

voluntary nature of the exchange offer, some debtholders may choose not to exchange their existing unsecured CRC debentures for the new NYC Newco and PRR Newco debentures. Petitioners explain that these debtholders would continue to hold their existing unsecured CRC debentures, without most of the original covenants.

Secured Equipment Financing Agreements. Petitioners advise that all of Conrail's secured equipment financing agreements will remain obligations of Conrail, and that CRC will sublease approximately 42% of its encumbered equipment to NYC Newco and approximately 58% of its encumbered equipment to PRR Newco. Petitioners add that the sublease obligations of NYC Newco and PRR Newco will be assumed by CSXT and NSR, respectively, upon the merger of NYC Newco and PRR Newco into CSXT and NSR, respectively.

Petitioners advise that NYC Newco and PRR Newco will utilize a grantor trust structure for certain equipment secured by financing agreements entered into prior to October 1994 (to preserve for the secured parties to such financing agreements the benefits of section 1168 of the Bankruptcy Code, 11 U.S.C. 1168, as in effect prior to October 1994). Petitioners explain: that, under this structure, Conrail will sublease the relevant equipment to NYC Newco and PRR Newco under capital leases for tax purposes; that NYC Newco and PRR Newco will create bankruptcy-remote grantor trusts and transfer their rights and obligations under the capital leases to their respective grantor trusts; that the trusts then will sublease the relevant equipment to CSXT and NSR under true leases for tax purposes, and assign payments under those subleases to Conrail; and that, after NYC Newco and PRR Newco are distributed to CSXT and NSR, but before being merged into CSXT and NSR, NYC Newco and PRR Newco each will transfer the beneficial interest in its grantor trust to a corporation (other than CSXT and NSR, respectively) that is a subsidiary of CSX and NS, respectively.

Petitioners explain that, in all of Conrail's secured equipment financings, holders of Conrail's secured debt instruments are entitled to the benefits of Bankruptcy Code § 1168, which (petitioners advise) provides certain protections to creditors under railroad equipment leasing and financing arrangements. Petitioners add that, to preserve the existing protections that Conrail's secured debtholders enjoy under § 1168, all of the subleases described above will provide, among other things, that: (1) Any such sublease

will be junior and subordinate to the controlling agreement and the holders of CRC's secured debt; (2) the sublessee, upon default by CRC under the controlling agreement, will surrender possession of the equipment in accordance with the terms of the controlling agreement; and (3) each sublessee in possession of equipment will be a railroad against which § 1168 protection would be available.

Analysis of the Debt Restructuring. Petitioners state that the debt ratings of the new NYC Newco and PRR Newco unsecured debentures, and the Conrail secured debt obligations, will be at least equal to that of the present corresponding CRC debt obligations. Petitioners indicate that two corporate debt rating services (Moody's Investors Service and Standard & Poor's) have advised: (a) That the debt ratings assigned to the debt obligations to be offered by NYC Newco and PRR Newco (in exchange for Conrail's current unsecured debt obligations) will be at least equal to Conrail's current debt ratings for those unsecured obligations;¹⁴ and (b) that the debt ratings of Conrail's current public secured debt obligations will not be reduced as a result of the proposed transaction.

Petitioners assert that the proposed debt restructuring follows the pattern approved by the Board in Decision No. 89. Petitioners explain that, in that decision, the Board authorized CSX and NS to bear the economic burden of the CRC debt in the ratio of 42% to 58%, respectively. Petitioners further explain: that, in practice, Conrail's debt obligations remained in place after the Split Date, but, in the case of any failure of Conrail's income to service them, the provisions of § 4.3 of the Transaction Agreement stood behind them;¹⁵ that the proposed debt restructuring will follow the original model by exchanging, in the same 42%–58%

¹⁴ Petitioners add that, post-exchange, unsecured debtholders will own a package of securities, 42% of which will continue to be rated at the CSX rating (which, petitioners advise, was the Conrail rating prior to the Split Date) and 58% of which will be rated at the NS rating.

¹⁵ 4.3(a) of the Transaction Agreement provides that, from and after the Split Date, "CSX [in the Transaction Agreement, CSXC is referred to as CSX] and NSC shall ensure that CRR, CRC and their Affiliates have sufficient cash to satisfy the Retained Liabilities as they become due and any operating and other expenses incurred by CRR, CRC and their Affiliates in the conduct of their business." 4.3(b) of the Transaction Agreement provides: "It is the intent of the parties that the economic burden of the Corporate Level Liabilities [of Conrail] will be borne, directly or indirectly, by CSX or NSC in accordance with their respective Percentage [i.e., 42%–58%]." CSX/NS–25, Volume 8B at 49 (filed June 23, 1997, in STB Finance Docket No. 33388).

ratio, NYC Newco debentures guaranteed by CSXT and PRR Newco debentures guaranteed by NSR, for the Conrail unsecured debt securities, and by providing, in addition to their existing security, assumptions by CSXT and NSR in that same ratio with respect to the subleases supporting the Conrail secured debt; that the Conrail debtholders will either keep their existing securities (in the case of the secured debt obligations) or have an option to acquire new securities guaranteed by CSXT and NSR respectively, with the same maturity dates, principal and interest payment dates, and interest rates that they previously had; and that, in addition, NYC Newco's and PRR Newco's unsecured debentures will have covenant packages substantially similar to those of the publicly traded unsecured debentures of CSX and NS, respectively. Petitioners therefore conclude that the proposed debt restructuring follows the existing pattern approved by the Board and is consistent with the public interest.

Negotiations Contemplated.

Petitioners indicate that they intend to approach the holders of Conrail's outstanding debt obligations to secure their consents to the proposed transaction. Petitioners advise that, because any issues involving the Conrail debtholders' consents may be resolved consensually, petitioners are not asking the Board to undertake, at this time, a detailed review of issues related to the consents. Petitioners are asking, rather, that the Board defer consideration of these issues while reviewing and approving the underlying aspects of the proposed transaction.

Relief Sought by Petitioners

(1) Petitioners ask that the Board provide for **Federal Register** publication of notice of their petition, and adopt a procedural schedule providing for an opportunity for comments by interested parties and a reply by petitioners. Petitioners ask, in particular, that the due date for the submission of comments by interested parties be set as the 30th day after the date of **Federal Register** publication, and that the due date for the submission of a reply by petitioners be set as the 60th day after the date of **Federal Register** publication. Petitioners also ask that the Board issue its decision on the merits within 45 days after completion of the procedural schedule, if possible, or as expeditiously as circumstances may permit.

(2) Petitioners ask that the Board issue, following the receipt of written