is the largest of our operating subsidiaries, transporting LTL shipments interstate throughout the Central US, Eastern Cana

Truckload Trucking

TL shipments are defined as shipments of 10,000 or more pounds. Typically, TL carriers transport freight along irregular routes fro

Glen Moore transports TL shipments interstate throughout the US generally from the Northeastern and Southeastern states to the W

Logistics Subsidiary

Logistics provides dedicated carriage, cross-dock operations, supply chain management, contractual warehousing, and domestic oc

Logistics has grown through acquisitions in the warehousing industry and start up operations designed to serve large customers sp

Recent Developments

On April 22, 2005, USF announced results of operations for the quarter ended April 2, 2005. USF reported revenues of \$598 millio

Table of Contents

Beneficial Ownership of USF's Common Stock

Except as otherwise noted, the following table sets forth certain information as of May 2, 2005 as to the security ownership of (1) t

Name and Address of Beneficial Owner

FMR Corp.

82 Devonshire Street

Boston, MA 02109

Citigroup Inc.

399 Park Avenue

New York, NY 10043

Dimensional Fund Advisors Inc.

1299 Ocean Avenue, 11th Floor

Santa Monica, CA 90401

AXA Financial, Inc. and affiliates

1290 Avenue of the Americas

New York, NY 10104

Wellington Management Company, LLP

75 State St.

Boston, MA 02109

Mac Per Wolf Company

310 S. Michigan Ave., Suite 2600

Chicago, IL 60604

HYMF Limited

45 Fremont St. 17th Fl.

San Francisco, CA 94105

Paul J. Liska (Executive Chairman)

Morley Koffman

Stephen W. Lilienthal

Anthony J. Paoni

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Michael L. Thompson

Neil A. Springer

Glenn R. Richter

Thomas E. Bergmann

Douglas R. Waggoner

Edward R. Fitzgerald

Steven Caddy

All directors and executive officers as a group (11 persons)

Table of Contents

- *
- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)
- (h)
- (i)
- (j)

Table of Contents

The following unaudited condensed combined pro forma financial statements and explanatory notes have been prepared by Yellow

Upon the effectiveness of the amended merger, each share of USF stock (except those shares owned directly or indirectly by USF

In accordance with Article 11 of Regulation S-X under the Securities Act of 1933, an unaudited condensed combined pro forma ba

The unaudited condensed combined pro forma balance sheet was prepared by combining Yellow Roadway's historical unaudited

The unaudited condensed combined pro forma statement of operations was prepared using the historical consolidated statement of

The unaudited condensed combined pro forma financial statements are prepared for illustrative purposes only, and are not necessar

Table of Contents

The process of valuing USF's tangible and intangible assets and liabilities as well as evaluating accounting policies for conformity

The amended merger had not been consummated as of the preparation of these unaudited condensed combined pro forma financial

Table of Contents

ASSETS

Current assets:

Cash and cash equivalents

Accounts receivable, net

Prepaid expense and other

Deferred income taxes

Total current assets

Property and equipment, at cost

Less: accumulated depreciation

Net property and equipment

Goodwill

Intangibles

Other assets

Total Assets

LIABILITIES AND SHAREHOLDERS' EQUITY

Current liabilities:

Accounts payable

Wages, vacations and employees' benefits

Other current and accrued liabilities

ABS borrowings

Current maturities of long-term debt

Total current liabilities

Long-term liabilities:

Long-term debt, less current portion

Claims and other liabilities

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Accrued pension and postretirement health care
Deferred income taxes

Total long-term liabilities

Total shareholders' equity

Total Liabilities and Shareholders' Equity

Table of Contents

Revenue

Operating expenses:

Salaries, wages and employees' benefits

Operating expenses and supplies

Purchased transportation

Other operating expenses

Operating expenses

Operating income

Interest expense

Other, net

Nonoperating expenses, net

Income from continuing operations before income taxes

Income tax provision

Income from continuing operations

Earnings per share from continuing operations:

Basic

Diluted

Average common shares outstanding:

Basic

Diluted

Table of Contents

(1)

The purchase price is estimated as follows (in thousands, except per share data):

Amended merger agreement consideration of approximately \$1.3 billion, based on a fixed exchange ratio of 0.31584 shares of Yel

*

**

Table of Contents

(2)

(3)

(4)

*

**

(5)

(6)

(7)

(8)

(9)

(10)

(11)

(12)

(13)

(14)

Table of Contents

This summary of the material features and rights of Yellow Roadway's capital stock does not purport to be exhaustive and is qualified by reference to the full text of the applicable provisions of the certificate of incorporation and the charter of the company.

Common Stock

Our certificate of incorporation authorizes the issuance of up to 120,000,000 common shares, par value \$1.00 per share. As of May 31, 2014, we had 11,000,000 common shares outstanding.

Preferred Stock

Our certificate of incorporation authorizes the issuance of up to 5,000,000 shares of preferred stock, par value \$1.00 per share. As of May 31, 2014, we had no preferred shares outstanding.

Delaware Anti-Takeover Law

We are a Delaware corporation subject to Section 203 of the Delaware General Corporation Law. Under Section 203, certain business combinations involving a corporation that is subject to Section 203 are prohibited unless the corporation has first obtained the approval of a majority of its independent directors.

Table of Contents

The three-year prohibition also does not apply to some business combinations proposed by an interested stockholder following the

Under the Delaware General Corporation Law, the term "business combination" is defined generally to include mergers or consol

Anti-Takeover Effects of Our Certificate of Incorporation and Bylaws

In addition, our certificate of incorporation provides that certain "business combinations" require an affirmative vote of holders of

Our certificate of incorporation also contains restrictions on such business combinations by requiring the approval of a majority of

The term "business combination" is defined in our certificate of incorporation generally to include any merger or consolidation of

Our certificate of incorporation also provides that stockholders may act only at an annual or special meeting of stockholders and no

Table of Contents

As a result of the amended merger, the holders of USF common stock will become holders of Yellow Roadway common stock. The

The following is a summary of the material differences between the rights of Yellow Roadway stockholders and USF stockholders

The following summaries do not provide a complete description of the specific rights of Yellow Roadway stockholders under its c

Authorized Capital Stock. Under USF's certificate of incorporation, USF is authorized to issue 100,000,000 shares consisting of

Combinations with Interested Stockholders. The Yellow Roadway certificate of incorporation permits business combinations

Table of Contents

As used in the Yellow Roadway certificate of incorporation, a business combination includes:

Table of Contents

Neither USF's bylaws nor its certificate of incorporation contains a similar provision.

Arrangements Between the Corporation and Others. Under Yellow Roadway's certificate of incorporation, arrangements or co

Under USF's bylaws, a contract or transaction between USF and one or more of its directors, or between USF and any other corpo

Stockholder Meetings

Annual Meetings

Under Yellow Roadway's bylaws, annual meetings of stockholders must be held on a date as fixed annually by Yellow Roadway

Special Meetings

Under Yellow Roadway's bylaws, a special meeting of the stockholders may be called by the Chairman of the Board, the Chief E

Table of Contents

Notice of Meetings to Stockholders. Both Yellow Roadway s and USF s bylaws, as well as Yellow Roadway s certificate of in

Adjournment and Notice of Adjournment of Stockholder Meetings. Under Yellow Roadway s bylaws, if a quorum fails to att

Quorum at a Stockholder Meeting. Under Yellow Roadway s bylaws, the holders of a majority of the outstanding shares entitle

Notice of Stockholder Business. Yellow Roadway s bylaws provide that notice of business to be brought by a particular stockhol

USF s bylaws provide that notice of stockholder business must be delivered to or by mailed and received at USF s principal execu

Table of Contents

Proxies and Voting. Under Yellow Roadway's bylaws, each stockholder has one vote for every share of stock. Both USF's bylaws

Yellow Roadway's bylaws provide that all voting may be by a voice vote unless a stock vote is demanded. The certificate of incorporation

Under Yellow Roadway's bylaws, all elections must be determined by a plurality of the votes cast, and all other matters, except as otherwise

Nomination of Directors. Under Yellow Roadway's bylaws, written nominations must be properly delivered or mailed not less than 30 days

Proper nominations of candidates for Yellow Roadway's board of directors must include the name, age, and certain addresses of the candidates

Table of Contents

traded. Such nominations of candidates for USF's board of directors must also include the name and address of the stockholder making the nomination.

Number of Directors on Board. Yellow Roadway's certificate of incorporation provides that the board of directors may, from time to time, increase or decrease the number of directors to any number between one and 15, provided that there are always a majority of directors who are independent members.

Vacancies of Directors. Vacant positions on Yellow Roadway's board of directors, under Yellow Roadway's bylaws and certificate of incorporation, may be filled by the affirmative vote of a majority of the board of directors.

Removal of Directors. A director of Yellow Roadway, under Yellow Roadway's bylaws, may be removed for cause by a majority vote of the board of directors.

Quorum of the Board of Directors. The bylaws of Yellow Roadway provide that one-third of the total number of the whole board of directors shall constitute a quorum for the transaction of business.

Amendment of Bylaws. The Yellow Roadway bylaws may be amended by the affirmative vote at an annual or special meeting of the stockholders of a majority of the votes cast by the holders of a majority of the outstanding shares of common stock.

Amendment of Certificates of Incorporation. Under the USF certificate of incorporation, the company reserves the right to amend its certificate of incorporation at any time by a majority vote of the board of directors.

Table of Contents

Yellow Roadway currently has in place a \$450 million receivables financing facility secured by certain receivables of Yellow Tran

In addition to the proposed financings, following consummation of the amended merger, USF, as a subsidiary of Yellow Roadway

The validity of the shares of Yellow Roadway common stock to be issued in the amended merger have been passed on for Yellow

The consolidated financial statements and schedule of Yellow Roadway as of December 31, 2004 and 2003, and for each of the ye

The consolidated financial statements of USF and subsidiaries as of December 31, 2004 and 2003, and for each of the three years i

Table of Contents

USF does not currently expect to hold a 2005 annual meeting of stockholders, except in the case where the amended merger agree

Stockholder proposals submitted for evaluation as to inclusion in the proxy materials for USF's 2005 annual meeting of stockhold

Stockholder proposals submitted outside the processes of Rule 14a-8 must be received by the Secretary of USF in a timely fashion

Yellow Roadway and USF file annual, quarterly and current reports, proxy statements and other information with the Securities and

Please call the Securities and Exchange Commission at 1-800-SEC-0330 for further information on the operation of the public refe

The Yellow Roadway common stock and the USF common stock are traded on the Nasdaq National Market under the symbols Y

Yellow Roadway's and USF's Securities and Exchange Commission filings are also available to the public on the Securities and

Table of Contents

We incorporate by reference into this proxy statement/prospectus the documents listed below and any future filings Yellow Roadw

The documents incorporated by reference into this proxy statement/prospectus are available from us upon request. We will provide

Table of Contents

Table of Contents

ARTICLE I

- 1.1.
- 1.2.
- 1.3.

ARTICLE II

- 2.1.
- 2.2.

ARTICLE III

- 3.1.
- 3.2.

ARTICLE IV

- 4.1.
- 4.2.
- 4.3.
- 4.4.
- 4.5.
- 4.6.
- 4.7.
- 4.8.
- 4.9.
- 4.10.
- 4.11.

ARTICLE V

- 5.1.
- 5.2.

ARTICLE VI

- 6.1.
- 6.2.
- 6.3.
- 6.4.
- 6.5.
- 6.6.
- 6.7.
- 6.8.
- 6.9.
- 6.10.
- 6.11.
- 6.12.
- 6.13.
- 6.14.
- 6.15.
- 6.16.
- 6.17.

ARTICLE VII

- 7.1.
- 7.2.

Table of Contents

7.3.

ARTICLE VIII

8.1.

8.2.

8.3.

8.4.

8.5.

ARTICLE IX

9.1.

9.2.

9.3.

9.4.

9.5.

9.6.

9.7.

9.8.

9.9.

9.10.

9.11.

9.12.

9.13.

Table of Contents

Terms

Acquisition Proposal
Adverse Recommendation Notice
Affiliates
Agreement
Alternative Acquisition Agreement
Amendment Date
Articles of Incorporation
Bankruptcy and Equity Exception
Cash Consideration
Certificates
Change in Company Recommendation
CIC Agreement
Closing
Closing Date
Code
Company
Company Balance Sheet Date
Company Board
Company Common Stock
Company Compensation and Benefit Plans
Company Disclosure Letter
Company ERISA Affiliate
Company Health Plan
Company Material Adverse Effect
Company Multiemployer Plans
Company Option
Company Reports
Company Stockholder Approval
Company Stockholders Meeting
Company Stock Plans
Company Tax Party
Confidentiality Agreement
Constituent Entities
Continuing Employees
Contracts
Costs
Current Premium
Current Year
D&O Insurance
Deemed Per Share Merger Consideration
Delaware Certificate of Merger
DGCL
Dissenters Shares
Effective Time
Environmental Law
ERISA
Exchange Act
Exchange Agent
Exchange Fund

Table of Contents

Terms

Exchange Ratio
Excluded Shares
GAAP
Governmental Entity
Government Antitrust Entity
Hazardous Substance
HSR Act
IFL
Indemnified Parties
IP Rights
IRS
Laws
Lien
Merger
Merger Consideration
Merger Sub
Morgan Stanley
Nasdaq National Market
Order
Parent
Parent Balance Sheet Date
Parent Board
Parent Closing Price
Parent Common Stock
Parent Compensation and Benefit Plans
Parent Disclosure Letter
Parent ERISA Affiliate
Parent Material Adverse Effect
Parent Multiemployer Plans
Parent Preferred Stock
Parent Reports
Parent Stock Plans
Parent Tax Party
Parent Voting Debt
Past Service
PBGC
Person
Potential Superior Proposal
Preferred Shares
Proxy Statement/Prospectus
Proxy Statement/Prospectus Supplement
PSU
Representatives
Restricted Share
Rights
Rights Agreement
S-4 Registration Statement
Sarbanes-Oxley Act
SARS
SEC
Securities Act

Table of Contents

Terms

Share
Shares
Stock Consideration
Subsidiary
Superior Proposal
Surviving Entity
Takeover Statute
Tax
Taxable
Taxes
Tax Return
Termination Date
Termination Fee
to the Knowledge of Parent
to the Knowledge of the Company
Transferee
Voting Debt

Table of Contents

This Agreement and Plan of Merger (this *Agreement*) is dated as of February 27, 2005 and as amended as of May 1, 2005 (the

WHEREAS, the respective boards of directors of each of Parent and the Company and the sole member of Merger Sub have appro

WHEREAS, the Company, Parent and Merger Sub desire to make certain representations, warranties, covenants and agreements in

NOW, THEREFORE, in consideration of the premises, and of the representations, warranties, covenants and agreements containe

1.1. *The Merger.* Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time (as defined in Sec

1.2. *Closing.* Unless otherwise mutually agreed in writing between the Company and Parent, the closing of the Merger (the *Closi*

1.3. *Effective Time.* As soon as practicable following the Closing, the Company and Parent will cause a Certificate of Merger (the

2.1. *Articles of Incorporation.* The articles of incorporation of the Company as in effect immediately prior to the Effective Time sh

Table of Contents

until thereafter amended as provided therein or by applicable Law (as defined in Section 5.1(j)), except that Article Fourth shall be

2.2. *By-Laws*. The by-laws of the Company as in effect at the time Effective Time shall be the by-laws of the Surviving Entity, unt

3.1. *Directors*. Prior to the Effective Time the members of the Board of Directors of the Company shall tender their resignations, e

3.2. *Officers*. From and after the Effective Time, the persons set forth on Exhibit A-2 attached hereto shall be the officers of the Su

4.1. *Effect on Capital Stock and Membership Interests*. As of the Effective Time, by virtue of the Merger and without any action or

(a) *Membership Interests of Merger Sub*. Each issued and outstanding membership interest of Merger Sub shall be converted into a

(b) *Cancellation of Excluded Shares*. Each share of common stock, par value \$0.01 per share, of the Company (*Company Common*

(c) *Conversion of Company Common Stock*. Subject to the provisions of Section 4.4, each share of Company Common Stock, toge

(x) 0.31584 (the *Exchange Ratio*) fully paid, non-assessable shares of Parent Common Stock (as defined below) (the *Stock Co*

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(y) \$29.25 in cash from Parent (the *Cash Consideration* and, together with the Stock Consideration, the *Merger Consideration*)

Table of Contents

For purposes of this Agreement, **Parent Common Stock** shall mean the common stock, \$1.00 par value per share, of Parent.

(d) *Adjustments to Prevent Dilution.* In the event that the Company changes the number of Shares or securities convertible or exchangeable into Shares, the number of Shares shall be adjusted so that the aggregate number of Shares shall be equal to the number of Shares that would have been outstanding if the Company had not changed the number of Shares or securities convertible or exchangeable into Shares.

4.2. Surviving Entity To Make Certificates Available.

(a) *Exchange of Certificates.* The Company and Parent shall authorize UMB Bank, N.A. (or such other bank or trust company in the United States as the Company may designate) as the Exchange Agent to exchange certificates for the Company's common stock.

(b) *Exchange Procedures.*

(i) As soon as reasonably practicable after the Effective Time, the Exchange Agent will mail to each holder of record of a Certificate for the Company's common stock a new certificate for the same number of shares of common stock.

(ii) After the Effective Time, upon surrender in accordance with this Section 4.2(b) of a Certificate for cancellation to the Exchange Agent, the Exchange Agent will issue a new certificate for the same number of shares of common stock.

Table of Contents

contemplated by this Section 4.2(b), each Certificate will be deemed at any time after the Effective Time to represent only the right

4.3. *Dividends; Transfer Taxes.* No dividends or other distributions that are declared on or after the Effective Time on Parent Common

4.4. *No Fractional Shares.* No certificates or scrip representing fractional shares of Parent Common Stock shall be issued upon the

4.5. *Return of Exchange Fund.*

(a) Any portion of the Exchange Fund that remains undistributed to the former stockholders of the Company for one year after the

Table of Contents

Parent for payment of their claim for Parent Common Stock, Cash Consideration, any cash in lieu of fractional shares of Parent Co

(b) The Exchange Agent shall invest any cash included in the Exchange Fund as directed by Parent; *provided*, that, for the two-mo

4.6. *Further Ownership Rights in Shares.* All shares of Parent Common Stock issued, and all Cash Consideration paid, upon the su

4.7. *Lost Certificates.* If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the

4.8. *Withholding Rights.* Each of the Surviving Entity and Parent shall be entitled to deduct and withhold from the consideration ot

4.9. *Closing of the Company Transfer Books.* At the Effective Time, the stock transfer books of the Company shall be closed and n

4.10. *Dissenters' Shares.* Notwithstanding any provision of this Agreement to the contrary, Shares that are issued and outstanding

Table of Contents

limitation, Section 262 thereof (the Dissenters Shares) will not be exchangeable for the right to receive the Merger Consideration.

4.11. *Treatment of Stock Options, Restricted Stock and Phantom Stock Awards.*

(a) *Treatment of Stock Options.* Each option to purchase Shares granted under a Company Stock Plan (as defined in Section 5.1(b))

(b) *Treatment of Restricted Stock.* Each share of restricted stock granted under a Company Stock Plan that is outstanding immediately

(c) *Treatment of Phantom Stock.* At the Effective Time, each PSU (as defined in Section 5.1(b)) granted under a Company Stock Plan

Table of Contents

5.1. *Representations and Warranties of the Company.* Except as set forth in the disclosure letter delivered to Parent by the Company

(a) *Organization, Good Standing and Qualification.* Each of the Company and its Subsidiaries (as defined below) is a corporation,

As used in this Agreement, (i) the terms as of the date hereof, as of the date of this Agreement, on the date hereof and on

(A) changes that are the result of general economic, capital market, regulatory, political or business conditions or acts of war or terrorism

(B) changes that are the result of factors generally affecting the industries or markets in which the Company operates to the extent

(C) changes in the Company's relationships with its employees or with any labor organization or other representative of such employees

(D) any adverse change, effect or circumstance resulting from entering into this Agreement or the announcement thereof or the performance

(E) changes in applicable law, rule or regulations or generally accepted accounting principles or the interpretation thereof after the

Table of Contents

(F) any out of pocket expenses (including filing fees and legal expenses specifically with respect to any litigation arising from the

(b) *Capital Structure*. As of the date of this Agreement, the authorized capital stock of the Company consists of 80,000,000 Shares

(collectively, the *Company Stock Plans*), (ii) 1,830,326 Shares were reserved for issuance pursuant to Company Options not yet

Table of Contents

evidencing such rights are authorized, issued or outstanding. The Company does not have outstanding any bonds, debentures, notes

(c) *Corporate Authority; Approval and Fairness.*

(i) The Company has all requisite corporate power and authority and has taken all corporate action necessary in order to execute, d

(ii) The Board of Directors of the Company (the *Company Board*), at a meeting duly called and held, (A) as of February 27, 200

(d) *Governmental Filings; No Violations; Certain Contracts, Etc.*

(i) Other than the filings and/or notices (A) pursuant to Section 1.3, (B) under the HSR Act, the Exchange Act and the Securities A

(ii) The execution, delivery and performance of this Agreement by the Company do not, and the consummation by the Company o

Table of Contents

properties of the Company or any of its Subsidiaries (with or without notice, lapse of time or both) pursuant to any agreement, lease

(iii) Each oral or written material contract required to be filed by the Company pursuant to Item 601(a) of SEC Regulation S-K as a

(e) *Company Reports; Financial Statements.*

(i) The Company has delivered to Parent each registration statement, report, proxy statement or information statement prepared by

(ii) The Company is in compliance in all material respects with (A) the applicable provisions of the Sarbanes-Oxley Act of 2002, a

(f) *Absence of Certain Changes.* Except as disclosed in the Company Reports filed with the SEC prior to the date of this Agreement

Table of Contents

engaged in any material transaction other than according to, the ordinary course of such businesses consistent with past practice and

(g) *Litigation*. There are no civil, criminal or administrative actions, suits, claims, hearings, investigations or proceedings pending

(h) *No Undisclosed Material Liabilities*. Neither the Company nor any of its Subsidiaries has any liabilities or obligations, whether

(i) liabilities or obligations (A) disclosed or provided for in the Company's balance sheet as of the Company Balance Sheet Date or

(ii) liabilities or obligations which, individually and in the aggregate, have not had and are not reasonably likely to have a Company

(iii) liabilities or obligations incurred in the ordinary course of business consistent with past practice; or

(iv) liabilities or obligations under this Agreement or incurred in connection with the transactions contemplated hereby.

(i) *Employee Benefits*.

(i) Section 5.1(i)(i) of the Company Disclosure Letter contains a complete and correct list of all *Company Compensation and Benefits*

Table of Contents

plans, agreements and arrangements that are maintained or contributed to by the Company, any of its Subsidiaries or any Person (w

(ii) With respect to each Company Compensation and Benefit Plan, the Company has heretofore made available to Parent, as appli

(A) each Company Compensation and Benefit Plan and any amendments thereto (or if the Company Compensation and Benefit Pl

(B) the most recent annual Form 5500 report filed with the Internal Revenue Service (the *IRS*);

(C) the most recent statement filed with the Department of Labor pursuant to 29 C.F.R. Section 2520.104-23;

(D) the most recent annual Form 990 and 1041 reports filed with the IRS;

(E) the most recent actuarial report;

(F) the most recent report prepared in accordance with Statement of Financial Accounting Standards No. 87;

(G) the most recent summary plan description and summaries of material modifications thereto;

(H) the trust agreement, group annuity contract or other funding agreement that provides for the funding of a Company Compensat

(I) the most recent financial statement for a Company Compensation and Benefit Plan;

(J) the most recent determination letter received from the IRS with respect to each Company Compensation and Benefit Plan that i

(K) any agreements directly relating to a Company Compensation and Benefit Plan pursuant to which the Company is obligated to

(iii) No asset of the Company, any Subsidiary or any Company ERISA Affiliate is the subject of any Lien arising under Section 30

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(iv) The Pension Benefit Guaranty Corporation (the *PBGC*) has not instituted proceedings to terminate any Company Compens

(v) No pension benefit plan as defined in Section 3(2) of ERISA that is maintained or contributed to by the Company, any Subsidia

Table of Contents

- (vi) Except as would not, individually or in the aggregate, reasonably be likely to have a Company Material Adverse Effect, (A) ne

- (vii) Except as would not, individually or in the aggregate, reasonably be likely to have a Company Material Adverse Effect, each

- (viii) Each Company Compensation and Benefit Plan that is intended to qualify under Section 401(a) of the Code has received a fa

- (ix) No Company Compensation and Benefit Plan provides medical, surgical or hospitalization benefits (whether or not insured by

- (x) The consummation of the transactions contemplated by this Agreement, either alone or in conjunction with another event (such

- (xi) Except as would not, individually or in the aggregate, reasonably be likely to have a Company Material Adverse Effect, there i

- (xii) Except as would not, individually or in the aggregate, reasonably be likely to have a Company Material Adverse Effect, (A) n

- (xiii) Except as would not, individually or in the aggregate, reasonably be likely to have a Company Material Adverse Effect, none

Table of Contents

Plan that would, individually or in the aggregate, reasonably be likely to have a Company Material Adverse Effect.

(xiv) To the Knowledge of the Company, no Company Multiemployer Plan is the subject of any proceeding brought by the PBGC

(xv) The most recent financial statements and actuarial reports, if any, for the Company Compensation and Benefit Plans reflect th

(xvi) None of the Company, any of its Subsidiaries or any Company ERISA Affiliate has entered into, or made any premium paym

(xvii) Except as would not, individually or in the aggregate, reasonably be likely to have a Company Material Adverse Effect, no C

(xviii) Except as would not have a Company Material Adverse Effect, (i) none of the Company, any of its Subsidiaries or any Com

(xix) Except as would not, individually or in the aggregate, reasonably be likely to have a Company Material Adverse Effect, each

(xx) No Company Compensation and Benefit Plan is funded by a trust that meets the requirements of Rev. Proc. 92-64 (a *rabbi tr*

(j) *Compliance with Laws; Permits.* Since January 1, 2001, the businesses of each of the Company and its Subsidiaries have not be

Table of Contents

Material Adverse Effect or prevent or materially impair the ability of the Company to consummate the transactions contemplated b

(k) *Takeover Statutes*. No fair price, moratorium, control share acquisition or other similar anti-takeover statute or regulat

(l) *Environmental Matters*. Except for such matters that, individually or in the aggregate, are not reasonably likely to have a Comp

As used herein, the term *Environmental Law* means any federal, state, local or foreign statute, law, regulation, order, decree, per

As used herein, the term *Hazardous Substance* means any substance that is listed, classified or regulated pursuant to any Enviro

(m) *Intentionally Omitted*.

(n) *Taxes*. The Company, each of its Subsidiaries and, to the Knowledge of the Company, any affiliated, combined or unitary group

Table of Contents

Company, threatened in writing, any audits, examinations, investigations or other proceedings in respect of Taxes or Tax matters. 7

As used in this Agreement, (i) the term *Tax* (including, with correlative meaning, the terms *Taxes* , and *Taxable*) includes

(o) *Labor Matters*. As of the date of this Agreement:

(i) set forth in Section 5.1(o)(i) of the Company Disclosure Letter is a listing of each of the collective bargaining agreements or oth

(ii) there is no unfair labor practice charge filed with the National Labor Relations Board or complaint pending or, to the Knowledge

(iii) there is no labor strike, material slowdown, material work stoppage or other material labor controversy in effect or, to the Kno

(iv) except as disclosed in the Company Reports filed with the SEC prior to the date of this Agreement, no union certification or d

Table of Contents

service of process having been made on the Company or any of its Subsidiaries), that relates to employees of the Company or any

(v) Section 5.1(o)(v) of the Company Disclosure Letter sets forth all grievance proceedings pending before the National Grievance

(vi) neither the Company nor any of its Subsidiaries is a party to, or is otherwise bound by, any consent decree with any Governme

(vii) the Company and each of its Subsidiaries is in compliance with all applicable agreements, contracts and policies relating to er

Solely for purposes of this subsection (o), clause (C) of the definition of *Company Material Adverse Effect* shall not apply.

As used in this Agreement, the term *Affiliates* shall have the same meaning as the term *affiliates* as defined by Rule 12b-2 un

(p) *Insurance*. The Company has made available to Parent an insurance schedule of the Company's and its Subsidiaries' directors

(q) *Intellectual Property*.

(i) The Company and/or each of its Subsidiaries owns, is licensed or otherwise possesses legally enforceable rights to use all (A) tr

Table of Contents

(ii) The Surviving Entity will, as of the Effective Time, have legally enforceable license rights or other valid rights to use all of the

(iii) Except as would not, individually or in the aggregate, reasonably be likely to have a Company Material Adverse Effect, (A) th

(iv) Neither the Company nor any of its Subsidiaries has been advised in writing that the conduct of the business of the Company a

(v) To the Knowledge of the Company, no third party has in the past three years infringed, misappropriated or otherwise violated,

(vi) The consummation of the transactions contemplated hereby will not conflict with, alter or impair any of the Company s or its

(r) *Owned and Leased Properties.*

(i) The Company and each of its Subsidiaries has such good and indefeasible title to all owned real property and such good and val

(ii) Except for such matters that, individually or in the aggregate, are not reasonably likely to have a Company Material Adverse E

(s) *Rights Agreement.* Parent shall not constitute an Acquiring Person (as defined in the Rights Agreement) and the Rights will n

(t) *Brokers and Finders.* Neither the Company nor any of its officers, directors or employees has employed any broker or finder or

Table of Contents

5.2. *Representations and Warranties of Parent and Merger Sub.* Except as set forth in the disclosure letter delivered to the Company

(a) *Organization, Good Standing and Qualification.* Each of Parent and its Subsidiaries is a corporation, limited liability company

As used in this Agreement, the term *Parent Material Adverse Effect* means a material adverse effect on the financial condition,

(i) changes that are the result of general economic, capital market, regulatory, political or business conditions or acts of war or terrorism

(ii) changes that are the result of factors generally affecting the industries or markets in which Parent operates to the extent such changes

(iii) changes in Parent's relationships with its employees or with any labor organization or other representative of such employees

(iv) any adverse change, effect or circumstance resulting from entering into this Agreement or the announcement thereof or the performance

(v) changes in applicable law, rule or regulations or generally accepted accounting principles or the interpretation thereof after the

(vi) any out of pocket expenses (including filing fees and legal expenses specifically with respect to any litigation arising from the

(b) *Capitalization of Merger Sub.* All of the issued and outstanding membership interests of Merger Sub are, and at the Effective Time

Table of Contents

no obligations of Merger Sub to issue, any membership interests, voting securities or securities convertible into or exchangeable for

(c) *Capital Structure of Parent.* As of the date of this Agreement, the authorized capital stock of Parent consists of 120,000,000 shares

(d) *Corporate Authority; Approval and Fairness.*

(i) Each of Parent and Merger Sub has all requisite corporate power and authority and has taken all corporate action necessary in order

(ii) The Board of Directors of Parent (the *Parent Board*), at a meeting duly called and held, (A) as of February 27, 2005 and as of

Table of Contents

cause Parent, as the sole member of Merger Sub, to approve and adopt this Agreement and (B) has received the written opinions of

(iii) The affirmative vote of Parent, as the sole equity holder of outstanding membership interests of Merger Sub, is the only vote of

(iv) Prior to the Effective Time, Parent will have taken all necessary action to permit it to issue the number of shares of Parent Com

(e) *Governmental Filings; No Violations; Certain Contracts; Etc.*

(i) Other than the filings and/or notices (A) pursuant to Section 1.3, (B) under the HSR Act, the Securities Act and the Exchange A

(ii) The execution, delivery and performance of this Agreement by Parent and Merger Sub do not, and the consummation by Paren

(iii) Each oral or written material contract required to be filed by Parent pursuant to Item 601(a) of SEC Regulation S-K as of the d

(f) *Parent Reports; Financial Statements.*

(i) Parent has delivered to the Company each registration statement, report, proxy statement or information statement prepared by t

Table of Contents

website, including (i) Parent's Annual Report on Form 10-K for the year ended December 31, 2003, and (ii) Parent's Quarterly R

(ii) Parent is in compliance in all material respects with (A) the applicable provisions of the Sarbanes-Oxley Act and (B) the applic

(g) *Absence of Certain Changes*. Except as disclosed in the Parent Reports filed with the SEC prior to the date of this Agreement o

(h) *Litigation*. There are no civil, criminal or administrative actions, suits, claims, hearings, investigations or proceedings pending

Table of Contents

(i) *No Undisclosed Material Liabilities.* None of Parent, Merger Sub nor any of Parent's Subsidiaries has any liabilities or obligations

(i) liabilities or obligations (A) disclosed or provided for in Parent's balance sheet as of the Parent Balance Sheet Date or (B) disclosed

(ii) liabilities or obligations which, individually and in the aggregate, have not had and are not reasonably likely to have a Material

(iii) liabilities or obligations incurred in the ordinary course of business consistent with past practice; or

(iv) liabilities or obligations under this Agreement or incurred in connection with the transactions contemplated hereby.

(j) *Employee Benefits.*

(i) Section 5.2(j)(i) of the Parent Disclosure Letter contains a complete and correct list of all Parent Compensation and Benefit Plans

(ii) With respect to each Parent Compensation and Benefit Plan, Parent has heretofore made available to the Company, as applicable

(A) each Parent Compensation and Benefit Plan and any amendments thereto (or if the Parent Compensation and Benefit Plan is not

(B) the most recent annual Form 5500 report filed with the IRS;

(C) the most recent statement filed with the Department of Labor pursuant to 29 C.F.R. Section 2520.104-23;

(D) the most recent annual Form 990 and 1041 reports filed with the IRS;

(E) the most recent actuarial report;

(F) the most recent report prepared in accordance with Statement of Financial Accounting Standards No. 87;

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(G) the most recent summary plan description and summaries of material modifications thereto;

(H) the trust agreement, group annuity contract or other funding agreement that provides for the funding of a Parent Compensation

(I) the most recent financial statement for a Parent Compensation and Benefit Plan;

Table of Contents

(J) the most recent determination letter received from the IRS with respect to each Parent Compensation and Benefit Plan that is in

(K) any agreements directly relating to a Parent Compensation and Benefit Plan pursuant to which Parent is obligated to indemnify

(iii) No asset of Parent, any of Parent's Subsidiaries or any Parent ERISA Affiliate is the subject of any Lien arising under Section

(iv) The PBGC has not instituted proceedings to terminate any Parent Compensation and Benefit Plan that is subject to Title IV of

(v) No pension benefit plan as defined in Section 3(2) of ERISA that is maintained or contributed to by Parent, any Subsidiary of P

(vi) Except as would not, individually or in the aggregate, reasonably be likely to have a Parent Material Adverse Effect, (A) neither

(vii) Except as would not, individually or in the aggregate, reasonably be likely to have a Parent Material Adverse Effect, each Par

(viii) Each Parent Compensation and Benefit Plan that is intended to qualify under Section 401(a) of the Code has received a favor

(ix) No Parent Compensation and Benefit Plan provides medical, surgical or hospitalization benefits (whether or not insured by a th

(x) The consummation of the transactions contemplated by this Agreement, either alone or in conjunction with another event that (

Table of Contents

- (xi) Except as would not, individually or in the aggregate, reasonably be likely to have a Parent Material Adverse Effect, there is no
- (xii) Except as would not, individually or in the aggregate, reasonably be likely to have a Parent Material Adverse Effect, (A) none of
- (xiii) Except as would not, individually or in the aggregate, reasonably be likely to have a Parent Material Adverse Effect, none of
- (xiv) To the Knowledge of Parent, no Parent Multiemployer Plan is the subject of any proceeding brought by the PBGC and none of
- (xv) The most recent financial statements and actuarial reports, if any, for the Parent Compensation and Benefit Plans reflect the fi
- (xvi) None of Parent, any of its Subsidiaries or any Parent ERISA Affiliate has entered into, or made any premium payments with
- (xvii) Except as would not, individually or in the aggregate, reasonably be likely to have a Parent Material Adverse Effect, no Pare
- (xviii) Except as would not have a Parent Material Adverse Effect, (i) none of Parent, any of its Subsidiaries or any Parent ERISA

Table of Contents

(xix) Except as would not, individually or in the aggregate, reasonably be likely to have a Parent Material Adverse Effect, each Par

(k) *Compliance with Laws; Permits.* Since January 1, 2001, the businesses of each of Parent and its Subsidiaries have not been, and

(l) *Environmental Matters.* Except for such matters that, individually or in the aggregate, are not reasonably likely to have a Parent

(m) *Intentionally Omitted.*

(n) *Taxes.* Parent, each of its Subsidiaries and, to the Knowledge of Parent, any affiliated, combined or unitary group of which Par

Table of Contents

material Tax liability that are not disclosed or provided for in the Parent Reports filed with the SEC prior to the date of this Agreement

(o) *Labor Matters*. As of the date of this Agreement:

(i) Parent and its Subsidiaries are in compliance with each of the collective bargaining agreements or other material contracts or agreements

(ii) there is no unfair labor practice charge filed with the National Labor Relations Board or complaint pending or, to the Knowledge of Parent

(iii) there is no labor strike, material slowdown, material work stoppage or other material labor controversy in effect or, to the Knowledge of Parent

(iv) except as disclosed in the Parent Reports filed with the SEC prior to the date of this Agreement, no union certification or decertification

(v) Section 5.2(o)(v) of the Parent Disclosure Letter sets forth all grievance proceedings pending before the National Grievance Commission

(vi) neither Parent nor any of its Subsidiaries is a party to, or is otherwise bound by, any consent decree with any Governmental Entity

(vii) Parent and each of its Subsidiaries is in compliance with all applicable agreements, contracts and policies relating to employment

Table of Contents

the employees except those failures to comply that are not, individually or in the aggregate, reasonably likely to have a Parent Material

Solely for purposes of this subsection (o), clause (iii) of the definition of "Parent Material Adverse Effect" shall not apply.

(p) *Ownership of Shares.* Neither Parent nor any of its Subsidiaries "Beneficially Owns" or is the "Beneficial Owner" of (as such

(q) *Insurance.* Parent has made available to the Company an insurance schedule of Parent's and its Subsidiaries' directors' and o

(r) *Intellectual Property.*

(i) Parent and/or each of its Subsidiaries owns, is licensed or otherwise possesses legally enforceable rights to use all IP Rights that

(ii) Except as would not, individually or in the aggregate, reasonably be likely to have a Parent Material Adverse Effect, (A) the IP

(iii) Neither Parent nor any of its Subsidiaries has been advised in writing that the conduct of the business of Parent and its Subsidi

(iv) To the Knowledge of Parent, no third party has in the past three years infringed, misappropriated or otherwise violated, nor is o

(v) The consummation of the transactions contemplated hereby will not conflict with, alter or impair any of Parent's or its Subsidi

(s) *Owned and Leased Properties.*

(i) Parent and each of its Subsidiaries has such good and indefeasible title to all owned real property and such good and valid title t

Table of Contents

individually or in the aggregate, are not reasonably likely to materially interfere with Parent's and its Subsidiaries' operations of s

(ii) Except for such matters that, individually or in the aggregate, are not reasonably likely to have a Parent Material Adverse Effect

(t) *Brokers and Finders*. Neither Parent nor any of its officers, directors or employees has employed any broker or finder or incurred

(u) *Available Funds*. Parent has available to it sufficient funds to perform all of its obligations under this Agreement, to consummate

6.1. *Interim Operations*.

(a) *Interim Operations of the Company*.

(i) *Ordinary Course*. During the period from the date of this Agreement to the Effective Time (except as otherwise expressly provided

(A) (I) other than regularly scheduled quarterly dividends not to exceed \$0.093333 per share of Company Common Stock per fiscal

(B) issue, deliver, grant, sell, pledge, dispose of or otherwise encumber any of its capital stock or any securities convertible into, or

Table of Contents

Company Voting Debt (other than the issuance of Shares upon the exercise of Company Options outstanding on the date of this Agreement);

(C) amend the Company's certificate of incorporation or bylaws;

(D) acquire or agree to acquire (I) by merging or consolidating with, or by purchasing a substantial portion of the stock, or other ownership interest, of (I);

(E) sell, lease, mortgage, pledge, grant a Lien on or otherwise encumber or dispose of any of its properties or assets, except (I) in the ordinary course of business;

(F) (I) incur any indebtedness for borrowed money or guarantee any such indebtedness of another Person, issue or sell any debt securities, or otherwise incur any financial obligations, except (I) in the ordinary course of business;

(G) except for capital expenditures in compliance with the amounts and timing included in the Company's written capital expenditure budget, incur any capital expenditures, except (I) in the ordinary course of business;

(H) make any material election relating to Taxes or settle or compromise any material Tax liability;

(I) except to the extent permitted by Section 6.2(a) of this Agreement, waive the benefits of, or agree to modify in any manner, any provision of this Agreement, except (I) in the ordinary course of business;

(J) restructure, recapitalize, reorganize or completely or partially liquidate or adopt a plan of complete or partial liquidation or adoption of a plan of liquidation, except (I) in the ordinary course of business;

(K) enter into any new collective bargaining agreement, including any collective bargaining agreement involving unions in more than one jurisdiction, except (I) in the ordinary course of business;

(L) change any accounting principle used by it, except as required by applicable Laws or GAAP;

(M) (I) settle or compromise (x) any litigation, administrative proceeding, claim or charge before or with the National Labor Relations Board or any state or federal court, or (y) any litigation, administrative proceeding, claim or charge before or with the National Labor Relations Board or any state or federal court, except (I) in the ordinary course of business;

Table of Contents

prior to the date of this Agreement or entered into in the ordinary course after the date of this Agreement, pay, discharge or satisfy

(N) (I) enter into any new, or amend any existing, retention or severance agreement or arrangement, deferred compensation arrang

(O) authorize any of, or commit or agree to take any of, the foregoing actions.

(ii) *Other Actions.* The Company shall not take any action or omit to take any action that could reasonably be expected to cause an

(b) *Interim Operations of Parent.*

(i) *Ordinary Course.* During the period from the date of this Agreement to the Effective Time (except as otherwise expressly provi

(A) (I) declare, set aside or pay any dividends on, or make any other distributions in respect of, any of its capital stock or (II) split,

(B) issue, deliver, grant, sell, pledge, dispose of or otherwise encumber any of its capital stock or any securities convertible into, or

Table of Contents

other stock awards outstanding on the date of this Agreement, or (II) pursuant to existing Parent Stock Plans in accordance with the

(C) amend Parent's certificate of incorporation or bylaws or amend Merger Sub's certificate of formation or limited liability company

(D) directly or indirectly, (I) enter into any transaction, other than the Merger, that would require approval of the stockholders of Parent

(E) recapitalize, reorganize or completely or partially liquidate Parent or adopt a plan of complete or partial liquidation or Parent or

(F) enter into any new collective bargaining agreement involving unions in more than one state;

(G) change any accounting principle used by it, except as required by applicable Law or GAAP; or

(H) authorize any of, or commit or agree to take any of, the foregoing actions.

(ii) *Other Actions.* Neither Parent nor Merger Sub shall take any action or omit to take any action that could reasonably be expected

(c) *Interim Operations of Merger Sub.* During the period from the date of this Agreement to the Effective Time, Merger Sub shall

6.2. Acquisition Proposals.

(a) *No Solicitation or Negotiation.* The Company hereby covenants that, except as expressly permitted by this Section 6.2, the Company

(i) solicit, initiate or encourage any inquiries or the making of any proposal or offer that constitutes, or could reasonably be expected

(ii) enter into, or participate in any discussions or negotiations regarding, or furnish to any Person any non-public information for the

The Company shall, and shall direct its Representatives to, cease immediately and cause to be terminated all discussions and negot

Table of Contents

Notwithstanding anything to the contrary set forth in this Agreement the Company may, to the extent the Company Board determines

(b) *No Change in Company Recommendation or Alternative Acquisition Agreement.* The Company Board shall not:

(i) except as expressly permitted by this Section 6.2, withdraw or modify (or publicly propose to withdraw or modify), in a manner

(ii) except as permitted by Section 8.3(a), cause or permit the Company to enter into any letter of intent, memorandum of understanding

(iii) except as expressly permitted by this Section 6.2, approve, recommend or propose publicly to approve or recommend any Acquisition

Notwithstanding anything to the contrary set forth in this Agreement the Company Board may withdraw or modify its approval or

Table of Contents

(c) *Certain Permitted Disclosure*. Nothing contained in this Agreement shall be deemed to prohibit the Company from taking and

(d) *Definitions*. As used in this Agreement:

Acquisition Proposal means (i) any proposal or offer for a merger, consolidation, dissolution, tender offer, recapitalization, reor

Superior Proposal means any bona fide written Acquisition Proposal made by a third party to acquire more than 50% of the equ

6.3. *Information Supplied*. (a) As soon as practicable following the Amendment Date, but in no event later than May 5, 2005, Paren

(b) The Company and Parent each agrees, as to itself and its Subsidiaries, that none of the information supplied or to be supplied b

Table of Contents

Section 6.4), contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or neces

6.4. *Company Stockholders Meeting.* Except if the Company Board determines in good faith, after consultation with outside couns

6.5. *Filings; Other Actions; Notification; Access.*

(a) The Company and Parent shall cooperate with each other and use (and shall cause their respective Subsidiaries to use) their resp

Table of Contents

(b) The Company and Parent each shall, upon request by the other, furnish the other with all information concerning itself, its Subs

(c) Subject to applicable Law and the instructions of any Governmental Entity, the Company and Parent each shall keep the other a

(d) Without limiting the generality of the undertakings pursuant to this Section 6.5, each of the Company (in the case of clauses (i)

6.6. Access to Information.

(a) Upon reasonable notice, and except as may otherwise be required by applicable Law, each of the Company and Parent shall (an

Table of Contents

properties, books, contracts, records and personnel and, during such period, each of the Company and Parent shall (and shall cause

(b) Nothing in this Agreement shall require any party hereto to permit any inspection, or to disclose any information, that in the rea

6.7. *Intentionally Omitted.*

6.8. *Affiliates.* Prior to the Effective Time, the Company shall deliver to Parent a list of names and addresses of those Persons who

6.9. *Stock Exchange Listing and De-listing.* Parent shall use its reasonable best efforts to cause the shares of Parent Common Stock

6.10. *Publicity.* The initial press release regarding the Merger shall be a joint press release and thereafter the Company and Parent

6.11. *Employee Benefits/Labor Matters.*

(a) For the period beginning at the Effective Time and ending on December 31 of the calendar year in which the Effective Time oc

Table of Contents

aggregate than those offered under the Company Compensation and Benefit Plans as of the date of this Agreement. Parent shall, on

(b) Parent acknowledges that by operation of Law the Surviving Entity and its Subsidiaries shall continue to be obligated to compl

(c) Parent acknowledges that by operation of Law the Surviving Entity and its Subsidiaries shall continue to be obligated to compl

(d) Parent acknowledges that by operation of Law after the Effective Time the Subsidiaries of the Company that are parties to coll

6.12. *Letter of the Company's Accountants.* The Company shall use commercially reasonable efforts to cause to be delivered to Pa

Table of Contents

public accountants, one dated a date within two business days before the date on which any post-effective amendment to the S-4 sh

6.13. *Letter of Parent's Accountants.* Parent shall use commercially reasonable efforts to cause to be delivered to the Company tw

6.14. *Appointment of Additional Director.* The Parent Board shall take action prior to the Effective Time to cause the number of di

6.15. *Expenses.* Except as otherwise provided in Section 8.5(b), whether or not the Merger is consummated, all fees and expenses i

6.16. *Indemnification; Directors and Officers Insurance.*

(a) From and after the Effective Time, Parent shall indemnify and hold harmless, to the fullest extent permitted under applicable L

(b) Any Indemnified Party wishing to claim indemnification under paragraph (a) of this Section 6.16, upon learning of any such cl

Table of Contents

an Indemnified Party's conduct complies with the standards set forth under applicable Law and the certificate of incorporation or

(c) Subject to the last sentence of this Section 6.16(c), for six years after the Effective Time, Parent shall maintain in effect director

(d) If Parent or the Surviving Entity or any of their respective successors or assigns (i) shall consolidate with or merge into any other

(e) The provisions of this Section 6.16 are intended to be for the benefit of, and shall be enforceable by, each of the Indemnified Pa

6.17. Other Actions by the Company and Parent.

(a) *Rights.* Prior to the Effective Time, the Company Board shall take all necessary action to terminate all of the outstanding Rights

(b) *Takeover Statute.* If any Takeover Statute is or may become applicable to the Merger or the other transactions contemplated by

Table of Contents

grant such approvals and take such actions as are necessary so that such transactions may be consummated as promptly as practical

(c) *Section 16 Matters.* The Company Board and Parent Board shall, prior to the Effective Time, take all such actions as may be re

7.1. *Conditions to Each Party's Obligation to Effect the Merger.* The respective obligation of each party to effect the Merger is su

(a) *Company Stockholder Approval.* The Company Stockholder Approval shall have been obtained.

(b) *Nasdaq National Market Listing.* The shares of Parent Common Stock issuable to the Company stockholders pursuant to this A

(c) *Litigation.* No court or other Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced o

(d) *S-4.* The post-effective amendment to the S-4 Registration Statement, if any, shall have become effective under the Securities A

7.2. *Conditions to Obligations of Parent and Merger Sub.* The obligations of Parent and Merger Sub to effect the Merger are also s

Table of Contents

(a) *Absence of a Company Material Adverse Effect.* Except (x) as disclosed in Company Reports filed with the SEC prior to May 1

(b) *Performance of Obligations of the Company.* The Company shall have performed in all material respects all obligations require

7.3. *Conditions to Obligation of the Company.* The obligation of the Company to effect the Merger is also subject to the satisfactio

(a) *Absence of a Parent Material Adverse Effect.* Except (x) as disclosed in Parent Reports filed with the SEC prior to May 1, 2005

(b) *Performance of Obligations of Parent and Merger Sub.* Each of Parent and Merger Sub shall have performed in all material res

8.1. *Termination by Mutual Consent.* This Agreement may be terminated and the Merger may be abandoned at any time prior to th

8.2. *Termination by Either Parent or the Company.* This Agreement may be terminated and the Merger may be abandoned at any t

(a) if the Merger shall not have been consummated by December 31, 2005 whether such date is before or after the date of approval

(b) if the Company Stockholder Approval shall not have been obtained at the Company Stockholders Meeting duly convened there

(c) if any Order permanently restraining, enjoining or otherwise prohibiting consummation of the Merger shall become final and n

Table of Contents

8.3. *Termination by the Company.* This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Date of the Merger if:

- (a) if (i) the Company Board authorizes the Company, subject to complying with the terms of this Agreement, to enter into a binding agreement with Parent for the Merger, and (ii) the Company Board has approved the Merger;
- (b) if there has been any change in the financial condition, properties, business or results of operations of Parent and its subsidiaries that materially and adversely affects Parent's ability to consummate the Merger;
- (c) if there has been a breach of any covenant or agreement made by Parent or Merger Sub in this Agreement such that Section 7.3(b) would apply.

8.4. *Termination by Parent.* This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Date of the Merger if:

- (a) within 20 business days following the date on which the Company Board shall have effected a Change in Company Recommendation;
- (b) if there has been any change in the financial condition, properties, business or results of operations of the Company and its subsidiaries that materially and adversely affects the Company's ability to consummate the Merger;
- (c) if there has been a breach of any covenant or agreement made by the Company in this Agreement such that Section 7.2(b) would apply.

8.5. *Effect of Termination and Abandonment.*

- (a) In the event of termination of this Agreement and the abandonment of the Merger pursuant to this Article VIII, this Agreement shall be null and void and of no effect, and the Merger shall not be consummated.
- (b) The Company agrees to pay Parent a fee in immediately available funds (in recognition of the fees and expenses incurred to date by Parent in connection with the Merger) as follows:
 - (i) (A) by Parent or the Company as permitted by Section 8.2(b), (B) after the date of this Agreement and prior to the Company's Stockholders' meeting to approve the Merger;

Table of Contents

foregoing clause the term "Acquisition Proposal" has the meaning assigned to such term in Section 6.2(d) except that the reference

(ii) by the Company pursuant to Section 8.3(a); or

(iii) by Parent pursuant to Section 8.4(a).

The Termination Fee shall be paid promptly by the Company, but in no event later than: (x) two business days after the first to occur

9.1. *Survival.* This Article IX and the agreements of the Company, Parent and Merger Sub contained in Article IV (Effect of the Merger)

9.2. *Modification or Amendment.* Subject to the provisions of applicable law, at any time prior to the Effective Time, this Agreement

9.3. *Waiver of Conditions.* The conditions to each of the parties' obligations to consummate the Merger are for the sole benefit of

9.4. *Counterparts.* This Agreement may be executed in any number of counterparts, each such counterpart being deemed to be an original

9.5. **GOVERNING LAW AND VENUE; WAIVER OF JURY TRIAL. (a) THIS AGREEMENT SHALL BE DEEMED TO BE GOVERNED BY THE**

Table of Contents

proceeding for the interpretation or enforcement hereof or of any such document, that it is not subject thereto or that such action, s

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS A

9.6. *Notices.* Any notice, request, instruction or other document to be given hereunder by any party to the others shall be in writing

if to the Company:

USF Corporation

8550 W. Bryn Mawr Avenue

Suite 700

Chicago, Illinois 60631

Attention: Richard C. Pagano, Esq.

Fax: (773) 824-2227

with a copy to:

Sullivan & Cromwell LLP

125 Broad Street

New York, NY 10004

Attention: Joseph B. Frumkin, Esq.

Fax: (212) 558-3588

if to Parent or Merger Sub:

Yellow Roadway Corporation

10990 Roe Avenue

Overland Park, Kansas 66211

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Attention: Daniel J. Churay, Esq.

Fax: (913) 696-6116

Table of Contents

with a copy to:

Fulbright & Jaworski L.L.P.

1301 McKinney, Suite 1500

Houston, Texas 77010-3095

Attention: Charles L. Strauss, Esq.

Fax: (713) 651-5246

or to such other persons or addresses as may be designated in writing by the party to receive such notice as provided above.

9.7. *Entire Agreement; NO OTHER REPRESENTATIONS.* This Agreement (including any exhibits hereto), the Company Disclosu

9.8. *No Third Party Beneficiaries.* Except as provided in Article IV (Effect of the Merger on the Capital Stock and Membership Int

9.9. *Obligations of Parent and of the Company.* Whenever this Agreement requires a Subsidiary of Parent to take any action, such

9.10. *Severability.* The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provis

9.11. *Interpretation; Construction.*

(a) The table of contents and headings herein are for convenience of reference only, do not constitute part of this Agreement and sh

Table of Contents

this Agreement unless otherwise indicated. Whenever the words include, includes or including are used in this Agreement

(b) The parties have participated jointly in negotiating and drafting this Agreement. In the event that an ambiguity or a question of

(c) The parties agree that any action that may be taken by the Parent Board or the Company Board may, to the extent permitted by

9.12. *Assignment.* This Agreement shall not be assignable by operation of law or otherwise; *provided, however,* that Parent may de

9.13. *Knowledge.* As used in this Agreement, (a) *to the Knowledge of the Company* or any similar reference means to the actual

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of the parties here

Table of Contents

Table of Contents

Thomas E. Bergmann
Todd Hacker
Terry Gerrond
G. David Gerrard
Richard C. Pagano
Gary Beggs
David A. Kramer
Brenda Landry
James T. Castro
Chester J. Popkowski
Thomas W. Clarke
Stephen G. Dill
Patrick M. Malone

Table of Contents

[], 2005

Ladies and Gentlemen:

I have been advised that I may be deemed to [be][have been] an affiliate of USF Corporation, a Delaware corporation (the *Cor*

I hereby represent, warrant, and covenant to Parent and Merger Sub that in the event I receive any shares of Parent Common Stock

Table of Contents

It is understood and agreed that the legends set forth in paragraph E and F above shall be removed by the delivery of substitute certificates.

Parent agrees that it will (a) supply me with any information necessary to enable me to make routine sales of any Affiliate Shares and

This letter constitutes the complete understanding between Parent and me concerning the subject matter hereof. This letter shall be

Agreed and accepted this [] day of [], 2005

YELLOW ROADWAY CORPORATION

By:

Name:

Title:

YANKEE II LLC

By:

Name:

Title:

Table of Contents

Board of Directors

USF Corporation

8550 West Bryn Mawr Avenue

Suite 700

Chicago, Illinois 60631

Members of the Board:

We understand that USF Corporation (the Company), Yellow Roadway Corporation (Parent) and Yankee II LLC, a wholly owned subsidiary of the Parent, are proposing to merge with the Company.

You have asked for our opinion as to whether the Merger Consideration to be received by the holders of shares of Common Stock of the Company is fair to the Company.

For purposes of the opinion set forth herein, we have:

- i) reviewed certain publicly available financial statements and other information of the Company and Parent;
- ii) reviewed certain internal financial statements and other financial and operating data concerning the Company and Parent prepared by the management of each of the Company and Parent;
- iii) reviewed certain financial projections prepared by the management of each of the Company and Parent;

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- iv) discussed the past and current operations and financial condition and the prospects of each of the Company and Parent, including
- v) reviewed the pro forma impact of the Merger on Parent's earnings per share and other financial ratios;
- vi) reviewed the reported prices and trading activity for each of the Common Stock and the Parent Common Stock;
- vii) compared the financial performance of each of the Company and Parent and the prices and trading activity of the Common Stock
- viii) reviewed the financial terms, to the extent publicly available, of certain comparable acquisition transactions;

Table of Contents

ix) participated in discussions and negotiations among representatives of the Company, Parent and their respective financial and legal advisors;

x) reviewed the draft Merger Agreement and certain related documents;

xi) reviewed certain documents and correspondence related to certain audit related matters involving both the Company and Parent;

xii) performed such other analyses and considered such other factors as we have deemed appropriate.

We have assumed and relied upon without independent verification the accuracy and completeness of the information reviewed by us.

In arriving at our opinion, we were not authorized to solicit, and did not solicit, interest with respect to a business combination involving the Company.

We have acted as financial advisor to the Board of Directors of the Company in connection with this transaction and will receive a fee therefor.

In the ordinary course of our trading, brokerage, investment management and financing activities, Morgan Stanley or its affiliates may have a financial interest in the Company.

It is understood that this letter is for the information of the Board of Directors of the Company and may not be used for any other purpose.

Based on and subject to the foregoing, we are of the opinion on the date hereof that the Merger Consideration to be received by the Company is adequate to pay the cash consideration to be received by the Company.

Table of Contents

Table of Contents

[LOGO]

Board of Directors

USF Corporation

8550 West Bryn Mawr Avenue

Suite 700

Chicago, Illinois 60631

Members of the Board:

We understand that USF Corporation (the Company), Yellow Roadway Corporation (Parent) and Yankee II LLC, a wholly owned subsidiary of Parent, are proposing to merge with and into the Company.

You have asked for our opinion as to whether the Merger Consideration to be received by the holders of shares of Common Stock of the Company is fair to the Company.

For purposes of the opinion set forth herein, we have:

i) reviewed certain publicly available financial statements and other information of the Company and Parent;

ii) reviewed certain internal financial statements and other financial and operating data concerning the Company and Parent prepared by the Company and Parent.

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- iii) reviewed certain financial projections prepared by the management of each of the Company and Parent;
- iv) discussed the past and current operations and financial condition and the prospects of each of the Company and Parent, including
- v) reviewed the pro forma impact of the Merger on Parent's earnings per share and other financial ratios;
- vi) reviewed the reported prices and trading activity for each of the Common Stock and the Parent Common Stock;
- vii) compared the financial performance of each of the Company and Parent and the prices and trading activity of the Common Stock
- viii) reviewed the financial terms, to the extent publicly available, of certain comparable acquisition transactions;
- ix) participated in discussions and negotiations among representatives of the Company, Parent and their respective financial and legal

Table of Contents

x) reviewed the draft Merger Agreement, dated April 30, 2005, and certain related documents;

xi) reviewed certain documents and correspondence related to certain audit related matters involving both the Company and Parent

xii) performed such other analyses and considered such other factors as we have deemed appropriate.

We have assumed and relied upon without independent verification the accuracy and completeness of the information reviewed by

In arriving at our opinion, we were not authorized to solicit, and did not solicit, interest with respect to a business combination invol

We have acted as financial advisor to the Board of Directors of the Company in connection with this transaction and will receive a

In the ordinary course of our trading, brokerage, investment management and financing activities, Morgan Stanley or its affiliates r

It is understood that this letter is for the information of the Board of Directors of the Company and may not be used for any other p

Based on and subject to the foregoing, we are of the opinion on the date hereof that the Merger Consideration to be received by the

Table of Contents

Table of Contents

§262 APPRAISAL RIGHTS.

- (a) Any stockholder of a corporation of this State who holds shares of stock on the date of the making of a demand pursuant to sub

- (b) Appraisal rights shall be available for the shares of any class or series of stock of a constituent corporation in a merger or consoc

- (1) Provided, however, that no appraisal rights under this section shall be available for the shares of any class or series of stock, wh

- (2) Notwithstanding paragraph (1) of this subsection, appraisal rights under this section shall be available for the shares of any clas
 - a. Shares of stock of the corporation surviving or resulting from such merger or consolidation, or depository receipts in respect ther

 - b. Shares of stock of any other corporation, or depository receipts in respect thereof, which shares of stock (or depository receipts i

 - c. Cash in lieu of fractional shares or fractional depository receipts described in the foregoing subparagraphs a. and b. of this parag

 - d. Any combination of the shares of stock, depository receipts and cash in lieu of fractional shares or fractional depository receipts

- (3) In the event all of the stock of a subsidiary Delaware corporation party to a merger effected under §253 of this title is not owne

Table of Contents

(c) Any corporation may provide in its certificate of incorporation that appraisal rights under this section shall be available for the

(d) Appraisal rights shall be perfected as follows:

(1) If a proposed merger or consolidation for which appraisal rights are provided under this section is to be submitted for approval

(2) If the merger or consolidation was approved pursuant to §228 or §253 of this title, then, either a constituent corporation before

Table of Contents

- (e) Within 120 days after the effective date of the merger or consolidation, the surviving or resulting corporation or any stockholder
- (f) Upon the filing of any such petition by a stockholder, service of a copy thereof shall be made upon the surviving or resulting co
- (g) At the hearing on such petition, the Court shall determine the stockholders who have complied with this section and who have t
- (h) After determining the stockholders entitled to an appraisal, the Court shall appraise the shares, determining their fair value excl
- (i) The Court shall direct the payment of the fair value of the shares, together with interest, if any, by the surviving or resulting corp

Table of Contents

of the certificates representing such stock. The Court's decree may be enforced as other decrees in the Court of Chancery may be

(j) The costs of the proceeding may be determined by the Court and taxed upon the parties as the Court deems equitable in the circumstances.

(k) From and after the effective date of the merger or consolidation, no stockholder who has demanded appraisal rights as provided in the charter shall be entitled to appraisal rights.

(l) The shares of the surviving or resulting corporation to which the shares of such objecting stockholders would have been converted shall be deemed to be the shares of such objecting stockholders.

Table of Contents

Capitalized terms used but not defined in Part II have the meanings ascribed to them in the proxy statement/prospectus contained in

ITEM 20. *Indemnification of Directors and Officers*

The Certificate of Incorporation and Bylaws of Yellow Roadway Corporation together provide that Yellow Roadway's directors and

Yellow Roadway maintains directors' and officers' liability insurance against any actual or alleged error, misstatement, misleading

DGCL Section 102(b)(7) provides that Yellow Roadway may indemnify a present or former director if such director conducted his

DGCL Section 145 provides that Yellow Roadway may indemnify its directors and officers, as well as other employees and individuals

In the Agreement and Plan of Merger among Yellow Corporation, Yankee LLC, a wholly owned subsidiary of Yellow ("Sub"), and

Table of Contents

In the Agreement and Plan of Merger among Yellow Roadway Corporation, Yankee II LLC, a wholly owned subsidiary of Yellow

ITEM 21. *Exhibits and Financial Statement Schedules.*

Table of Contents

*

Filed with the original filing of this Registration S

Table of Contents

ITEM 22. *Undertakings.*

(a) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, e

(b) The undersigned registrant hereby undertakes as follows: that prior to any public reoffering of the securities registered hereund

(c) The undersigned registrant undertakes that every prospectus (i) that is filed pursuant to the paragraph immediately preceding, o

The undersigned registrant hereby undertakes to respond to requests for information that is incorporated by reference into the prosp

The undersigned registrant hereby undertakes to supply by means of a post-effective amendment all information concerning a trans

Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers or controll

Table of Contents

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this post-effective amendment no. 1 to re

Pursuant to the requirements of the Securities Act of 1933, this post-effective amendment no. 1 to registration statement has been s

Signature

/s/ WILLIAM D. ZOLLARS

William D. Zollars

/s/ DONALD G. BARGER, JR.

Donald G. Barger, Jr.

/s/ BHADRESH A. SUTARIA

Bhadresh Sutaria

*

Cassandra C. Carr

*

Howard M. Dean

*

Frank P. Doyle

John F. Fiedler

*

Dennis E. Foster

*

John C. McKelvey

*

Phillip J. Meek

*

William L. Trubeck

*

Carl W. Vogt

*By:

Table of Contents

Table of Contents

*

Filed with the original filing of this Registration S