KANSAS CITY SOUTHERN
Form PREM14A
June 26, 2003

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

SCHEDULE 14A

(RULE 14A-101)

SCHEDULE 14A INFORMATION

PROXY STATEMENT PURSUANT TO SECTION 14(A) OF THE SECURITIES EXCHANGE ACT OF 1934 (AMENDMENT NO. __________)

Filed by the registrant [X]

Filed by a party other than the registrant [ ]

Check the appropriate box:

[X] Preliminary proxy statement.

[ ] Confidential, for use of the Commission only (as permitted by Rule 14a-6(e)(2)).

[ ] Definitive proxy statement.

[ ] Definitive additional materials.

[ ] Soliciting material pursuant toss. 240.14a-11(c) ofss. 240.14a-12.

KANSAS CITY SOUTHERN
--------------------------------------------------------------------------------
(Name of Registrant as Specified in its Charter)

NOT APPLICABLE
--------------------------------------------------------------------------------
(Name of Person(s) Filing Proxy Statement, if Other Than the Registrant)

Payment of filing fee (check the appropriate box):

[ ] No fee required.

[X] Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies: Common Stock, par value $0.01 per share, of Kansas City Southern and Class A Convertible Common Stock, par value $0.01 per share, of Kansas City Southern.

(2) Aggregate number of securities to which transaction applies: 18 million shares of Class A Convertible Common Stock of Kansas City Southern and up to an additional 6.4 million shares of Class A Convertible Common Stock or Common Stock of Kansas City Southern (in each cash, contractually valued at $12.50 per share) if Kansas City Southern, at its option, determines to pay up to $80 million of the $200 million cash consideration in such securities as discussed in (3) below.

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11: The proposed maximum aggregate value of the transaction for purposes of calculating the filing fee only is $402,680,000. The filing fee was determined by adding (a) $200 million of cash consideration (up to $80 million of which may consist of 6.4 million shares of Class A Convertible Common Stock or Common Stock of Kansas City Southern contractually valued at $12.50 per share) and (ii) the $202,680,000 value of the 18 million shares of Class A Common Stock based on a book value of $11.26 per share. The filing fee, pursuant to Section 14(g)(1)(A)(i) and Section 14(g)(5), equals $80.90 per million of the maximum aggregate value of the transaction, as set forth in Fee Rate Advisory #11 for Fiscal Year 2003.

(4) Proposed maximum aggregate value of transaction: $402,680,000.

(5) Total fee paid: $32,577

[ ] Fee paid previously with preliminary materials.

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[ ] Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the form or schedule and the date of its filing.

(1) Amount Previously Paid:

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(2) Form, Schedule or Registration Statement No.:

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(3) Filing Party:

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(4) Date Filed:

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[KCS LOGO]
427 WEST 12TH STREET
KANSAS CITY, MISSOURI 64105

KANSAS CITY SOUTHERN

NOTICE AND PROXY STATEMENT

FOR

A SPECIAL MEETING OF STOCKHOLDERS

TO BE HELD

[ ], 2003

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YOUR VOTE IS IMPORTANT!

Please mark, date and sign the enclosed proxy card and promptly return it in the enclosed envelope, or vote by telephone or through the Internet as described on the proxy card.

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MAILING OF THIS NOTICE AND PROXY STATEMENT AND THE ACCOMPANYING ENCLOSED PROXY COMMENCED ON OR ABOUT _________, 2003

KANSAS CITY SOUTHERN
427 WEST 12TH STREET
KANSAS CITY, MISSOURI 64105

_________, 2003

TO OUR STOCKHOLDERS:

On April 20, 2003, Kansas City Southern ("KCS") entered into acquisition agreements with Grupo TMM, S.A. ("Grupo TMM") under which KCS ultimately would acquire control of TFM, S.A. de C.V. ("TFM") which operates one of the three major rail systems in Mexico.

In connection with this acquisition, KCS proposes to issue up to 24,400,000 shares of a new class of common securities, to be called Class A Convertible Common Stock, and up to 9,025,000 shares of common stock, in addition to substantial cash payments.

Important information about this acquisition, certain related transactions and proposed amendments to our Restated Certificate of Incorporation is contained in the accompanying proxy materials.

A Special Meeting of Stockholders will be held at 10:00 a.m. on [_________, _________ ___], 2003 at [Union Station Kansas City, City Stage Theater, 30 West Pershing Road,] Kansas City, Missouri, to consider and approve the proposals described in the attached proxy statement.

Your vote is important. Stockholder approval of some of the proposals described in the proxy statement is a condition to the acquisition described above. KCS's Board of Directors has unanimously recommended that you vote FOR each proposal contained in the proxy statement.

The proxy statement contains detailed information about the Special Meeting and the formal business to be acted upon by the stockholders. We urge you to read these proxy materials and to participate in the Special Meeting either in person or by proxy. WHETHER OR NOT YOU PLAN TO ATTEND THE MEETING IN PERSON, PLEASE SIGN AND RETURN PROMPTLY THE ACCOMPANYING PROXY CARD, IN THE ENVELOPE PROVIDED, TO ASSURE THAT YOUR SHARES WILL BE REPRESENTED. ALTERNATIVELY, YOU MAY CAST YOUR VOTES BY TELEPHONE OR THROUGH THE INTERNET AS DESCRIBED ON THE ACCOMPANYING PROXY CARD.

Sincerely,

Michael R. Haverty
Chairman of the Board, President
and Chief Executive Officer

KANSAS CITY SOUTHERN
427 WEST 12TH STREET
KANSAS CITY, MISSOURI 64105

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NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

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A Special Meeting of the Stockholders of Kansas City Southern, a Delaware corporation ("KCS"), will be held at [Union Station Kansas City, City Stage Theater, 30 West Pershing Road], Kansas City, Missouri, at 10:00 a.m. on [_____, ________ ___], 2003, to consider and vote upon approval of the following proposals and upon such other business as may properly come before the Special Meeting and any adjournments thereof. (At present, our Board of Directors is not aware of any other business that will be presented for consideration at the Special Meeting.):

PROPOSAL 1 - Amendment of Restated Certificate of Incorporation of KCS, in connection with a proposed acquisition, to:

- increase our authorized common securities from 400 million shares to 450 million shares; and

- authorize the additional 50 million shares from the increase in common securities described above as a new class of stock, designated as "Class A Convertible Common Stock."

PROPOSAL 2 - Amendment of Restated Certificate of Incorporation of KCS to simplify and update the Restated Certificate of Incorporation, as follows:

- change our name to "NAFTA Rail";

- provide that our corporate purpose shall be "to engage in any lawful act or activity for which corporations may be organized under Delaware Corporation Law;"

- amend the New Series Preferred Stock provisions to allow our Board of

Directors more flexibility in designating dividend, voting, liquidation and redemption rights of new series of preferred stock;

- o delete the provisions regarding Series B Convertible Preferred Stock and the names and addresses of our incorporators, which are now obsolete;

- o amend the provision regarding personal liability of our directors for breaches of fiduciary duties to conform to the General Corporation Law of Delaware (the "Delaware Corporation Law") by setting forth the instances in which a director's personal liability shall not be eliminated or limited; and

- o authorize indemnification of (and advancement of expenses to) directors, officers and agents of KCS.

PROPOSAL 3 - Restatement of Restated Certificate of Incorporation of KCS to incorporate the foregoing amendments and the Certificate of Designations attached to the Restated Certificate of Incorporation, which created the 4.25% Redeemable Cumulative Convertible Perpetual Preferred Stock, Series C ("Series C Preferred Stock").

PROPOSAL 4 - Proposed issuance of 18 million shares of Class A Convertible Common Stock, up to 2,625,000 shares of KCS Common Stock ("Common Stock"), and up to an additional 6,400,000 shares of Common Stock or Class A Convertible Common Stock, pursuant to an acquisition agreement with Grupo TMM, S.A. and others.

NOTE: KCS CANNOT PROCEED WITH PROPOSAL 4 IF PROPOSAL 1 IS NOT APPROVED.

Only holders of KCS Common Stock and holders of KCS Preferred Stock, $25 par value per share, of record at the close of business on [_________], 2003, are entitled to notice of and to vote at this meeting or any adjournment thereof. Holders of KCS Series C Preferred Stock do not have voting rights with respect to the proposals to be presented at this meeting. The list of stockholders entitled to vote at this meeting will be available for inspection during normal business hours in the office of KCS's Corporate Secretary at least 10 days prior to the date of the meeting.

By Order of the Board of Directors,

Michael R. Haverty
Chairman of the Board, President
and Chief Executive Officer

The date of this notice is ___________, 2003.

PLEASE DATE, SIGN AND PROMPTLY RETURN THE ENCLOSED PROXY CARD, REGARDLESS OF THE NUMBER OF SHARES YOU MAY OWN AND WHETHER OR NOT YOU PLAN TO ATTEND THE MEETING IN PERSON. ALTERNATIVELY, YOU MAY CAST YOUR VOTES BY TELEPHONE OR THROUGH THE INTERNET AS DESCRIBED ON THE ACCOMPANYING PROXY CARD. YOU MAY REVOKE YOUR PROXY AND VOTE YOUR SHARES IN PERSON IF REVOKED IN ACCORDANCE WITH THE PROCEDURES DESCRIBED IN THIS NOTICE AND PROXY STATEMENT. PLEASE ALSO INDICATE ON YOUR PROXY CARD WHETHER YOU PLAN TO ATTEND THE SPECIAL MEETING.

KANSAS CITY SOUTHERN
427 WEST 12TH STREET
KANSAS CITY, MISSOURI 64105

PROXY STATEMENT

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## INTRODUCTION

The accompanying proxy is solicited by the Board of Directors of Kansas City Southern ("KCS") from holders of KCS Common Stock, par value $0.01 per share (the "Common Stock"), and holders of KCS Preferred Stock, par value $25.00 per share (the "Preferred Stock"), as of the record date for use at the Special Meeting of Stockholders to be held at the time and place and for the purposes set forth in the accompanying notice. This proxy statement is first being mailed to stockholders on or about ________, 2003

## SUMMARY TERM SHEET FOR THE PROPOSALS

THIS SUMMARY TERM SHEET FOR THE PROPOSALS HIGHLIGHTS SELECTED INFORMATION FROM THIS PROXY STATEMENT REGARDING THE PROPOSALS AND MAY NOT CONTAIN ALL OF THE INFORMATION THAT IS IMPORTANT TO YOU AS A KCS STOCKHOLDER. ACCORDINGLY, WE ENCOURAGE YOU TO CAREFULLY READ THIS ENTIRE DOCUMENT, INCLUDING THE APPENDICES, AND THE DOCUMENTS TO WHICH WE HAVE REFERRED YOU. YOU MAY OBTAIN A COPY OF THE DOCUMENTS TO WHICH WE HAVE REFERRED YOU WITHOUT CHARGE BY FOLLOWING THE INSTRUCTIONS IN THE SECTION ENTITLED "WHERE YOU CAN FIND MORE INFORMATION."

### PURPOSE OF THE PROPOSALS

On April 20, 2003, KCS and Grupo TMM, S.A. ("Grupo TMM") entered into separate agreements for the acquisition by KCS of control of TFM, S.A. de C.V. ("TFM") and The Texas-Mexican Railway Company ("Tex-Mex"). On May 9, 2003, KCS acquired from Grupo TMM 51% of the shares of Mexrail, Inc. ("Mexrail"), which owns 100% of Tex-Mex, and deposited the Mexrail shares into a voting trust pending resolution of KCS's application to the Surface Transportation Board ("STB") seeking authority to exercise common control over Tex-Mex and KCS's other rail companies, The Kansas City Southern Railway Company ("KCSR") and the Gateway Eastern Railway Company ("Gateway Eastern"). See "Proposal 4 - Proposed Issuance of Class A Convertible Common Stock and Common Stock--Summary of the Acquisition Agreement and Related Agreements--The Stock Purchase Agreement" and "Proposal 4 - Proposed Issuance of Class A Convertible Common Stock and Common Stock--Regulatory Matters."

Pursuant to the agreement for the acquisition of control of TFM (the "Acquisition") entered into on April 20, 2003 by KCS with Grupo TMM and other parties (the "Acquisition Agreement"), KCS will acquire all of the interest of TMM Multimodal, S.A. de C.V. ("Multimodal"), a subsidiary of Grupo TMM, in Grupo Transportacion Ferroviaria Mexicana, S.A. de C.V. ("Grupo TFM") for $200 million in cash and 18,000,000 shares of a new class of common securities of KCS, to be designated "Class A Convertible Common Stock." Grupo TFM owns an 80% economic interest in TFM and all of the shares of stock with full voting rights of TFM (the "TFM Voting Stock"). KCS has the right to elect to pay up to $80 million of the cash portion of the purchase price by delivering up to 6,400,000 shares of KCS Class A Convertible Common Stock or KCS Common Stock.

Proposals 1 and 4 described below are for the purpose of allowing KCS to consummate the acquisition of the Grupo TFM shares held by Multimodal and thereby acquire control of TFM. The remaining proposals are intended to simplify, update and restate our Restated Certificate of Incorporation.

THE PROPOSALS

You are being asked to consider and vote upon approval of proposals to amend and restate our Restated Certificate of Incorporation, and to authorize our issuance of additional shares of Common Stock and shares of a new class, called Class A Convertible Common Stock, as described in more detail below.

PROPOSAL 1 - AMENDMENT OF RESTATED CERTIFICATE OF INCORPORATION OF KCS, IN CONNECTION WITH THE ACQUISITION (PAGES 32 THROUGH 39 AND APPENDIX A)

We propose to amend our Restated Certificate of Incorporation to:

- increase our authorized common securities from 400 million shares to 450 million shares; and
- authorize the additional 50 million shares from the increase in common securities described above as a new class of stock, designated as "Class A Convertible Common Stock," par value $0.01 per share;

PROPOSAL 2 - AMENDMENT OF RESTATED CERTIFICATE OF INCORPORATION OF KCS TO SIMPLIFY AND UPDATE THE RESTATED CERTIFICATE OF INCORPORATION (PAGES 40 THROUGH 41 AND APPENDIX A)

We also propose to amend our Restated Certificate of Incorporation to:

- change our name from "Kansas City Southern" to "NAFTA Rail";
- delete the itemization of specific corporate purposes and substitute therefor that our corporate purpose is ". . . to engage in any lawful act or activity for which corporations may be organized under Delaware Corporation Law;"
- amend the New Series Preferred Stock provisions to allow our Board of Directors more flexibility in designating dividend, voting, liquidation and redemption rights of new series of preferred stock;
- delete the provisions regarding "Series B Convertible Preferred Stock" and the names and addresses of our incorporators, which are now obsolete;
- amend the provision regarding personal liability of our directors for breaches of fiduciary duties to conform to Section 102(b)(7) of the General Corporation Law of Delaware (the "Delaware Corporation Law") by setting forth the instances in which a director's personal liability shall not be eliminated or limited; and
- authorize indemnification of (and advancement of expenses to) directors, officers and agents of KCS;

PROPOSAL 3 - RESTATEMENT OF RESTATED CERTIFICATE OF INCORPORATION OF KCS (PAGE 42 AND APPENDIX A)

We propose to restate our Restated Certificate of Incorporation to incorporate the foregoing amendments, if approved, and the Certificate of Designations attached to our Restated Certificate of Incorporation, which created the 4.25% Redeemable Cumulative Convertible Perpetual Preferred Stock, Series C ("Series C Preferred Stock").

PROPOSAL 4 - PROPOSED ISSUANCE OF CLASS A CONVERTIBLE COMMON STOCK AND COMMON STOCK (PAGES 43 THROUGH 56)

We propose to issue shares of Class A Convertible Common Stock and Common Stock, along with the payment of cash, to acquire control of TFM, in accordance with the terms of the Acquisition Agreement. Pursuant to the Acquisition Agreement and related agreements, we propose to issue 18 million shares of Class A Convertible Common Stock, up to 2,625,00 shares of Common Stock, and up to an additional 6,400,000 shares of Common Stock or Class A Convertible Common Stock. The terms and conditions of these stock issuances and related transactions are set forth in the Acquisition Agreement and related ancillary agreements (the "Ancillary Agreements") described below. See "Proposal 4 - Proposed Issuance of Class A Convertible Common Stock and Common Stock--Summary of the Acquisition Agreement and Related Agreements."

ACQUISITION AGREEMENT (PAGES 44 TO 48)

In the Acquisition Agreement, KCS has agreed to issue 18 million shares of Class A Convertible Common Stock to Multimodal, a subsidiary of Grupo TMM, upon the consummation of three steps, referred to collectively as the "Acquisition." These three steps will all occur sequentially and virtually simultaneously, as follows:

(1) A wholly-owned subsidiary of KCS, KARA Sub, Inc., or "KARA Sub," using funds and securities provided by KCS, will purchase from Multimodal all of the shares it holds of Grupo TFM. Grupo TFM owns all of the TFM Voting Stock. In the purchase, Kara Sub will pay $200 million and deliver a subordinated promissory note of KARA Sub in the principal amount of $25 million. (KCS has the option to issue up to 6,400,000 shares of Class A Convertible Common Stock or Common Stock in lieu of paying up to $80 million of the $200 million purchase price.) This step is referred to as the "Stock Purchase."

(2) Multimodal will purchase from KARA Sub 10% of the issued and outstanding shares of KARA Sub common stock, in consideration for delivery by Multimodal to KARA Sub of the KARA Sub subordinated promissory note. This step is referred to as the "Subsidiary Investment."

(3) KARA Sub will then be merged into KCS in accordance with the Delaware Corporation Law. The merger will be consummated by filing a certificate of merger with the Delaware Secretary of State. This step is referred to as the "Merger." In the Merger, the shares of KARA Sub held by Multimodal will be converted into and exchanged for 18,000,000 shares of Class A Convertible Common Stock. KCS will be the surviving company in the Merger and will change its name to "NAFTA Rail." References in this proxy statement to NAFTA Rail mean KCS after it has changed its name.

The foregoing three steps comprise the Acquisition. Upon consummation of the Acquisition, two new directors, Jose Serrano Segovia, Chairman of Grupo TMM and Javier Segovia Serrano, President of Grupo TMM, will be appointed to the NAFTA Rail Board of Directors to serve until the Annual Meeting of Stockholders of NAFTA Rail in 2004. At that meeting, Jose Serrano Segovia will be nominated for election to the class of directors serving until the annual meeting of stockholders in 2006 and Javier Segovia Serrano will be nominated for election to the class of directors serving until the annual meeting of stockholders in 2005.

In addition, provided the Acquisition has occurred and neither KCS nor any of its subsidiaries has purchased TFM shares held by the Mexican government upon exercise of the Mexican government's right to compel purchase of those shares (referred to as the "Put"), KCS will be obligated to pay to Grupo TMM an additional amount (referred to as the "VAT Contingency Payment") of up to $180 million in cash in the event that a pending Value Added Tax claim (referred to as the "VAT Claim") against the Mexican government by TFM is successfully resolved and the amount received is greater than the purchase price of the Put. See "Proposal 4 - Proposed Issuance of Class A Convertible Common Stock and Common Stock--Summary of the Acquisition Agreement and Related Agreements--The Acquisition Agreement--VAT Contingency Payment." Upon completion of the Acquisition, KCS will assume Grupo TMM's obligations to make any payment upon the exercise by the Mexican government of the Put and will indemnify Grupo TMM and its affiliates, and their respective officers, directors, employees and shareholders, against obligations or liabilities relating thereto. See "Proposal 4 - Proposed Issuance of Class A Convertible Common Stock and Common Stock--Summary of the Acquisition Agreement and Related Agreements--Agreement of Assignment and Assumption of Rights, Duties and Obligations."

The obligations of KCS and Grupo TMM to complete the Acquisition are subject, in addition to standard conditions, to the following conditions:

- Approval by KCS's stockholders of amendments to KCS's Restated Certificate of Incorporation (described in Proposal 1) and issuance of Class A Convertible Common Stock and Common Stock (described in Proposal 4);

- Obtaining required consents, waivers, authorizations and approvals from governmental authorities;

- Listing on the New York Stock Exchange of the Common Stock to be issued in connection with the Acquisition;

- Execution and delivery of the Ancillary Agreements;

- Absence of any legal or judicial restraints or prohibitions preventing, or proceedings pending to restrain or prohibit, consummation of the Acquisition;

- Receipt of consents from the holders of certain outstanding notes of Grupo TMM;

- Absence of any insolvency or bankruptcy proceeding against Multimodal, TMM Holdings, S.A. de C.V. ("TMM Holdings") or TFM that has been pending for more than 60 days, and the absence of certain material adverse effects; and

- Release by KCS of former directors and officers of TFM or any of its subsidiaries from certain claims by KCS or its subsidiaries.

See "Proposal 4 - Proposed Issuance of Class A Convertible Common Stock and Common Stock--Summary of the Acquisition Agreement and Related Agreements--The Acquisition Agreement."

In addition, in connection with the Acquisition, KCS and Harris Trust & Savings Bank, as Rights Agent, will enter into a First Amendment to Rights Agreement to, among other things, amend the definition of "Acquiring Person" so that the Acquisition will not trigger the rights under the Rights Agreement, dated September 19, 1995. A copy of the First Amendment to Rights Agreement is attached to this proxy statement as Appendix C. See "Proposal 4 - Proposed Issuance of Class A Convertible Common Stock and Common Stock--Summary of the Acquisition Agreement and Related Agreements--First Amendment to Rights Agreement."

ANCILLARY AGREEMENTS (PAGES 48 TO 55 AND APPENDICES D THROUGH H)

Pursuant to the Acquisition Agreement, the following Ancillary Agreements have been entered into, or will be entered into prior to the closing of the Acquisition:

- STOCKHOLDERS' AGREEMENT. This agreement, to be entered into by KCS, Grupo TMM, certain subsidiaries of Grupo TMM and certain stockholders of Grupo TMM (the "Principal Stockholders"), contains standstill provisions, restrictions on transfer provisions and pre-emptive rights provisions with respect to Grupo TMM, such subsidiaries, the Principal Stockholders and their respective affiliates, who are then holders of Common Stock or Class A Convertible Common Stock (collectively, the "TMM Holders"). The Stockholders' Agreement also contains corporate governance provisions involving NAFTA Rail, including provisions regarding the selection of directors which, among other things, give TMM Holders the right to elect up to two directors of NAFTA Rail. This agreement requires the TMM Holders to vote their shares of NAFTA Rail in favor of the NAFTA Rail Board's slate of director nominees and against any proposal to remove any director nominated by the NAFTA Rail Nominating Committee and elected to the NAFTA Rail Board of Directors by the holders of Common Stock and Class A Convertible Common Stock. Subject to specific termination provisions contained in the Stockholders' Agreement, the Agreement (with a few exceptions) terminates when the TMM Holders' ownership falls below 40% of the Voting Securities initially acquired pursuant to the Merger, or in the event the Class A nominees are not elected to the NAFTA Rail Board of Directors (except for good cause). See "Proposal 4 - Proposed Issuance of Class A Convertible Common Stock and Common Stock--Summary of the Acquisition Agreement and Related Agreements--Stockholders' Agreement."

- REGISTRATION RIGHTS AGREEMENT. This agreement, to be entered into by KCS, Grupo TMM, certain Grupo TMM subsidiaries and the Principal Stockholders (who for purposes of this agreement include two additional members of the Serrano Segovia family), will provide certain holders of NAFTA Rail securities, collectively referred to as the "Holders," with registration rights with respect to the shares of NAFTA Rail Common Stock (i) issuable upon conversion of the Class A Convertible Common Stock, (ii) issued in lieu of cash at the closing of the Acquisition, (iii) issued pursuant to the Consulting Agreement and (iv) acquired on pre-emptive exercises. See "Proposal 4 - Proposed Issuance of Class A Convertible Common Stock and Common Stock--Summary of the Acquisition Agreement and Related Agreements--Registration Rights Agreement."

- CONSULTING AGREEMENT. This agreement, to be entered into by KCS and a consulting firm controlled by Jose Serrano Segovia provides for the consulting firm to provide consulting services to the NAFTA Rail Board of Directors and Chief Executive Officer relating to NAFTA Rail's Mexican rail network operations, including its customers and suppliers, regulatory matters and regarding the Mexican railroad industry in general. Jose Serrano Segovia is required under the terms of the Consulting Agreement to be personally involved in the provision of services by the consulting firm. The Consulting Agreement has an initial term of three years and may be extended by NAFTA Rail for an additional year. Under the Consulting Agreement, NAFTA Rail will pay to the consulting firm an annual fee of $600,000. In addition, NAFTA Rail will grant the consulting firm 2,100,000 shares of NAFTA Rail restricted Common Stock, subject to certain vesting conditions. If NAFTA Rail extends the initial term of the Consulting Agreement, NAFTA Rail will grant to consulting firm an additional 525,000 shares of NAFTA Rail restricted Common Stock. The Consulting Agreement contains restrictions on transfer of the shares of NAFTA Rail restricted Common Stock received under the agreement. See "Proposal 4 - Proposed Issuance of Class A Convertible Common Stock and Common Stock--Summary of the Acquisition Agreement and Related Agreements--Consulting

Agreement."

- MARKETING AND SERVICES AGREEMENT. This agreement, to be entered into by Grupo TMM, TFM and KCS, provides for the parties to enter into various "most favored nations" provisions, requiring, among other things, that: (i) NAFTA Rail provide certain services to Grupo TMM on terms which are no less favorable than the terms provided to third or fourth party logistics companies; (ii) Grupo TMM may be the exclusive provider of Road-Railer freight services over TFM's rail system within Mexico; (iii) Grupo TMM shall have the right, but not the obligation, to operate NAFTA Rail's intermodal terminals to the extent that NAFTA Rail determines to utilize a third party to operate such terminals within Mexico, the terms of such operations to be subject to mutual agreement of Grupo TMM and KCS; and (iv) Grupo TMM shall have the right to make a bid for the provision of certain transportation related services that are provided by Grupo TMM or its affiliates to third parties, if TFM determines to have such services provided by any unaffiliated third party in Mexico or the United States. The initial term of the Marketing and Services Agreement is for five years, subject to automatic renewal for periods of one year unless terminated by Grupo TMM or NAFTA Rail. See "Proposal 4 - Proposed Issuance of Class A Convertible Common Stock and Common Stock--Summary of the Acquisition Agreement and Related Agreements--Marketing and Services Agreement."

- ASSIGNMENT AND ASSUMPTION OF PUT RIGHTS AND OBLIGATIONS. This agreement is to be entered into by and among Grupo TMM, KCS, and Grupo TFM, by which Grupo TMM will assign and transfer to NAFTA Rail, and NAFTA Rail will accept and assume, Grupo TMM's rights, duties and obligations with respect to the purchase of the TFM limited voting shares from the Mexican government under the Put Agreement, as defined below. The obligation to purchase the Mexican government's 20% interest in TFM arises under an agreement entered into by and among the Federal Government of the United Mexican States, Grupo TFM, Grupo TMM and KCS, referred to as the "Put Agreement." Under the Put Agreement, the Mexican government has the right to sell its 20% interest in TFM through a public offering on October 31, 2003 (or prior to October 31, 2003, with the consent of Grupo TFM). If, on October 31, 2003, the Mexican government has not sold all of its capital stock in TFM, Grupo TFM is obligated to purchase the capital stock. In the event that Grupo TFM does not purchase the Mexican government's 20% interest in TFM within 60 days of the Mexican government's delivery of notice to Grupo TFM exercising the put, then Grupo TMM and NAFTA Rail would will be jointly and severally obligated under the Put Agreement to purchase the Mexican government's remaining interest in TFM in accordance with the terms of the Put Agreement. See "Proposal 4 - Proposed Issuance of Class A Convertible Common Stock and Common Stock--Summary of the Acquisition Agreement and Related Agreements--Agreement of Assignment and Assumption of Rights, Duties and Obligations."

- STOCK PURCHASE AGREEMENT. This agreement was entered into as of April 20, 2003, by and among KCS, Grupo TMM and TFM. Pursuant to this agreement, on May 9, 2003, KCS purchased from TFM 51% of the outstanding shares of Mexrail, a wholly-owned subsidiary of TFM, for $32,680,000. KCS has deposited these shares of Mexrail into a voting trust pending approval of KCS's application to the STB seeking authority to exercise common control over Tex-Mex, KCSR and Gateway Eastern. KCS has an exclusive option until December 31, 2005 to purchase the remaining outstanding shares of Mexrail. TFM retained the right to repurchase all of the Mexrail shares from KCS at any time within two years of the date of the Stock Purchase Agreement at the purchase price paid by KCS for such shares. See "Proposal 4 - Proposed Issuance of Class A Convertible Common Stock and Common Stock--Summary of the Acquisition Agreement and Related Agreements--The Stock Purchase Agreement" and "Proposal 4 - Proposed Issuance of Class A Convertible Common Stock and Common Stock--Regulatory Matters."

The following table provides a summary comparison of the Common Stock and proposed Class A Convertible Common Stock.

| TERM | COMMON STOCK | CLASS A CON COMMON S |
|---|---|---|
| Number of Authorized Shares | 400,000,000 | 50,000, |
| Par Value per Share | $0.01 | Same as Comm |
| Voting Rights | One vote for each share outstanding on each matter on which the stock-holders are entitled to vote | One vote for each share each matter on which th entitled to vote, provi shall be voted in favor recommended by the Boar respect to directors ot A Directors; and (ii) s separately as a class t directors (the "Class A (reduced to one in the ownership falls below 7 Securities initially ac the Merger and reduced event the TMM Holders' below 40% of the Voting initially acquired purs |
| Cumulative Voting | In elections for directors, other than Class A Directors, when the holders of the Preferred Stock do not have the right, voting as a class, to elect two directors, holders shall be entitled to as many votes as shall equal the number of shares which they are entitled to vote, multiplied by the number of directors to be elected, and such shares may be cast all for a single director or any two or more of them | Same as Comm |

| TERM | COMMON STOCK | CLASS A CON COMMON S |
|---|---|---|
| Required Vote | (i) Directors, other than Class A Directors, shall be elected by a | Same as Comm |

| | | |
|---|---|---|
| | plurality of votes of the shares present in person (or represented by proxy) at the meeting and entitled to vote for election of directors; (ii) increasing the number of directors to more than eighteen, abolishing cumulative voting in elections of directors and abolishing the division of the Board of Directors into three classes all require a vote of 70% of the outstanding shares of the KCS entitled to vote in the elections of directors; and (iii) all other matters require the affirmative vote of the majority of shares present in person (or represented by proxy) at the meeting and entitled to vote on the subject matter. | |
| Dividends | Holders entitled to share equally, share for share, in such dividends or other distributions declared by the Board of Directors | Same as Comm |
| Liquidation, Dissolution or Winding Up | Share ratably in all assets available for distribution | Same as Comm |

| TERM | COMMON STOCK | CLASS A CON COMMON S |
|---|---|---|
| Conversion Rights | Not applicable | May be converted into s Stock at any time upon holder and shall be con of Common Stock upon (i person other than Grupo its subsidiaries or Pri Stockholders; (ii) the the TMM Holders cease t in the aggregate, 40% o Securities initially ac the Merger; (iii) a Cha NAFTA Rail; and (iv) ac control of any TMM Hold |
| Transfer Restrictions | Not applicable | For a period of five ye not effect a Dispositio Competitor; (ii) to an such Affiliate agrees i bound by the terms of t Agreement; (iii) that i represents 5% or more o Voting Securities to an an eligible 13G Filer, been provided the right obligation) to purchase Securities; (iv) to any |

| | | |
|---|---|---|
| | | together with such pers Associates, thereby ben of the Total Voting Pow capital stock or Voting control of any Person t indirectly, beneficiall Securities of NAFTA Rai |

| TERM | COMMON STOCK | CLASS A CON COMMON S |
|---|---|---|
| Pre-Emptive Rights | Not applicable | Holders may purchase ad Class A Convertible Com maintain their percenta event NAFTA Rail author or sale of any shares o any securities containi rights to acquire share EXCEPT for issuances of issued: (i) to NAFTA Ra directors, consultants, independent contractors providers in connection upon the conversion of Common Stock; (iii) upo any options, warrants, exchangeable securities outstanding as of the d connection with the acq equity interests or ass Person; or (v) in the e additional equity in li million in cash at clos Acquisition. |

FAIRNESS OPINION (PAGES 24 TO 31 AND APPENDIX I)

Deutsche Bank Securities, Inc., ("Deutsche Bank"), acted as financial advisor to KCS in connection with the Acquisition. At an April 15, 2003 meeting of the KCS Board of Directors, Deutsche Bank delivered an oral opinion, which it subsequently confirmed in writing to the KCS Board of Directors as of April 20, 2003. The opinion was to the effect that, as of its date and based upon and subject to the assumptions made, matters considered and limits of the review undertaken by Deutsche Bank, the consideration to be paid by KCS in the Acquisition was fair, from a financial point of view, to KCS. For purposes of its opinion, the consideration to be paid by KCS included the stock consideration, the cash consideration and any amounts that could become payable pursuant to the VAT Contingency Payment. The full text of the written opinion of Deutsche Bank is attached hereto as Appendix I. KCS encourages you to read the opinion carefully, as well as the description of the analyses on which it was based.

VOTE REQUIRED TO APPROVE THE PROPOSALS (PAGES 39, 41, 42 AND 56)

Approval of Proposals 1, 2 and 3 will require the affirmative vote of the holders of a majority of the outstanding shares of Voting Stock that are entitled to vote on the Proposal. Approval of Proposal 4 will require the affirmative vote of the holders of a majority of the outstanding shares of KCS Common Stock and of Preferred Stock present in person or represented by proxy and entitled to vote on these matters, voting together as a single class, provided a quorum is present. The Series C Preferred Stock is not entitled to vote on these proposals.

QUESTIONS AND ANSWERS ABOUT THE PROPOSALS

This question-and-answer section highlights important information in this proxy statement but does not contain all of the information that is important to you. You should read carefully this entire proxy statement, including the appendices, and the other documents we refer you to for a more complete understanding of the matters being considered at the Special Meeting. In addition, we incorporate by reference into this proxy statement important business and financial information about KCS and Grupo TFM. You may obtain the information incorporated by reference into this proxy statement without charge by following the instructions in the section entitled "Where You Can Find More Information."

Q: ON WHAT AM I BEING ASKED TO VOTE?

A: You are being asked, through Proposals 1, 2 and 3, to vote to:

Amend and restate the KCS Restated Certificate of Incorporation to:

o Increase our authorized common securities from 400 million shares to 450 million shares and, from such newly authorized shares, create a new class of 50 million shares of common securities, called the "Class A Convertible Common Stock;"

o Change our name from "Kansas City Southern" to "NAFTA Rail;"

o Provide that our corporate purpose shall be to engage in any lawful act or activity for which corporations may be organized under the Delaware Corporation Law;

o Amend the New Series Preferred Stock provisions to allow our Board of Directors more flexibility in designating new series of preferred stock;

o Delete the "Series B Convertible Preferred Stock" provisions and the names and addresses of our incorporators, which are now obsolete;

o Amend the provision regarding personal liability of our directors for breaches of fiduciary duties to conform to Section 102(b)(7) of the Delaware Corporation Law;

o Authorize indemnification of (and advancement of expenses to) directors, officers and agents of KCS; and

o Incorporate into the KCS Restated Certificate of Incorporation the foregoing amendments, and the Certificate of Designation attached to the KCS Restated Certificate of Incorporation which created the Series C Preferred Stock.

The proposed amendments will not change the number of authorized shares of Preferred Stock or New Series Preferred Stock, which is 840,000 shares and 2,000,000 shares, respectively. A copy of the Amended and Restated Certificate of Incorporation incorporating the proposed amendments and the Certificate of Designations for the Series C Preferred Stock is attached to this proxy statement as Appendix A.

You are also being asked in Proposal 4 to approve the issuance of 18,000,000 shares of Class A Convertible Common Stock , up to an additional 6,400,000 shares of Class A Convertible Common Stock or Common Stock (in lieu of a portion of the cash consideration for the Grupo TFM shares), and up to 2,625,000 shares of Common Stock in connection with our acquisition of control of TFM. See "Proposal 4 - Proposed Issuance of Class A Convertible Common Stock and Common Stock."

Q: WHAT IS CLASS A CONVERTIBLE COMMON STOCK?

A: Class A Convertible Common Stock is a new series of common securities of KCS (NAFTA Rail following approval of the Proposals) that will be created by the proposed Amended and Restated Certificate of Incorporation. The terms of the Class A Convertible Common Stock are set forth in Article FOURTH of Appendix A and are described under "Proposal 1 - Amendment of Restated Certificate of Incorporation of KCS, in Connection With the Acquisition--Description of Class A Convertible Common Stock."

Q: WHY DOES KCS WANT TO ACQUIRE ADDITIONAL INTERESTS IN GRUPO TFM?

A: Grupo TFM owns 80 percent of the economic interest in TFM and all the shares of TFM entitled to full voting rights. KCS currently owns a 46.6% economic interest in Grupo TFM and 49.0% of the shares of Grupo TFM entitled to full voting rights. If KCS purchases the additional shares of Grupo TFM, it will have a controlling interest in Grupo TFM and, by virtue of Grupo TFM's ownership interest in TFM, KCS will have a controlling interest in TFM.

Q: WHO IS TFM?

A: TFM holds the concession to operate Mexico's Northeast Rail Lines (the "Concession"; the "Northeast Rail Lines" are now know as "TFM"). Under the Concession, TFM operates a strategically significant corridor between Mexico and the United States, and has as its core route a key portion of the shortest, most direct rail passageways between Mexico City and the border crossing to Laredo, Texas. TFM's rail lines connect the most populated and industrialized regions of Mexico with Mexico's principal U.S. border railway gateway at Nuevo Laredo. In addition, TFM serves three of Mexico's primary seaports and 15 Mexican states and Mexico City, which together represent a majority of the country's population and account for a majority of its estimated gross domestic product.

Q: WHAT IS THE PURPOSE OF THIS ACQUISITION?

A: The purpose of the acquisition is to place TFM under the control of KCS, to be renamed "NAFTA Rail," which will also control KCSR, Gateway Eastern and, if STB approval is obtained, Tex-Mex. KCS management believes that common control of these railroads, which are already physically linked in an end-to-end configuration, will enhance competition and give shippers in the North American Free Trade Agreement ("NAFTA") trade corridor a strong transportation alternative as they make their decisions to move goods between the United States, Mexico and Canada. In addition, KCS management believes that this common control offers stockholders greater value through the operating efficiencies expected to come from common ownership and control.

Q: WHY DOES KCS WANT TO CHANGE ITS NAME TO NAFTA RAIL?

A: One of KCS's growth strategies is to continue to capitalize on NAFTA trade. Upon consummation of the acquisitions discussed above, along with KCS's ownership of KCSR and through its strategic alliance with Canadian National Railway Company ("CN") and Illinois Central Corporation ("IC," and together with CN, "CN/IC"), KCS will control or have access to a contiguous rail network connecting Canada, the United States and Mexico. KCS believes that the name NAFTA Rail will more accurately reflect KCS's consolidated holdings and will emphasize KCS's focus on NAFTA trade.

Q: WHY IS KCS STOCKHOLDER APPROVAL NECESSARY?

A: The rules of the New York Stock Exchange require listed companies, such as KCS, to obtain stockholder approval before the issuance of common stock, or securities convertible into common stock, in any transaction or series of related transactions which amount to 20% or more of the listed company's issued and outstanding common stock. The proposed issuance of shares of Class A Convertible Common Stock and Common Stock is expected to exceed 20% of KCS's issued and outstanding common stock. We are also proposing amendments to our Restated Certificate of Incorporation to simplify, update and restate that certificate and such amendments require stockholder approval.

Q: DO I HAVE APPRAISAL RIGHTS IF I OPPOSE ANY OF THE PROPOSALS?

A: No. Under Delaware law, stockholders do not have the right to an appraisal of the value of their shares in connection with any of the proposals.

Q: WHAT IS THE BOARD OF DIRECTORS' RECOMMENDATION ON HOW TO VOTE?

A: The KCS Board of Directors has unanimously recommended that you vote FOR the Proposals.

Q: WHAT WILL HAPPEN IF ANY OF THE PROPOSALS ARE NOT APPROVED?

A: KCS will not be able to take the actions proposed. If Proposal 1 is not approved, KCS will not be able to proceed with the approval of Proposal 4. If either Proposal 1 or Proposal 4 is not approved, KCS may not be able to complete the Acquisition.

Q: WHAT EFFECTS WILL THE PROPOSED ISSUANCES OF CLASS A CONVERTIBLE COMMON STOCK AND COMMON STOCK HAVE ON KCS STOCKHOLDERS?

A: The proposed issuance of Class A Convertible Common Stock and Common Stock will result in dilution in the percentage ownership interest of KCS's existing stockholders. The amount of such dilution cannot be determined until the time of issuance; however, if KCS had issued, as of March 31, 2003, the maximum number of shares of Common Stock contemplated by the Acquisition Agreement (including shares issued upon conversion of the Class A Convertible Common Stock) and by the Consulting Agreement, which would aggregate approximately 88.7 million shares, then based upon approximately 61.6 million shares of Common Stock outstanding as of that date and a book value per share then of $12.42, the outstanding shares of Common Stock outstanding would have increased by approximately 44%, and the book value per share of Common Stock would have decreased, from $12.42 to $12.07. These results may be different at the time the Acquisition is completed.

Q: WILL I HAVE TO DO ANYTHING WITH MY CERTIFICATES FOR KCS COMMON STOCK UPON THE CHANGE OF KCS'S NAME TO NAFTA RAIL?

A: No. You need not surrender your certificates for new certificates at this time. Certificates for NAFTA Rail shares will be issued in the normal course as transfers of KCS shares occur. Until then, your certificates for stock of KCS may continue to be held and will be treated as if they were certificates for NAFTA Rail.

Q. WHY HAS KCS NOT INCLUDED A PROPOSAL ON THE ELECTION OF DIRECTORS TO NAFTA RAIL'S BOARD OF DIRECTORS UPON CONSUMMATION OF THE ACQUISITION?

A. The two new directors of NAFTA Rail will not be appointed unless and until the consummation of the Acquisition. At that time, they will be appointed to serve until the Annual Meeting of Stockholders of NAFTA Rail in 2004, at which time they will be nominated for election by the stockholders.

Q: WHO CAN HELP ANSWER OTHER QUESTIONS I MAY HAVE?

A: If you have any questions concerning the Proposals or the Special Meeting, or if you would like additional copies of the proxy statement, please contact the Corporate Secretary's Office of KCS at 816-983-1384.

## INFORMATION ABOUT THE SPECIAL MEETING

WHY WERE KCS'S STOCKHOLDERS SENT THIS PROXY STATEMENT?

KCS is mailing this proxy statement on or about ________, 2003 to its stockholders of record on [______], 2003 in connection with KCS's Board of Directors' solicitation of proxies for use at a Special Meeting of Stockholders and any adjournment thereof (the "Special Meeting"). The Special Meeting will be held at [Union Station Kansas City, City Stage Theater, 30 West Pershing Road], Kansas City, Missouri, on _________________________ 2003 at 10:00 a.m. The Notice of Special Meeting of Stockholders and a proxy card accompany this proxy statement.

KCS will pay for the Special Meeting, including the cost of mailing the proxy materials and any supplemental materials. Directors, officers and employees of KCS may, either in person, by telephone or otherwise, also solicit proxy cards. They have not been specifically engaged for that purpose, nor will they be compensated for their efforts. Morrow & Co., Inc. has been retained and will be paid by KCS to assist in the solicitation of proxies at a cost not expected to exceed [$7,500], plus expenses. In addition, KCS may reimburse brokerage firms and other persons representing beneficial owners of KCS shares for their expenses in forwarding this proxy statement and other soliciting materials to the beneficial owners.

Brokers, dealers, banks, voting trustees, other custodians and their nominees are asked to forward this notice and proxy statement and the proxy card to the beneficial owners of KCS's stock held of record by them. Upon request, KCS will reimburse them for their reasonable expenses in completing the mailing of the materials to beneficial owners of our stock.

WHO MAY ATTEND THE SPECIAL MEETING?

Only KCS stockholders or their proxies and guests of KCS may attend the Special Meeting. Any stockholder or stockholder's representative who, because of a disability, may need special assistance or accommodation to allow him or her to participate in the Special Meeting may request reasonable assistance or accommodation from KCS by contacting the office of the Corporate Secretary at KCS's principal executive offices, (816) 983-1538. If written requests are made to the Corporate Secretary of KCS, they should be mailed to P.O. Box 219335, Kansas City, Missouri 64121-9335 (or if by United Parcel Service or other form of express delivery to 427 West 12th Street, Kansas City, Missouri 64105). To provide KCS sufficient time to arrange for reasonable assistance, please submit all requests by _______, 2003.

WHAT MATTERS WILL BE CONSIDERED AT THE SPECIAL MEETING?

At the Special Meeting, stockholders will consider and vote upon proposals to: (1) amend KCS's Restated Certificate of Incorporation, in connection with the proposed Acquisition; (2) amend KCS's Restated Certificate of Incorporation to simplify and update the Restated Certificate of Incorporation; (3) restate KCS's Restated Certificate of Incorporation and (4) issue 18,000,000 shares of Class A Convertible Common Stock, up to 2,625,000 shares of Common Stock and up to an additional 6,400,000 shares of Class A Convertible Common Stock or Common Stock. These matters have been proposed by the Board of Directors, and Proposal 4 is dependent upon the approval of Proposal 1. The Board of Directors knows of no other matters that will be presented or voted on at the Special Meeting.

VOTING

WHICH STOCKHOLDERS MAY VOTE AT THE SPECIAL MEETING?

Only the holders of record at the close of business on [_____________], 2003 (the "Record Date"), of the Common Stock and the holders of the Preferred Stock, are entitled to notice of and to vote at the Special Meeting. On the Record Date, KCS had outstanding [61,495,992] shares of Common Stock and 242,170 shares of Preferred Stock for a total of [61,738,162] shares eligible to be voted at the Special Meeting. The holders of Series C Preferred Stock will not have any right to vote on the matters known to be presented at the Special Meeting. Holders of the Series C Preferred Stock only have contingent voting rights, as in the case of a dividend or redemption payment default, as set forth in KCS's Restated Certificate of Incorporation and as otherwise required by law.

The Common Stock and the Preferred Stock (collectively, the "Voting Stock") constitute KCS's only voting securities which are entitled to vote at the Special Meeting and will vote together as a single class on all matters to be considered at the Special Meeting. Each holder of Voting Stock is entitled to cast one vote for each share of Voting Stock held on the Record Date on all matters. Internet and telephone voting are also available, and the accompanying form of proxy contains the Internet address and toll-free telephone number.

HOW DOES KCS DECIDE WHETHER ITS STOCKHOLDERS HAVE APPROVED ANY OF THE PROPOSALS?

Stockholders owning at least a majority of the shares of Voting Stock entitled to vote must be present in person or represented by proxy to constitute a quorum for the transaction of business at the Special Meeting. The shares of a stockholder who is present and entitled to vote at the Special Meeting, either in person or through a proxy, are counted for purposes of determining whether there is a quorum, regardless of whether the stockholder votes the shares.

For the proposals to be voted on at the Special Meeting, (i) the affirmative vote of the holders of a majority of the outstanding shares of Voting Stock that are entitled to vote on the proposals to amend and restate the Restated Certificate of Incorporation of KCS is required for the adoption of Proposals 1, 2 and 3 and (ii) the affirmative vote of the holders of a majority of the outstanding shares of KCS Common Stock and of Preferred Stock present in person or represented by proxy and entitled to vote on the proposal to approve the issuance of Class A Convertible Common Stock and Common Stock, voting together as a single class, assuming a quorum is present, is required for the adoption of Proposal 4.

Voting ceases when the chairman of the Special Meeting closes the polls. The votes are counted and certified by inspectors appointed by the Board of Directors of KCS in advance of the Special Meeting. In determining whether a majority of shares have been affirmatively voted for a particular proposal, the affirmative votes for the proposal are measured against the votes for and against the proposal plus the abstentions from voting on the proposal and broker non-votes. In other words, abstentions and broker non-votes will have the effect of votes against a proposal. A stockholder may abstain from voting on any proposal and abstentions from voting are not considered to be votes affirmatively cast. Abstaining will, therefore, have the effect of a vote against a proposal.

WHAT IF A STOCKHOLDER HOLDS SHARES IN A BROKERAGE ACCOUNT?

The Voting Stock is traded on the New York Stock Exchange, Inc. (the "NYSE"). Under the rules of the NYSE, member stockbrokers who hold shares of Voting Stock in the broker's name for customers are required to get directions from the customers on how to vote their shares. NYSE rules also permit brokers to vote shares on certain proposals when they have not received any directions. The Staff of the NYSE, prior to the Special Meeting, informs the brokers of those proposals upon which the brokers are entitled to vote the undirected shares. KCS does not believe that brokers will be permitted to vote on these proposals if they have not received directions from their customers.

When a stockbroker does not receive directions from customers, and the stockbroker cannot or does not vote the customers' shares, the stockbroker's abstention is referred to as a "broker non-vote" (customer directed abstentions are not broker non-votes). Broker non-votes generally do not affect the determination of whether a quorum is present at the Special Meeting because, in most cases, some of the shares held in the broker's name have been voted on at least some proposals, and, therefore, all of those shares are considered present at the Special Meeting. Under applicable law, a broker non-vote will have the same effect as a vote against any of the Proposals.

HOW ARE A STOCKHOLDER'S SHARES VOTED IF THE STOCKHOLDER SUBMITS A PROXY?

Stockholders who return a properly executed proxy card or properly vote via the Internet or telephone are appointing the Proxy Committee to vote their shares of Voting Stock covered by the Proxy. That Committee consists of the three directors of KCS whose names are listed on the related proxy card. A stockholder wishing to name as his, her or its proxy someone other than the Proxy Committee designated on the proxy card may do so by crossing out the names of the designated proxies and inserting the name of another person. In that case, it will be necessary for the stockholder to sign the proxy card and deliver it to the person so named and for that person to be present and vote at the Special Meeting. Proxy cards so marked should NOT be mailed directly to KCS.

The Proxy Committee will vote the shares of Voting Stock covered by a proxy in accordance with the instructions given by the stockholders executing the proxy(1) or authorizing the proxy and voting by Internet or telephone. If a properly executed, or authorized, and unrevoked proxy solicited hereunder does not specify how the shares represented thereby are to be voted, the Proxy Committee intends to vote the shares FOR the proposals to amend and restate KCS's Restated Certificate of Incorporation, FOR the proposal to issue shares of Class A Convertible Common Stock and Common Stock, and in accordance with their discretion upon such other matters as may properly come before the Special Meeting.

MAY A STOCKHOLDER REVOKE HIS OR HER PROXY OR VOTING INSTRUCTION CARD?

Yes. At any time before the polls for the Special Meeting are closed, a stockholder who holds stock in his or her name may revoke a properly executed or authorized proxy by (a) an Internet or telephone vote subsequent to the date shown on a previously executed and delivered proxy or to the date of a prior electronic vote or telephone vote, or (b) with a later-dated, properly executed and delivered proxy, or (c) a written revocation delivered to the Corporate Secretary of KCS. A stockholder who holds stock in a brokerage account must contact the broker and comply with the broker's procedures if he or she wants to revoke or change the instructions that the stockholder returned to the broker. Attendance at the Special Meeting will not have the effect of revoking a properly executed or authorized proxy unless the stockholder delivers a written revocation to the Corporate Secretary before the proxy is voted.

HOW DO PARTICIPANTS IN KCS'S OR DST SYSTEMS, INC.'S EMPLOYEE STOCK OWNERSHIP PLANS, IN KCS'S 401(K) AND PROFIT SHARING PLAN, IN THE JANUS 401(K), PROFIT SHARING AND EMPLOYEE STOCK OWNERSHIP PLAN, OR IN KCS'S UNION 401(K) PLANS VOTE?

Participants in KCS's and DST Systems, Inc.'s employee stock ownership plans ("ESOPs"), in KCS's 401(k) and Profit Sharing Plans ("401(k) Plan"), in the Janus 401(k), Profit Sharing and Employee Stock Ownership Plan ("Janus Plan," formerly the Stilwell Financial Inc. 401(k) and Profit Sharing Plan) and in KCS's union 401(k) plans ("Union Plans") are each provided a separate voting instruction card (accompanying this proxy statement) to instruct the respective trustees of these ESOPs, 401(k) Plan, Janus Plan and Union Plans how to vote the shares of Common Stock held on behalf of the participant.(2) The trustee is required under the trust agreements to vote the shares in accordance with the instructions indicated on the voting instruction card.(2) If voting instructions are not given by the participant, the trustee must vote those shares, as well as any unallocated shares, in the same proportions as the shares for which voting instructions were received from the plan participants. Unless giving voting instructions by Internet or telephone, the voting instruction card should be returned in the envelope provided to UMB Bank, N.A., Securities Transfer Division, P.O. Box 410064, Kansas City, Missouri 64179-0013. THE VOTING INSTRUCTION CARD SHOULD NOT BE RETURNED TO KCS, JANUS CAPITAL GROUP INC ("JANUS"). OR DST SYSTEMS, INC. ("DST"). ESOP participants, 401(k) Plan participants, Janus Plan participants and Union Plan participants who wish to revoke their voting instructions must contact the trustee and follow its procedures.

ARE THE VOTES OF PARTICIPANTS IN THE ESOPS, THE 401(K) PLAN, THE JANUS PLAN AND THE UNION PLANS CONFIDENTIAL?

Under the terms of the ESOPs, the 401(k) Plan, the Janus Plan and the Union Plans, the trustee is required to establish procedures to ensure that the instructions received from participants are held in confidence and not divulged, released or otherwise utilized in a manner that might influence the participants' free exercise of their voting rights.

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(1) Internet and telephone voting are also available, and the accompanying form of proxy contains the Internet address and toll-free telephone number.

(2) Voting instructions may also be given by Internet or telephone by participants in the KCS and DST ESOPs and the KCS 401(k) and Profit Sharing Plan, and the accompanying voting instruction card relating to such plans contains the Internet address and toll-free number.

## BUSINESS OF KCS, TFM AND TEX-MEX

### KCS

We, along with our subsidiaries and affiliates, own and operate a uniquely positioned North American rail network strategically focused on the growing north/south freight corridor that connects key commercial and industrial markets in the central United States with major industrial cities in Mexico. KCS's principal subsidiary, KCSR, which was founded in 1887, is one of seven Class I railroads in the United States (railroads with annual revenues of at least $250 million, as indexed for inflation). Our rail network (KCSR, TFM and Tex-Mex) is comprised of approximately 6,000 miles of main and branch lines. We have further expanded our rail network through marketing alliances and strategic alliances.

Our expanded network includes:

- KCSR, which owns and operates approximately 3,100 miles of main and branch lines running on a north/south axis from Kansas City, Missouri to the Gulf of Mexico and on an east/west axis from Meridian, Mississippi to Dallas, Texas and from Kansas City to East St. Louis, Illinois and Springfield, Illinois;

- TFM, which operates approximately 2,650 miles of main and branch lines running from the U.S./Mexico border at Nuevo Laredo to Mexico City and serves most of Mexico's principal industrial cities and three of its major shipping ports, and Tex-Mex, which operates a 160-mile rail line extending from Laredo to Corpus Christi, Texas;

- a marketing agreement with Norfolk Southern Railway Company ("Norfolk Southern") that allows us to gain incremental traffic volume between the southeast and the southwest United States and a marketing agreement with the Iowa, Chicago & Eastern Railroad Corporation (formerly I&M Rail Link, LLC), that provides us with access to Minneapolis and Chicago and to originations of corn and other grain in Iowa, Minnesota and Illinois;

- a strategic alliance with CN/IC, through which we have created a contiguous rail network of approximately 25,000 miles of main and branch lines connecting Canada, the United States and Mexico;

- a joint marketing alliance with The Burlington Northern and Santa Fe Railway Company aimed at promoting cooperation, revenue growth and extending market reach, principally to enhance chemical, grain and forest product traffic for both railroads in the United States and Canada. The marketing alliance is also expected to improve operating efficiencies for both carriers in key market areas, as well as provide customers with expanded service options; and

- the Panama Canal Railway Company, which holds the concession to operate the Panama Canal Railway, a 47-mile railroad located adjacent to the Panama Canal. This railroad has been reconstructed for the purpose of performing freight and passenger operations. Its wholly-owned subsidiary, Panarail Tourism Company operates a commuter and tourist railway service over the lines of the Panama Canal Railway.

KCS is incorporated in Delaware. Our principal executive offices are located at 427 West 12th Street, Kansas City, Missouri 64105. Our telephone number is 816-983-1303.

TFM

TFM is 80% owned by Grupo TFM, which holds all of the TFM Voting Stock. The remaining 20% economic interest in TFM is held by the Mexican government. Grupo TFM is a non-operating holding company with no material assets or operations other than its investment in TFM. The stockholders of Grupo TFM are Multimodal, an indirect subsidiary of Grupo TMM, NAFTA Rail, S. A. de C. V., an indirect wholly owned subsidiary of KCS, and TFM. TFM is the owner of the limited voting shares previously held by the Mexican National Railway, representing 24.6% of the equity of Grupo TFM. TFM holds the concession, which was awarded by the Mexican Government in 1996, to operate Mexico's Northeast Rail Lines (the "Concession"; the "Northeast Rail Lines" are now known as "TFM") for the 50 years ending in June 2047 and, subject to certain conditions, has an option to extend the Concession for an additional 50 years. The Concession is subject to certain mandatory trackage rights and is exclusive until 2027. However, the Mexican government may revoke TFM's exclusivity after 2017 if it determines that there is insufficient competition and may terminate the Concession as a result of certain conditions or events, including (1) TFM's failure to meet its operating and financial obligations with regard to the Concession under applicable Mexican law, (2) a statutory appropriation by the Mexican government for reasons of public interest and (3) liquidation or bankruptcy of TFM. TFM's assets and its rights under the Concession may, under certain circumstances such as natural disaster, war or other similar situations, also be seized temporarily by the Mexican government. Under Mexican law, the Mexican government would be obligated to compensate Grupo TFM for damages arising out of the permanent or temporary condemnation of or seizure of the Concession.

Under the Concession, TFM operates a strategically significant corridor between Mexico and the United States, and has as its core route a key portion of the shortest, most direct rail passageways between Mexico City and the border crossing to Laredo, Texas. TFM's rail lines are the only ones which serve Nuevo Laredo, the largest rail freight exchange point between the United States and Mexico. TFM's rail lines connect the most populated and industrialized regions of Mexico with Mexico's principal U.S. border railway gateway at Nuevo Laredo. In addition, TFM serves three of Mexico's primary seaports at Veracruz and Tampico on the Gulf of Mexico and Lazaro Cardenas on the Pacific Ocean. TFM serves 15 Mexican states and Mexico City, which together represent a majority of the country's population and account for a majority of its estimated gross domestic product. KCS management believes the Nuevo Laredo gateway is the most important interchange point for rail freight between the United States and Mexico. As a result, TFM's routes are an integral part of Mexico's foreign trade distribution system.

TFM operates approximately 2,650 miles of main and branch lines and certain additional sidings, spur tracks and main line tracks under trackage rights. TFM has the right to operate the rail lines, but does not own the land, roadway or associated structures, which remain owned by the Mexican Government.

The principal executive offices of TFM are located in Mexico City at Av. Periferico Sur 4829, Piso 4(degree), Col. Parques Del. Pedregal, Mexico, D.F. 14010.

We are proposing to acquire control of TFM. See "Proposal 4 - Proposed Issuance of Class A Convertible Common Stock and Common Stock."

TEX-MEX

Tex-Mex is a wholly-owned subsidiary of Mexrail. Mexrail is a holding company which owns 100% of the stock of Tex-Mex, the northern half of the International Bridge at Laredo, Texas and real property (approximately 70 acres of land) in and around Laredo, Texas.

Tex-Mex operates a 160-mile rail line extending from Laredo to Corpus Christi. Tex-Mex connects to KCSR through trackage rights over the Union Pacific Railroad Company between Robbstown and Beaumont, Texas. These trackage rights were granted pursuant to a 1996 STB decision and have an initial term of 99 years. Tex-Mex provides a vital link between KCS's U.S. operations through KCSR and its Mexican operations through TFM.

The principal executive offices of Tex-Mex are located at 5810 San

Bernardo, Laredo, Texas 78041.

We have purchased 51% of Mexrail and Mexrail and Tex-Mex have been placed into a voting trust pending approval of our application to the STB. See "Proposal 4 - Proposed Issuance of Class A Convertible Common Stock and Common Stock--Summary of the Acquisition Agreement and Related Agreements--The Stock Purchase Agreement" and "Proposal 4 - Proposed Issuance of Class A Convertible Common Stock and Common Stock--Regulatory Matters."

## BACKGROUND AND RECOMMENDATION

### BACKGROUND

To participate in the privatization of the Mexican railroad system and to promote the movement of rail traffic over their lines, KCS and Grupo TMM entered into a joint venture agreement in December, 1995 and formed the entity which subsequently became Grupo TFM.

On January 31, 1997, Grupo TFM paid approximately $565 million to the Mexican government, using funds provided by KCS and Grupo TMM, for a portion of the purchase price of the shares representing 80% of the economic interest in the Northeast Rail Lines. The Northeast Rail Lines, subsequently renamed TFM, holds the concession to operate the lines of the former Mexican National Railway Company running through the north and central portions of Mexico. Grupo TFM paid the remainder of the purchase price, approximately $835 million, to the Mexican government on June 23, 1997. Grupo TFM funded this second payment from a combination of TFM credit facilities, TFM debt securities sales, proceeds from the sale of 24.6% of Grupo TFM to the Mexican government and additional capital contributions from KCS and Grupo TMM.

Since the formation of their joint venture, executive officers of KCS and Grupo TMM have from time to time discussed the possibility of combining their respective U.S. and Mexican rail operations under a single transportation holding company. Shortly after joining KCS in 1995, Michael Haverty, the current Chairman, President and Chief Executive Officer of KCS, proposed bringing KCSR, Tex-Mex and TFM under the control of a single holding company in order to capitalize on NAFTA trade developments.

At a meeting on January 23, 2002 to address a dispute between KCS and Grupo TMM over, among other things, a dividend declaration by Grupo TFM, Mr. Haverty and Jose Serrano Segovia, Chairman and Chief Executive Officer of Grupo TMM, agreed it was time to direct their respective financial advisors to begin preliminary consideration of a possible transaction combining the rail operations of KCS and Grupo TMM under a single holding company. Mr. Larry Lawrence, Special Advisor to Mr. Haverty, subsequently met with KCS's financial advisor, Deutsche Bank, to assess valuation issues associated with such a transaction.

The following month, Deutsche Bank and JP Morgan, Grupo TMM's financial advisor, held discussions regarding possible terms for a transaction, and Deutsche Bank made a presentation to KCS regarding those terms. On February 6, 2002, Messrs. Haverty and Lawrence presented to the KCS Board of Directors a general outline of a possible transaction in which the U.S. rail operations of KCSR and Tex-Mex and the Mexican rail operations of TFM would be put under common control.

During the seven month period beginning in March 2002, financial and legal advisors for KCS and for Grupo TMM held numerous discussions among themselves and with other representatives of KCS and Grupo TMM, in person, by telephone and electronically, to discuss various proposals for a U.S.-Mexican rail combination and issues associated with those proposals, and to try to agree on a term sheet for such a transaction. Key issues addressed in those discussions included the amount of the purchase price and the proportions of the price to be paid in cash and securities; the terms, and restrictions on transfer, of securities to be issued in the transaction; governance of the surviving entity; providing liquidity to the recipients of KCS securities in the transaction, U.S. and Mexican tax consequences; regulatory, stockholder and noteholder approval matters and post-closing operations.

On May 1, 2002, at a regular meeting of the KCS Board of Directors, the Board received from management a presentation concerning the status of the negotiations between KCS and Grupo TMM and discussed the proposed transaction.

In July 2002, KCS and Grupo TMM caused TFM to purchase the Mexican government's 24.6% interest in Grupo TFM for approximately $256 million, using a combination of proceeds from an offering of TFM debt securities, a credit from the Mexican government for a reversion of certain redundant rail facilities, cash on hand and other financial resources. The Mexican government retained a 20% economic interest in TFM, which the Government has the right, on or after October 31, 2003, to sell in a public offering or to compel Grupo TFM to purchase. Should Grupo TFM fail to purchase the Mexican government's 20% economic interest in TFM, then the Mexican government has the right to compel KCS and Grupo TMM to purchase the Government's interest. The Acquisition Agreement contemplates an assumption by KCS of Grupo TMM's obligations to make such a purchase.

On September 24, 2002, at a regular meeting of the KCS Board of Directors, Mr. Lawrence and KCS's legal and financial advisors made a presentation regarding a possible transaction with Grupo TMM to acquire control of TFM by acquiring additional shares of Grupo TFM.

In October 2002, when the parties could not reach agreement on the proposed term sheet for a transaction, negotiations between the parties were suspended.

During November 2002, Deutsche Bank and JP Morgan held intermittent discussions regarding proposed terms for the transaction and the term sheet. A revised term sheet was prepared. During that month, there were numerous telephonic and electronic communications between the respective legal advisors to KCS and Grupo TMM regarding the draft term sheet. On November 9, 2002, KCS and Grupo TMM executed confidentiality and standstill agreements.

In December 2002, KCS officers and advisors met several times by telephone to discuss financial models and alternative structures for a proposed transaction and exchanged numerous electronic messages relating to the transaction.

During January 2003, further discussions were held between KCS and Grupo TMM representatives regarding a term sheet, and the standstill provisions of the confidentiality agreements between KCS and Grupo TMM were extended. On January 16, 2003, at a regular meeting, the KCS Board reviewed the status of negotiations and discussed the proposed term sheet.

In February 2003, KCS and Grupo TMM, and their respective legal advisors, worked on drafts of the transaction documents, including an Acquisition Agreement, a Stock Purchase Agreement, and the other Ancillary Agreements.

During March 2003, representatives of KCS and Grupo TMM, including their respective financial advisors and legal advisors, met to negotiate the terms of the transaction documents and to conduct due diligence reviews of their businesses.

At a special meeting held on April 15, 2003, the KCS Board received an extensive presentation on the possible transaction, which included a review of the proposed terms and draft transaction documents, consideration of financing alternatives and the results of due diligence inquiries. Deutsche Bank made a presentation to the Board regarding the transaction and delivered its oral fairness opinion. The Board requested that further due diligence be conducted and continued the meeting to April 20, 2003.

On April 20, 2003, the KCS Board held a telephonic meeting, reviewed the results of the further due diligence review and after discussion of the proposed transaction, approved the Proposals set forth in this Proxy Statement. KCS and Grupo TMM then executed and delivered the Acquisition Agreement and the Stock Purchase Agreement and a press release announcing their actions was released the next morning.

REASONS FOR THE PROPOSALS

KCS's Board of Directors is proposing to amend and restate KCS's Restated Certificate of Incorporation to, among other things, create the new Class A Convertible Common Stock to be issued pursuant to the Acquisition Agreement. KCS proposes to issue the Class A Convertible Common Stock to obtain a controlling interest in TFM through the purchase of shares of Grupo TFM, which holds an 80% economic interest in TFM and all of the TFM Voting Stock. KCS may issue additional Common Stock in order to consummate the Acquisition, in lieu of a portion of the cash payment payable for the Grupo TFM shares and pursuant to the Consulting Agreement to be entered into in connection with the consummation of the Acquisition. In addition, KCS proposes to change its name to "NAFTA Rail" to more accurately reflect its consolidated holdings upon consummation of the Acquisition and its focus on NAFTA trade. Other amendments to the Restated Certificate of Incorporation are being proposed to provide more flexibility to the Board with respect to New Series Preferred Stock, to make changes or add provisions as allowed by, or to reflect compliance with, the Delaware Corporation Law, to delete certain obsolete provisions, and to incorporate into the Restated Certificate of Incorporation the Certificate of Designations by which the Series C Preferred Stock was created.

KCS believes that the acquisition of a controlling interest in TFM, together with the controlling interest in Tex-Mex will benefit KCS and its stockholders. Upon consummation of the acquisitions, KCSR, TFM and Tex-Mex will be under the common control of a single transportation holding company, NAFTA Rail. KCS management believes that common control of these three railroads, which are already physically linked in an end-to-end configuration, will enhance competition and give shippers in the NAFTA trade corridor a strong transportation alternative as they make their decisions to move goods between the United States, Mexico and Canada. In addition, KCS management believes that this common control offers stockholders greater value through the operating efficiencies expected to come from common ownership and control.

In arriving at its decision to approve the Acquisition and the transactions contemplated by the Acquisition Agreement and the Ancillary Agreements and in making its recommendation discussed below under "--Recommendation," the KCS Board of Directors considered a number of factors, including, but not limited to the following:

- The oral opinion of Deutsche Bank, KCS's financial advisor, which it delivered at an April 15, 2003 meeting of the KCS Board of Directors, and subsequently confirmed orally and in writing to the KCS Board of Directors as of April 20, 2003. The opinion was to the effect that, as of its date and based upon and subject to the assumptions made, matters considered and limits of the review undertaken by Deutsche Bank, the consideration was fair, from a financial point of view, to KCS. See "--Opinion of Financial Advisor;"

- KCS's business, results of operations and financial condition;

including, but not limited to, its current and projected debt burden;

- The terms of the proposed Acquisition Agreement, including among other things, the conditions to closing, the consideration to be paid and received, the rights of termination and termination fee provisions set forth in that agreement, and the terms of the Ancillary Agreements;

- The terms of the proposed Stock Purchase Agreement, including, among other things, the conditions of closing, the rights of termination, and the consideration to be paid and received;

- The general economic and competitive conditions of the market in which KCS operates and consolidation trends in that market;

- The operating efficiencies expected to come from common ownership and control of KCSR, TFM and Tex-Mex;

- The impact of the Acquisition on the customers of KCSR, TFM and Tex-Mex;

- The financial resources of Grupo TMM, TFM and Tex-Mex;

- The likelihood of receiving the requisite regulatory approvals in a timely manner; and

- The interests of certain of Grupo TMM's executive officers and directors in the Acquisition.

In reaching its determination to approve the Acquisition, the Ancillary Agreements and the transactions contemplated by these agreements and in making its recommendations to KCS stockholders, the Board of Directors did not assign any relative or specific weights to the foregoing factors, and individual directors may have given different weights to different factors.

OPINION OF FINANCIAL ADVISOR

Deutsche Bank acted as financial advisor to KCS in connection with the Acquisition. At an April 15, 2003 meeting of the KCS Board of Directors, Deutsche Bank delivered an oral opinion, which it subsequently confirmed in writing to the KCS Board of Directors as of April 20, 2003. The opinion was to the effect that, as of its date and based upon and subject to the assumptions made, matters considered and limits of the review undertaken by Deutsche Bank, the consideration was fair, from a financial point of view, to KCS. For purposes of its opinion, the consideration to be paid by KCS included the stock consideration, the cash consideration and any amounts that could become payable pursuant to the VAT Contingency Payment to Grupo TMM. See "Proposal 4 - Proposed Issuance of Class A Convertible Common Stock and Common Stock--Summary of the Acquisition Agreement and Related Agreements--The Acquisition Agreement--VAT Contingency Payment."

THE FULL TEXT OF DEUTSCHE BANK'S WRITTEN OPINION, DATED APRIL 20, 2003, WHICH SETS FORTH, AMONG OTHER THINGS, THE ASSUMPTIONS MADE, MATTERS CONSIDERED AND LIMITS ON THE REVIEW UNDERTAKEN BY DEUTSCHE BANK IN CONNECTION WITH THE OPINION, IS ATTACHED AS APPENDIX I TO THIS PROXY STATEMENT AND IS INCORPORATED HEREIN BY REFERENCE. KCS STOCKHOLDERS ARE URGED TO READ DEUTSCHE BANK'S OPINION IN ITS ENTIRETY. THE SUMMARY OF DEUTSCHE BANK'S OPINION SET FORTH IN THIS PROXY STATEMENT IS QUALIFIED IN ITS ENTIRETY BY REFERENCE TO THE FULL TEXT OF DEUTSCHE BANK'S OPINION.

In connection with Deutsche Bank's role as financial advisor to KCS, and in arriving at its opinion, Deutsche Bank has reviewed certain publicly available financial and other information concerning TFM and KCS and certain internal analyses and other information furnished to it by TFM and KCS. Deutsche Bank has also held discussions with members of the senior management of KCS regarding the businesses and prospects of both companies and the joint prospects of a combined company. In addition, Deutsche Bank has:

- reviewed the reported prices and trading activity for KCS Common Stock,
- compared certain financial and stock market information for KCS with similar information for certain other companies whose securities are publicly traded,
- reviewed the financial terms of certain recent business combinations that it deemed comparable in whole or in part with the Acquisition,
- reviewed the terms of the Acquisition Agreement, the Stockholders Agreement, the Registration Rights Agreement, the Consulting Agreement, and the Agreement of Assignment of Assumption of Rights, Duties and Obligations, and
- performed such other studies and analyses and considered such other factors as it deemed appropriate.

In preparing its opinion, Deutsche Bank did not assume responsibility for independent verification of, and did not independently verify, any information, whether publicly available or furnished to it, concerning TFM or KCS, including, without limitation, any financial information, forecasts or projections considered in connection with the rendering of its opinion. Accordingly, for purposes of its opinion, Deutsche Bank assumed and relied upon the accuracy and completeness of all such information and Deutsche Bank did not conduct a physical inspection of any of the properties or assets, and did not prepare or obtain any independent evaluation or appraisal of any of the assets or liabilities, of TFM or KCS. With respect to the financial forecasts and projections made available to Deutsche Bank and used in its analyses, Deutsche Bank assumed that they have been reasonably prepared on bases reflecting the best currently available estimates and judgments of the management of TFM or KCS, as the case may be, as to the matters covered thereby. In rendering its opinion, Deutsche Bank expressed no view as to the reasonableness of such forecasts and projections or the assumptions on which they were based. Deutsche Bank's opinion was necessarily based upon economic, market and other conditions as in effect on, and the information made available to it as of, the date of such opinion.

For purposes of rendering its opinion, Deutsche Bank assumed that, in all respects material to its analysis:

- the representations and warranties of each of the parties to the Acquisition Agreement contained in the Acquisition Agreement are true and correct,
- each of the parties to the Acquisition Agreement will perform all of the covenants and agreements to be performed by it under the Acquisition Agreement, and
- all conditions to the obligations of each of the parties to the Acquisition Agreement to consummate the Acquisition will be satisfied without any waiver thereof.

Deutsche Bank also assumed that all material governmental, regulatory or other approvals and consents required in connection with the consummation of the Acquisition will be obtained and that in connection with obtaining any necessary governmental, regulatory or other approvals and consents, or any amendments, modifications or waivers to any agreements, instruments or orders to which either KCS or TFM is a party or is subject or by which it is bound, no limitations, restrictions or conditions will be imposed or amendments, modifications or waivers made that would have a material adverse effect on KCS or TFM or materially reduce the contemplated benefits of the Acquisition to KCS.

For purposes of rendering its opinion, Deutsche Bank, with the consent of the KCS Board of Directors, assumed that, on or prior to the closing of the Acquisition, financing sufficient to enable KCS to pay the consideration due at closing in accordance with the terms of the Acquisition Agreement will be consummated on reasonable and customary terms. Deutsche Bank also assumed that the VAT Payment will be equal to or greater than the Put Purchase Price, if any, and shall be received on or prior to the date on which any Put Purchase Price becomes payable. See "Proposal 4 - Proposed Issuance of Class A Convertible Common Stock and Common Stock--Summary of the Acquisition Agreement and Related Agreements--The Acquisition Agreement--VAT Contingency Payment."

Set forth below is a summary of the material financial analyses performed by Deutsche Bank in connection with its opinion and reviewed with the KCS Board of Directors at its meeting on April 15, 2003.

VALUE OF THE CONSIDERATION. In conducting its analyses, Deutsche Bank ascribed a basic value to the consideration of $392 million, which is referred to as the "Basic Value." This Basic Value consisted of:

o $120 million in cash,
o 18 million shares of common stock of KCS at $11.14 per share, and
o 6.4 million shares of stock of KCS at $11.14 per share.

Deutsche Bank's basic value assumes that KCS will make an election as permitted under the Acquisition Agreement to issue 6.4 million shares of stock rather than pay $80 million in cash. Deutsche Bank's basic value also assumes that KCS does not receive any payment from the Government of Mexico regarding the VAT Claim - see "Proposal to Approve Issuance of Class A Convertible Common Stock and Common Stock--Description of the Acquisition Agreement--VAT Contingency Payment") and that the Government of Mexico does not exercise the Put. Deutsche Bank performed certain sensitivity analyses with respect to this assumption which are discussed below.

For purposes of valuing the consideration, Deutsche Bank valued the KCS Common Stock at $11.14 per share, which was the last reported sale price of KCS Common Stock on April 11, 2003. Deutsche Bank also performed separate analyses to assess the trading value of KCS shares. The analyses performed included a review of KCS historical trading patterns and a comparison of its trading multiples to those of the selected companies (as such term is defined below).

The assumptions used in determining the basic value of the consideration were made for convenience only. The publicly traded price of KCS stock to be provided as part of the consideration may change considerably between the date of the opinion and the date of closing of the Acquisition. In addition, KCS may or may not choose to issue stock in lieu of paying $80 million in cash.

ANALYSIS OF SELECTED PUBLICLY TRADED COMPANIES. Deutsche Bank compared the purchase price multiples for TFM to corresponding trading multiples for a group of six publicly traded Class I railroad companies and two publicly traded Class II railroad companies (the "Selected Companies").

| CLASS I | CLASS II |
|---|---|
| Burlington Northern Santa Fe | Genesee & Wyoming Inc. |
| Canadian National Railway | RailAmerica Inc. |
| Canadian Pacific Railway Company | |
| CSX Corp. | |
| Norfolk Southern Corp. | |
| Union Pacific Corp. | |

Deutsche Bank compared, among other things, the ratios of:

- enterprise value to revenue,
- enterprise value to earnings before interest expense, income taxes, depreciation and amortization, or EBITDA, and
- enterprise value to earnings before interest expense and income taxes, or EBIT.

Enterprise value is the common equity market value, as adjusted for debt and cash. For purposes of determining the enterprise value for TFM, Deutsche Bank used the Basic Value as adjusted for cash and debt. Deutsche Bank calculated these ratios based upon revenue, EBITDA, and EBIT for both the 2002 fiscal year, which is the last year for which such data have been reported, and projected data for the 2003 fiscal year.

To calculate the trading multiples for the Selected Companies, Deutsche Bank used publicly available historical financial performance and estimates and projections reported by Deutsche Bank research.

To calculate the purchase price multiples for TFM, Deutsche Bank used publicly available information concerning historical financial performance and estimates of projected financial performance from TFM's management, as converted to U.S. generally accepted accounting principals ("GAAP") by KCS management. For purposes of its analyses, Deutsche Bank used 38.8% as the effective economic ownership interest that KCS is purchasing in TFM.

Deutsche Bank's analysis of the Selected Companies yielded the multiple ranges set forth in the chart below. Deutsche Bank then compared the multiple ranges of the selected companies to the purchase price multiples for the Acquisition based on the Basic Value. The following tables sets forth the results of this analysis:

| ENTERPRISE VALUE TO: | SELECTED COMPANIES RELEVANT MULTIPLE RANGE | ACQUISITION |
|---|---|---|
| 2002 revenue | 2.5x-3.0x | 2.8x |
| 2002 EBITDA | 7.0-8.0 | 7.7 |
| 2002 EBIT | 10.5-11.5 | 11.4 |
| 2003 revenue | 2.5-3.0 | 2.5 |
| 2003 EBITDA | 6.8-7.3 | 6.9 |
| 2003 EBIT | 9.5-10.0 | 9.7 |

None of the companies utilized as a comparison is identical to TFM. Accordingly, Deutsche Bank believes the analysis of the publicly traded comparable companies is not simply mathematical. Rather, it involves complex considerations and qualitative judgments, reflected in Deutsche Bank's opinion, concerning differences in financial and operating characteristics of the comparable companies and other factors that could affect the public trading value of the comparable companies.

ANALYSIS OF SELECTED PRECEDENT TRANSACTIONS. Deutsche Bank reviewed the financial terms, to the extent publicly available, of seven proposed or completed mergers and acquisition transactions since June 29, 1994 involving companies in the railroad industry (the "Selected Transactions"). The Selected Transactions were:

| ANNOUNCEMENT DATE | ACQUIROR(S) | TARGET |
|---|---|---|
| January 30, 2001 | Canadian National Railway Company | Wisconsin Central Transpor |

| | | |
|---|---|---|
| December 20, 1999 | Canadian National Railway Company | Burlington Northern Santa |
| February 10, 1998 | Canadian National Railway Company | Illinois Central Corp. |
| October 15, 1998 | Norfolk Southern Corporation and CSX Corporation | Conrail, Inc. |
| August 3, 1995 | Union Pacific Corporation | Southern Pacific Rail Corp |
| March 10, 1995 | Union Pacific Corporation | Chicago and North Western Company |
| June 29, 1994 | Burlington Northern, Inc. | Santa Fe Pacific Corporati |

Deutsche Bank calculated various purchase price multiples based on publicly available information for each of the Selected Transactions. Deutsche Bank then compared the multiple ranges of the Selected Transactions to the comparable multiple for the Acquisition based on the Basic Value. The following table sets forth the results of this analysis:

| ENTERPRISE VALUE TO: | SELECTED TRANSACTIONS RELEVANT MULTIPLES RANGE | ACQUISITION |
|---|---|---|
| Last twelve months Revenue | 2.8x-3.0x | 2.8x |
| Last twelve months EBITDA | 8.3-9.3 | 7.7 |
| Last twelve months EBIT | 12.0-14.0 | 11.4 |

All multiples for the Selected Transactions were based on public information available at the time of announcement of that transaction, without taking into account differing market and other conditions during the seven-year period during which the selected transactions occurred. Because the reasons for, and circumstances surrounding, each of the precedent transactions analyzed were so diverse, and due to the inherent differences between the operations and financial conditions of TFM and KCS and the companies involved in the Selected Transactions, Deutsche Bank believes that a comparable transaction analysis is not simply mathematical. Rather, it involves complex considerations and qualitative judgments, reflected in Deutsche Bank's opinion, concerning differences between the characteristics of these transactions and the Acquisition that could affect the value of the subject companies and businesses and TFM and KCS.

DISCOUNTED CASH FLOW ANALYSIS. Deutsche Bank performed a discounted cash flow analysis for TFM. Deutsche Bank calculated the discounted cash flow value as the sum of the net present values of (i) the estimated future cash flow that TFM will generate for the years 2003 through 2007, plus (ii) TFM's value at the end of such period, which we refer to as its terminal value. The estimated future cash flows for the years 2003 through 2007 are based on the financial projections for TFM that were prepared by TFM's management and translated to U.S. GAAP by KCS's management. The terminal values were calculated based on projected EBITDA for 2007 and a range of multiples of EBITDA ranging from 7.5x to 8.5x. Deutsche Bank used discount rates ranging from 10.0% to 12.0%. Deutsche Bank used these discount rates based on its judgment of the estimated weighted average cost of TFM's capital and based the EBITDA multiples on its review of the trading characteristics of the selected companies and the consideration paid in connection with the Selected Transactions.

Deutsche Bank observed that the implied value of the 38.8% effective economic ownership interest that KCS is buying in TFM based upon the discounted cash flow analysis ranged from $867 million to $999 million, and compared that range of values to the basic value of $392 million.

SENSITIVITY ANALYSIS. Deutsche Bank performed a sensitivity analysis for KCS. The analysis compared three different scenarios, including a base case, which was the basis for the analyses described above. The scenarios involved the following assumptions:

- BASE CASE. The Government of Mexico does not exercise the Put, and TFM does not receive any payment from the Government of Mexico arising from the VAT Claim. There is no VAT Contingency Payment paid to Grupo TMM.

- VAT EQUALS PUT. The Government of Mexico exercises the Put, and TFM receives a payment from the Government of Mexico arising from the VAT Claim that is equal to the amount necessary to discharge the Put. There is a $100 million VAT Contingency Payment made to Grupo TMM.

- VAT EXCEEDS PUT. The Government of Mexico exercises the Put, and TFM receives a payment from the Government of Mexico arising from the VAT Claim that exceeds by $365 million the amount necessary to settle the Put. There is a $175 million VAT Contingency Payment made to Grupo TMM.

Under the Base Case, Deutsche Bank calculated that KCS would acquire a 38.8% effective economic ownership in TFM in the Acquisition. In the other two cases, Deutsche Bank calculated that KCS would acquire a 51% effective economic ownership in TFM in the Acquisition because the Government of Mexico's direct and indirect interest in TFM would be extinguished in connection with the exercise of the Put.

Deutsche Bank calculated for each of the scenarios the following purchase price multiples:

- enterprise value to revenue,
- enterprise value to EBITDA, and
- enterprise value to EBIT.

The enterprise value used in the sensitivity analysis was the consideration paid for the equity of TFM, as adjusted for debt and cash, and taking into account, as appropriate, the receipt by TFM of a payment arising from the VAT Claim, the payment by Grupo TFM arising out of the exercise of the Put, and the payment of additional consideration to Grupo TMM. Deutsche Bank calculated the ratios of enterprise value to revenue, EBITDA and EBIT based on historical results for the 2002 fiscal year and projected data for the 2003 fiscal year. Deutsche Bank used publicly available information concerning historical financial performance and estimates of projected financial performance from TFM's management, as converted to U.S. GAAP by KCS management. Deutsche Bank's analysis of the different scenarios yielded the following multiples:

| Enterprise VALUE TO: | Base Case | VAT = Put | VAT Exceeds Put |
|---|---|---|---|
| 2002 revenue | 2.8x | 2.7x | 2.5x |
| 2002 EBITDA | 7.7 | 7.6 | 6.8 |
| 2002 EBIT | 11.4 | 11.1 | 10.0 |
| 2003 revenue | 2.5x | 2.5x | 2.2x |
| 2003 EBITDA | 6.9 | 6.8 | 6.1 |
| 2003 EBIT | 9.7 | 9.5 | 8.5 |

It is possible that none of the scenarios described will exactly reflect the actual events regarding the amount of the payment arising from the VAT Claim and the exercise of the Put and other factors. Deutsche Bank believes that a sensitivity analysis of possible scenarios for these and other events is not simply mathematical. Rather, it involves complex considerations and qualitative judgments, reflected in Deutsche Bank's opinion, concerning differences in the possible outcomes of events facing KCS as well as other factors.

PRO FORMA COMBINED EARNINGS ANALYSIS. Deutsche Bank analyzed certain pro forma effects of the Acquisition. Based on this analysis, Deutsche Bank computed the resulting dilution or accretion to KCS's earnings per share estimate for the fiscal years ending 2003 and 2004, before taking into account any potential cost savings KCS and TFM could achieve if the Acquisition were consummated and before non-recurring costs relating to the Acquisition. Deutsche Bank noted that the Acquisition would be significantly accretive to KCS's earnings per share estimate for each of the fiscal years ending 2003 and 2004. To calculate the pro forma earnings estimates, Deutsche Bank used forward estimates of projected financial performance for KCS that were prepared by KCS management and forward estimates of projected financial performance for TFM that were prepared by TFM's management, as converted to U.S. GAAP by KCS management.

GENERAL. The foregoing summary describes all analyses and factors that Deutsche Bank deemed material in its presentation to KCS Board of Directors, but it is not a comprehensive description of all analyses performed and factors considered by Deutsche Bank in connection with preparing its opinion. The preparation of a fairness opinion is a complex process involving the application of subjective business judgment in determining the most appropriate and relevant methods of financial analysis and the application of those methods to the particular circumstances and, therefore, is not readily susceptible to summary description. Deutsche Bank believes that its analyses must be considered as a whole and that considering any portion of such analyses and of the factors considered without considering all analyses and factors could create a misleading view of the process underlying the opinion. In arriving at its fairness determination, Deutsche Bank did not assign specific weights to any particular analyses.

In conducting its analyses and arriving at its opinions, Deutsche Bank utilized a variety of generally accepted valuation methods. The analyses were prepared solely for the purpose of enabling Deutsche Bank to provide its opinion to the KCS Board of Directors as to the fairness to KCS of the consideration and do not purport to be appraisals or necessarily reflect the prices at which businesses or securities actually may be sold, which are inherently subject to uncertainty. In connection with its analyses, Deutsche Bank made, and was provided by KCS management with, numerous assumptions with respect to industry performance, general business and economic conditions and other matters, many of which are beyond KCS's, Grupo TMM's or TFM's control. Analyses based on estimates or forecasts of future results are not necessarily indicative of actual past or future values or results, which may be significantly more or less favorable than suggested by such analyses. Because such analyses are inherently subject to uncertainty, being based upon numerous factors or events beyond the control of KCS, Grupo TMM, TFM or their respective advisors, neither KCS nor Deutsche Bank nor any other person assumes responsibility if future results or actual values are materially different from these forecasts or assumptions.

The terms of the Acquisition were determined through negotiations between KCS and Grupo TMM and were approved by the KCS Board of Directors. Although Deutsche Bank provided advice to KCS during the course of these negotiations, the decision to enter into the Acquisition was solely that of the KCS Board of Directors. As described above, the opinion and presentation of Deutsche Bank to the KCS Board of Directors was only one of a number of factors taken into consideration by the KCS Board of Directors in making its determination to approve the Acquisition. Deutsche Bank's opinion was provided to the KCS Board of Directors to assist it in connection with it consideration of the Acquisition and does not constitute a recommendation to any holder of KCS Common Stock as to how to vote with respect to the Acquisition.

KCS selected Deutsche Bank as financial advisor in connection with the Acquisition based on Deutsche Bank's qualifications, expertise, reputation and experience in mergers and acquisitions. KCS has retained Deutsche Bank pursuant to a letter agreement between KCS and Deutsche Bank, dated December 20, 2002, (the "Engagement Letter"). Deutsche Bank will be paid a reasonable and customary fee for its services as financial advisor to KCS in connection with the Acquisition, a portion of which is contingent upon consummation of the Acquisition. In addition, as more fully described in the engagement letter, KCS has agreed that Deutsche Bank will serve in a preferred senior role in connection with certain public or private offerings of securities for the purpose of effecting, or otherwise related to or arising from, the Acquisition. On May 5, 2003, KCS sold $200 million worth of redeemable cumulative convertible perpetual preferred stock in a private placement in which Deutsche Bank acted as an initial placement agent. Deutsche Bank received reasonable and customary compensation for acting as an initial placement agent in such private placement. Regardless of whether the Acquisition is consummated, KCS has agreed to reimburse Deutsche Bank for reasonable fees and disbursements of Deutsche Bank's counsel and all of Deutsche Bank's reasonable travel and other out-of-pocket expenses incurred in connection with the Acquisition or otherwise arising out of the retention of Deutsche Bank under the Engagement Letter subject to a limit for legal fees without the approval of KCS. KCS has also agreed to indemnify Deutsche Bank and certain related persons to the full extent lawful against certain liabilities, including certain liabilities under the federal securities laws arising out of its engagement or the Acquisition.

Deutsche Bank is an internationally recognized investment banking firm experienced in providing advice in connection with mergers and acquisitions and related transactions. Deutsche Bank is an affiliate of Deutsche Bank AG (together with its affiliates, the "DB Group"). One or more members of the DB Group have, from time to time, provided investment banking to KCS or its affiliates for which it has received compensation. One or more members of the DB Group have, from time to time, provided commercial banking (including extension of credit) to TFM or its affiliates for which it has received compensation. In the ordinary course of business, members of the DB Group may actively trade in the securities and other instruments and obligations of KCS and Grupo TMM for their own accounts and for the accounts of their customers. Accordingly, the DB Group may at any time hold a long or short position in such securities, instruments and obligations.

RECOMMENDATION

KCS's Board of Directors has unanimously determined that the proposed issuance of Class A Convertible Common Stock and Common Stock in connection with the Acquisition are in the best interests of KCS. KCS's Board of Directors unanimously recommends a vote FOR the amendment and restatement of KCS's Restated Certificate of Incorporation and FOR the issuance of Class A Convertible Common Stock and Common Stock.

## PROPOSAL 1 - AMENDMENT OF RESTATED CERTIFICATE OF INCORPORATION OF KCS, IN CONNECTION WITH THE ACQUISITION

Item 1 on Proxy Card

DESCRIPTION OF THE PROPOSED AMENDMENTS

KCS's Board of Directors unanimously recommends that stockholders approve amending the Restated Certificate of Incorporation to:

- increase our authorized common securities from 400 million shares to 450 million shares; and

- authorize the additional 50 million shares from the increase in common securities described above as a new class of common securities of KCS, Class A Convertible Common Stock.

PURPOSES AND EFFECTS OF PROPOSED AMENDMENTS

INCREASE OUR AUTHORIZED COMMON SECURITIES FROM 400 MILLION SHARES TO 450 MILLION SHARES

Article FOURTH of KCS's Restated Certificate of Incorporation currently authorizes Four Hundred Two Million Eight Hundred Forty Thousand (402,840,000) shares, of which Eight Hundred Forty Thousand (840,000) shares having a par value of $25 each shall be Preferred Stock, Two Million (2,000,000) shares having a par value of $1 each shall be New Series Preferred Stock, and Four Hundred Million (400,000,000) shares having a par value of $0.01 each shall be Common Stock. Upon approval of this proposed amendment to the Restated Certificate of Incorporation, Four Hundred Fifty Million (450,000,000) shares having a par value of $0.01 each shall be common securities (400,000,000 shares of Common Stock and 50,000,000 shares of Class A Convertible Common Stock).

AUTHORIZE 50 MILLION SHARES OF A NEW CLASS OF COMMON SECURITIES OF KCS, CLASS A CONVERTIBLE COMMON STOCK

Upon approval of this proposed amendment to the Restated Certificate of Incorporation, KCS will be authorized to issue Fifty Million (50,000,000) shares of Class A Convertible Common Stock. KCS proposes to issue shares of Class A Convertible Common Stock in connection with the Acquisition. See "Proposal 4 - Proposed Issuance of Class A Convertible Common Stock and Common Stock" below. The primary purpose in creating the Class A Convertible Common Stock is to provide certain benefits and impose certain obligations on those shares issued in connection with the Acquisition. See "--Description of Class A Convertible Common Stock" below.

Once authorized, additional shares of Class A Convertible Common Stock may be issued with approval of the Board of Directors and without further approval of the stockholders unless stockholder approval is required by applicable law, rule or regulation. KCS has no present intention to issue shares of Class A Convertible Common Stock other than pursuant to the Acquisition Agreement or upon exercise of the pre-emptive rights of the Class A Convertible Common Stock held by the TMM Holders.

DESCRIPTION OF CLASS A CONVERTIBLE COMMON STOCK

All capitalized terms used in this "Description of Class A Convertible Common Stock" section and not otherwise defined herein shall have the meanings set forth in the Stockholders' Agreement attached to this proxy statement as Appendix D and in the form of the Amended and Restated Certificate of Incorporation attached to this proxy statement as Appendix A.

DIVIDEND RIGHTS

When and as dividends or other distributions are declared, whether payable in cash, in property or in shares of stock of NAFTA Rail, the holders of the Class A Convertible Common Stock and Common Stock shall be entitled to share equally, share for share, in such dividends or other distributions as if all such shares were of a single class.

TERMS OF CONVERSION

The Class A Convertible Common Stock will be convertible into an equal number of shares of Common Stock at any time, at the election of the holders, and mandatorily, upon the occurrence of certain conditions. Shares of Class A Convertible Common Stock shall be converted automatically, without any action on the part of any Person, into an equal number of shares of Common Stock upon the occurrence of the following events: (i) a Transfer by any TMM Holder of any shares of Class A Convertible Common Stock to a Person other than Grupo TMM, TMM Holdings, Multimodal, or the Principal Stockholders, or an entity which is an Affiliate of any of the TMM Holders; (ii) on the first day on which the TMM Holders, in the aggregate, cease to beneficially own, in the aggregate, at least 40% of the Voting Securities initially acquired pursuant to the Merger contemplated by the Acquisition Agreement; (iii) a Change of Control of NAFTA Rail; or (iv) a Change of Control of such TMM Holder, if after such Change of Control a Competitor has Beneficial Ownership of more than a majority of the Total Voting Power of such TMM Holder.

VOTING RIGHTS

Each holder of Class A Convertible Common Stock shall be entitled to one vote for each share of such stock held by such holder. Each outstanding share of Class A Convertible Common Stock shall be entitled to vote on each matter on which the stockholders of NAFTA Rail shall be entitled to vote. However, with respect to the election of directors other than the Class A Directors (described below), the Class A Convertible Common Stock shall be voted in favor of nominees recommended by the Board of Directors who were nominated in compliance with Article V of the Stockholders' Agreement which is attached to this proxy statement as Appendix D.

Voting separately as a class, the holders of the Class A Convertible Common Stock shall have the right to elect Class A Director(s) as follows: (i) until such time as the TMM Holders cease to beneficially own in the aggregate at least 75% of the Voting Securities initially acquired pursuant to the Merger (80%, if a Change of Control of Grupo TMM or any TMM Holder shall have occurred), two members of the Board of Directors will be elected by the holders of the Class A Convertible Common Stock voting as a separate class; (ii) at such time as the TMM Holders cease to beneficially own in the aggregate at least 75% of the Voting Securities initially acquired pursuant to the Merger (80%, if a Change of Control of Grupo TMM or any TMM Holder shall have occurred) and provided that such TMM Holders continue to beneficially own in the aggregate at least 40% of the Voting Securities initially acquired pursuant to the Merger, the number of directors which the holders of Class A Convertible Common Stock have the right to elect voting as a separate class will be decreased from two to one; and (iii) at such time as the TMM Holders cease to beneficially own in the aggregate at least 40% of the Voting Securities initially acquired pursuant to the Merger, the right of the holders of Class A Convertible Common Stock voting as a separate class to elect any member of the Board of Directors shall terminate. Notwithstanding any of the above to the contrary, if a Change of Control of Grupo TMM or any TMM Holder shall have occurred and the acquiror is a Competitor, the right of the holders of Class A Convertible Common Stock voting as a separate class to elect any member(s) of the Board of Directors shall immediately terminate.

LIQUIDATION RIGHTS

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of NAFTA Rail, holders of the Class A Convertible Common Stock and Common Stock shall be entitled to share ratably according to the number of shares held by them, in all assets of NAFTA Rail available for distribution to its stockholders.

PRE-EMPTIVE RIGHTS

The holders of Class A Convertible Common Stock shall have pre-emptive rights to acquire additional shares of Class A Convertible Common Stock in the event NAFTA Rail authorizes the issuance or sale of any shares of Common Stock or any securities containing options or rights to acquire any shares of Common Stock (other than as a dividend on the outstanding Common Stock), except with respect to issuances of Common Stock (including for this purpose, options, warrants and other securities into or exercisable for Common Stock) issued: (i) to NAFTA Rail's employees, directors, consultants, agents, independent contractors or other service providers in connection with a Plan existing on the date hereof or a Plan approved by the Board of Directors and adopted by NAFTA Rail after the date hereof; (ii) upon the conversion of Class A Convertible Common Stock; (iii) upon the exercise of any options, warrants, or exchangeable securities which are outstanding as of the effective date of the Amended and Restated Certificate of Incorporation; or (iv) in connection with the acquisition (by merger, consolidation, acquisition of assets or equity interests or otherwise) of the equity interests or assets of another Person.

To the extent that any TMM Holder elects not to participate in such pre-emptive rights, each of the other TMM Holders shall have a pro rata right to purchase at the same price and on the same terms and conditions the Voting Securities which such non-participating TMM Holder had the right but elected not to purchase.

The pre-emptive rights of the TMM Holders of Class A Convertible Common Stock terminate on the date that the TMM Holders do not beneficially own in the aggregate at least 40% of the Voting Securities initially acquired pursuant to the Merger.

TRANSFER RESTRICTIONS

For a period of five years from and after the effectiveness of the Amended and Restated Certificate of Incorporation, the TMM Holders may not, directly or indirectly, alone or in concert with others, sell, assign, transfer, pledge, hypothecate, otherwise subject to any lien, grant any option with respect to or otherwise dispose of any interest in (or enter into an agreement or understanding with respect to the foregoing) any Voting Securities (a "Disposition") to a Competitor, or, except in certain circumstances, an affiliate. Disposition pursuant to a Public Offering or a Rule 144 Transaction will not be deemed to violate this prohibition if the selling TMM Holder(s) follow appropriate and reasonable procedures designed to prevent the sale of such Voting Securities to any Competitor. After the earliest of (i) such five year period, or (ii) the first date on which the TMM Holders beneficially own in the aggregate, directly or indirectly, less than 15% of the outstanding Voting Securities of KCS, a TMM Holder may propose to sell Voting Securities to a Competitor; provided NAFTA Rail shall have the right (but not the obligation) to purchase, in whole but not in part, such Voting Securities at a per share cash purchase price equal to the purchase price in the agreement between the selling TMM Holder and a Competitor. This purchase right shall be assignable, in whole or in part, by NAFTA Rail to any other Person, but no such assignment shall relieve NAFTA Rail of its obligation to assure payment of the purchase price for any Voting Securities as to which a notice of election to exercise the Right of First Refusal is made by NAFTA Rail or any such assignee.

Subject to the foregoing transfer restrictions, TMM Holders may sell any or all Voting Securities beneficially owned by such Person provided that: (i) no Disposition that in the aggregate represents 5% or more of the outstanding Voting Securities may be made to any Person other than a Person who is eligible to file reports pursuant to Rule 13d-1 under the Exchange Act (a "13G Filer"), unless such Person would not be so eligible with respect to the Voting Securities acquired from the Disposition; and (ii) no Disposition of Voting Securities that in the aggregate represents 5% or more of the outstanding Voting Securities may be made to any 13G Filer unless (a) such 13G Filer would continue to be eligible to file reports pursuant to Section 13G under the Exchange Act with respect to the Voting Securities after giving effect to the proposed acquisition of such Voting Securities; and (b) the selling TMM Holder shall have delivered a written notice to NAFTA Rail advising NAFTA Rail of the number of Voting Securities the seller desires to sell and the terms, including price, of the proposed transaction and NAFTA Rail has been provided the right (but not the obligation) to purchase, in whole or in part, such Voting Securities at a per share cash purchase price equal to the purchase price in the proposed transaction.

Notwithstanding any provision of the Amended and Restated Certificate of Incorporation to the contrary, no Disposition shall be made by any TMM Holder to any Person or Group that would, together with such Person's Affiliates and Associates and after giving effect to the acquisition of such Voting Securities, beneficially own or have the right to acquire more than 15% of the Total Voting Power of NAFTA Rail.

TMM Holders may make a Disposition, notwithstanding any contrary provision in the Amended and Restated Certificate of Incorporation, in connection with any tender or exchange offer made by an unaffiliated third party to acquire NAFTA Rail Common Stock so long as the following conditions are satisfied: (i) the TMM Holders did not solicit the tender or exchange offer; (ii) the same consideration is being offered to all holders of NAFTA Rail Voting Securities, (iii) the tender or exchange offer is approved by a majority of other NAFTA Rail stockholders, (iv) the tender or exchange is not conditioned on financing and (v) the TMM Holders may not tender or exchange, or publicly announce their intention to tender or exchange, until the last business day prior to expiration of the offer.

The transfer restrictions imposed by the Amended and Restated Certificate of Incorporation (with the exception of NAFTA Rail's right of first refusal in the event a TMM Holder intends to sell shares of Class A Convertible Common Stock to a Competitor, which shall survive indefinitely) terminate upon the earlier of the first date the TMM Holders beneficially own in the aggregate less than 15% of the outstanding Voting Securities of NAFTA Rail for at least 30 consecutive days, or the occurrence of a Change of Control of NAFTA Rail.

PLEDGES

Subject to the transfer restrictions described above, a TMM Holder may pledge or hypothecate as security for any indebtedness or other obligations any or all Voting Securities beneficially owned by such Person; provided that such TMM Holder obtains written consent from the pledgee that upon the occurrence of an event which gives the pledgee the right to foreclose on the pledged Voting Securities ("Foreclosure Event") such pledgee shall provide to NAFTA Rail prompt written notice of such Foreclosure Event and provide NAFTA Rail the right to purchase, in whole or in part, such Voting Securities at a price determined in accordance with such provision of the Amended and Restated Certificate of Incorporation. This purchase right shall be assignable, in whole or in part, by NAFTA Rail to any other Person, but no such assignment shall relieve NAFTA Rail of its obligation to assure payment of the purchase price for any Voting Securities as to which NAFTA Rail has delivered such a written notice.

SUMMARY COMPARISON OF COMMON STOCK AND CLASS A CONVERTIBLE COMMON STOCK

The following table provides a summary comparison of the Common Stock and proposed Class A Convertible Common Stock.

| TERM | COMMON STOCK | CLASS A CON COMMON S |
| --- | --- | --- |

| | | |
|---|---|---|
| Number of Authorized Shares | 400,000,000 | 50,000, |
| Par Value per Share | $0.01 | Same as Comm |
| Voting Rights | One vote for each share outstanding on each matter on which the stock-holders are entitled to vote | One vote for each share each matter on which th entitled to vote, provi shall be voted in favor recommended by the Boar respect to directors ot A Directors; and (ii) s separately as a class t directors (the "Class A (reduced to one in the ownership falls below 7 Securities initially ac the Merger and reduced event the TMM Holders' below 40% of the Voting initially acquired purs |
| Cumulative Voting | In elections for directors, other than Class A Directors, when the holders of the Preferred Stock do not have the right, voting as a class, to elect two directors, holders shall be entitled to as many votes as shall equal the number of shares which they are entitled to vote, multiplied by the number of directors to be elected, and such shares may be cast all for a single director or any two or more of them | Same as Comm |

| TERM | COMMON STOCK | CLASS A CON COMMON S |
|---|---|---|
| Required Vote | (i) Directors, other than Class A Directors, shall be elected by a plurality of votes of the shares present in person (or represented by proxy) at the meeting and entitled to vote for election of directors; (ii) increasing the number of directors to more than eighteen, abolishing cumulative voting in elections of directors and abolishing the division of the Board of Directors into three classes all require a vote of 70% of the outstanding shares of the KCS entitled to vote in the elections of directors; and (iii) all other matters require the affirmative vote of the majority of shares present in person (or | Same as Comm |

| | | |
|---|---|---|
| | represented by proxy) at the meeting and entitled to vote on the subject matter. | |
| Dividends | Holders entitled to share equally, share for share, in such dividends or other distributions declared by the Board of Directors | Same as Comm |
| Liquidation, Dissolution or Winding Up | Share ratably in all assets available for distribution | Same as Comm |
| Conversion Rights | Not applicable | May be converted into s Stock at any time upon holder and shall be con of Common Stock upon (i person other than Grupo its subsidiaries or Pri Stockholders; (ii) the the TMM Holders cease t in the aggregate, 40% o Securities initially ac the Merger; (iii) a Cha NAFTA Rail; and (iv) ac control of any TMM Hold |

| TERM | COMMON STOCK | CLASS A CON COMMON S |
|---|---|---|
| Transfer Restrictions | Not applicable | For a period of five ye not effect a Dispositio Competitor; (ii) to an such Affiliate agrees i bound by the terms of t Agreement; (iii) that i represents 5% or more o Voting Securities to an an eligible 13G Filer, been provided the right obligation) to purchase Securities; (iv) to any together with such pers Associates, thereby ben of the Total Voting Pow capital stock or Voting control of any Person t indirectly, beneficiall Securities of NAFTA Rai |

| TERM | COMMON STOCK | CLASS A CON |
|---|---|---|

| | | COMMON S |
|---|---|---|
| Pre-Emptive Rights | Not applicable | Holders may purchase ad Class A Convertible Com maintain their percenta event NAFTA Rail author or sale of any shares o any securities containi rights to acquire share EXCEPT for issuances of issued: (i) to NAFTA Ra directors, consultants, independent contractors providers in connection upon the conversion of Common Stock; (iii) upo any options, warrants, exchangeable securities outstanding as of the d connection with the acq equity interests or ass Person; or (v) in the e additional equity in li million in cash at clos Acquisition. |

REQUIRED VOTE AND BOARD OF DIRECTORS' RECOMMENDATION

In accordance with the Delaware Corporation Law and KCS's Restated Certificate of Incorporation, approval of this Proposal requires the affirmative vote of the holders of a majority of the outstanding shares of Voting Stock that are entitled to vote on the Proposal.

YOUR BOARD RECOMMENDS THAT YOU VOTE
"FOR"
PROPOSAL 1 - AMENDMENT OF RESTATED CERTIFICATE OF INCORPORATION
OF KCS, IN CONNECTION WITH THE ACQUISITION

PROPOSAL 2 - AMENDMENT OF RESTATED CERTIFICATE OF INCORPORATION OF KCS
TO SIMPLIFY AND UPDATE THE RESTATED CERTIFICATE OF INCORPORATION

Item 2 on Proxy Card

DESCRIPTION OF THE PROPOSED AMENDMENTS

KCS's Board of Directors unanimously recommends that stockholders approve amending the Restated Certificate of Incorporation to simplify and update it as follows:

- change our name from "Kansas City Southern" to "NAFTA Rail;"

- amend the purpose clause to delete the itemization of specific purposes and substitute that our corporate purpose is to engage in any lawful act or activity for which corporations may be organized under the Delaware Corporation Law;

- amend "New Series Preferred Stock" provisions to allow the Board of Directors more flexibility in designating dividend, voting, liquidation and redemption rights of any New Series Preferred Stock;
- delete the "Series B Convertible Preferred Stock" provisions and the names and addresses of our incorporators, which are now obsolete;
- specify situations in which a director's liability for monetary damages resulting from a breach of fiduciary duties cannot be limited or eliminated;
- authorize KCS to provide indemnification of (and advancement of expenses to) directors, officers and agents of KCS;

PURPOSES AND EFFECTS OF THE PROPOSED AMENDMENTS

CHANGE OF KCS'S NAME

KCS proposes to change its name from "Kansas City Southern" to "NAFTA Rail." One of KCS's growth strategies is to continue to capitalize on NAFTA trade. Upon consummation of the acquisitions discussed above, along with KCS's ownership of KCSR and through its strategic alliance with CN/IC, KCS will control or have access to a contiguous rail network connecting Canada, the United States and Mexico. KCS believes that the name NAFTA Rail will more accurately reflect KCS's consolidated holdings and will emphasize KCS's focus on NAFTA trade. Common stockholders will not be required to surrender their current KCS certificates for NAFTA Rail certificates.

AMEND THE CORPORATE PURPOSE CLAUSE

KCS's Restated Certificate of Incorporation contains numerous specific provisions regarding KCS's corporate purposes. Such provisions may limit the ability of KCS to engage in certain acts or activities in the future. Although KCS does not intend to engage in any act or activity that is prohibited presently by its Restated Certificate of Incorporation, the proposed amendment is intended to provide KCS with increased flexibility to engage in any lawful act or activity for which corporations may be organized under the Delaware Corporation Law.

AMEND "NEW SERIES PREFERRED STOCK" PROVISIONS

KCS's Restated Certificate of Incorporation contains certain provisions that may limit the authority of the Board of Directors in determining the designations and powers, preferences and rights, and the qualifications, limitations or restrictions of New Series Preferred Stock. The proposed amendments to these provisions afford the Board of Directors more flexibility in fixing dividends, voting, liquidation and redemption rights in the Certificate of Designations filed pursuant to law with respect to any series of the New Series Preferred Stock to be issued. The proposed amendments will not affect the relative rights, preferences or limitations of the Series A or Series C Convertible Preferred Stock.

DELETE THE "SERIES B CONVERTIBLE PREFERRED STOCK" PROVISIONS

The Restated Certificate of Incorporation provides that the Series B Convertible Preferred Stock shall only be issued in connection with the Kansas City Southern Industries, Inc. Employee Plan Funding Trust. As that Trust has been terminated and no shares of the Series B Convertible Preferred Stock remain outstanding, the provisions relating to the Series B Convertible Preferred Stock are regarded as obsolete and will be deleted from the Restated Certificate of

Incorporation.

DELETE THE NAMES AND PLACES OF RESIDENCE OF EACH OF THE INCORPORATORS OF KCS

The Restated Certificate of Incorporation includes the names and places of residence of each of the incorporators of the business and we propose to delete this information because the information is now obsolete.

REQUIRED VOTE AND BOARD OF DIRECTORS' RECOMMENDATION

In accordance with the Delaware Corporation Law and KCS's Restated Certificate of Incorporation, approval of this Proposal requires the affirmative vote of the holders of a majority of the outstanding shares of Voting Stock that are entitled to vote on the Proposal.

YOUR BOARD RECOMMENDS THAT YOU VOTE
"FOR"
PROPOSAL 2 - AMENDMENT OF RESTATED CERTIFICATE OF
INCORPORATION OF KCS TO SIMPLIFY AND UPDATE
THE RESTATED CERTIFICATE OF INCORPORATION

PROPOSAL 3 - RESTATEMENT OF
RESTATED CERTIFICATE OF INCORPORATION OF KCS

Item 3 on the Proxy Card

DESCRIPTION OF THE PROPOSED RESTATEMENT

KCS's Board of Directors unanimously recommends that stockholders approve restating the Restated Certificate of Incorporation to incorporate those proposed amendments which are approved by the stockholders and the Certificate of Designations attached to the Restated Certificate of Incorporation, which created the Series C Preferred Stock.

PURPOSE AND EFFECT OF THE PROPOSED RESTATEMENT

Under Delaware Corporation Law, amendments to a company's certificate of incorporation are filed as certificates of amendment and attached and become part of the company's certificate of incorporation. The Certificate of Designations which created the Series C Preferred Stock was filed as a separate document which is attached to KCS's Restated Certificate of Incorporation and is considered a part of such certificate. The restatement of the Restated Certificate of Incorporation will incorporate the amendments to the Restated Certificate of Incorporation that are approved under Proposals 1 and 2 of this proxy statement and the Certificate of Designations which created the Series C Preferred Stock into one complete document, the Amended and Restated Certificate of Incorporation.

If the proposed amendments to and restatement of the Restated Certificate of Incorporation is approved by the stockholders, KCS's Restated Certificate of Incorporation will be amended and restated as described in this proxy statement and as set forth in Appendix A. The Amended and Restated Certificate of Incorporation will become effective when it is filed with the Secretary of State of the State of Delaware. Prior to its filing with the Secretary of State of the State of Delaware, the proposed amendments to and restatement of the Restated Certificate of Incorporation may be abandoned by KCS's Board of Directors, without further action by the stockholders at any time before or after the Special Meeting if for any reason the Board of Directors deems it advisable.

REQUIRED VOTE AND BOARD OF DIRECTORS' RECOMMENDATION

In accordance with the Delaware Corporation Law and KCS's Restated Certificate of Incorporation, approval of this Proposal requires the affirmative vote of the holders of a majority of the outstanding shares of Voting Stock that are entitled to vote on the Proposal.

YOUR BOARD RECOMMENDS THAT YOU VOTE
"FOR"
PROPOSAL 3 - RESTATEMENT OF
RESTATED CERTIFICATE OF INCORPORATION OF KCS

PROPOSAL 4 - PROPOSED ISSUANCE OF
CLASS A CONVERTIBLE COMMON STOCK AND COMMON STOCK

Item 4 on Proxy Card

OVERVIEW

On April 20, 2003, KCS entered into the Acquisition Agreement with Grupo TMM under which KCS ultimately would acquire control of TFM through the purchase of shares of common stock of Grupo TFM. Grupo TFM holds an 80% economic interest in TFM and all of the TFM Voting Stock. The remaining 20% economic interest in TFM is owned by the Mexican government in the form of shares with limited voting rights. KCS currently owns a 46.6% economic interest in Grupo TFM and 49.0% of the shares of common stock of Grupo TFM entitled to full voting rights. On May 9, 2003, KCS acquired for cash 51% of the shares of Mexrail, which owns 100% of Tex-Mex, and deposited the Mexrail shares into an irrevocable voting trust pending resolution of KCS's application to the STB seeking authority to exercise common control over Tex-Mex and KCS's other rail companies, KCSR and Gateway Eastern. According to the terms of the Acquisition Agreement and certain related agreements (described in detail below), KCS will issue:

- 18,000,000 shares of Class A Convertible Common Stock to Multimodal upon the closing of the Acquisition;
- up to 6,400,000 shares of Class A Convertible Common Stock or Common Stock in lieu of a portion of the $200 million consideration to be paid in cash at the closing of the Acquisition Agreement; and
- up to 2,625,000 shares of restricted Common Stock pursuant to the Consulting Agreement.

The securities to be issued in connection with the Acquisition represent in the aggregate more than 20% of the issued and outstanding shares of KCS Common Stock.

PURPOSE AND EFFECT OF PROPOSED ISSUANCE OF STOCK

We are seeking your approval to issue the shares of Class A Common Stock and Common Stock in order to allow us to consummate the Acquisition and thereby acquire control of TFM, upon receipt of all regulatory approvals and satisfaction of the conditions to closing.

The proposed issuance of Class A Convertible Common Stock and Common Stock will result in dilution in the percentage ownership interest of KCS's existing stockholders. The amount of such dilution cannot be determined until the time of issuance; however, if KCS had issued, as of March 31, 2003, the maximum number of shares of Common Stock contemplated by the Acquisition Agreement (including shares issued upon conversion of the Class A Convertible Common Stock) and by the Consulting Agreement, which would aggregate approximately 88.7 million shares, then based upon approximately 61.6 million shares of Common Stock outstanding as of that date and a book value per share then of $12.42, the outstanding shares of Common Stock outstanding would have increased by approximately 44%, and the book value per share of Common Stock would have decreased, from $12.42 to $12.07.

SUMMARY OF THE ACQUISITION AGREEMENT AND RELATED AGREEMENTS

The following summary of the terms and provisions of the Acquisition Agreement, First Amendment to Rights Agreement, Stockholders' Agreement, Registration Rights Agreement, Consulting Agreement, Marketing and Services Agreement, Agreement of Assignment and Assumption of Rights, Duties and Obligations and Stock Purchase Agreement is qualified in its entirety by reference to each of those documents, a copy of which has been attached hereto as an appendix or as an exhibit to an appendix. You should read these agreements carefully for more details regarding the provisions described below and for other provisions that may be important to you.

THE ACQUISITION AGREEMENT

Upon the terms and subject to the conditions of the Acquisition Agreement, dated April 20, 2003, by and among KCS, KARA Sub, Grupo TMM, TMM Holdings and Multimodal, KCS would acquire all of the interest of Multimodal in Grupo TFM for consideration to Multimodal of $200 million and 18 million shares of KCS Class A Convertible Common Stock. The Acquisition will be accomplished in three steps, the Stock Purchase, the Subsidiary Investment and the Merger described below (and together comprising the Acquisition), all occurring sequentially and virtually simultaneously as follows:

(1) THE STOCK PURCHASE. KARA Sub will purchase from Multimodal all Grupo TFM shares held by Multimodal, consisting of 25,500 shares of Series "A" fixed capital stock of Grupo TFM and 3,842,901 shares of Series "A" variable capital stock of Grupo TFM. The purchase price to be paid by KARA Sub to Multimodal at the closing for the purchase of the Grupo TFM shares is: (i) $200 million (up to $80 million of which may be paid, at KCS's option, in shares of KCS Common Stock or KCS Class A Convertible Common Stock); and (ii) a subordinated promissory note of KARA Sub in the principal amount of $25 million. KCS will provide KARA Sub with the funds and securities to make these payments.

(2) THE SUBSIDIARY INVESTMENT. Immediately following the Stock Purchase, Multimodal will purchase 10% of the issued and outstanding shares of KARA Sub common stock, in consideration for delivery by Multimodal to KARA Sub of the KARA Sub subordinated promissory note.

(3) THE MERGER. KARA Sub will then be merged into KCS in accordance with the Delaware Corporation Law. The Merger will be consummated by filing a certificate of merger with the Delaware Secretary of State in accordance with the Delaware Corporation Law. At such time, the shares of KARA Sub held by Multimodal will be converted into and exchanged for 18 million shares of KCS Class A Convertible Common Stock. As a result of the Merger, the separate corporate existence of KARA Sub will cease and KCS will continue as the surviving corporation. Subject to approval by KCS stockholders, upon the date and time of the filing of the Certificate of Merger, KCS will change its name to "NAFTA Rail" and the capital stock of KCS (including the KCS Common Stock, the $25 par value Preferred Stock and the Series C Preferred Stock) will continue to be issued and outstanding as the capital stock of NAFTA Rail without further action by any holder thereof. Subject to listing approval by the New York Stock Exchange ("NYSE"), the NAFTA Rail Common Stock and Preferred Stock will trade on the NYSE under the symbol ________.

The closing of the Acquisition is dependent upon the closing of each of the Stock Purchase, the Subsidiary Investment and the Merger.

CONDITIONS TO OBLIGATIONS TO COMPLETE THE ACQUISITION

The obligations of KCS and Grupo TMM to complete the Acquisition are subject to a number of conditions, including, among others:

- KCS must have obtained approval of KCS stockholders of the amendments specified in Proposal 1 to KCS's Restated Certificate of Incorporation and of the issuance of Class A Convertible Common Stock and Common Stock specified in Proposal 4;

- All consents, waivers, authorizations and approvals required from all governmental authorities to consummate the Acquisition must have been obtained and remain effective as of the closing date of the Acquisition Agreement;

- The Common Stock to be issued must have been approved for listing by the NYSE;

- Each of the Ancillary Agreements must have been duly executed and delivered by or on behalf of KCS and each of Grupo TMM, TMM Holdings and Multimodal, as the case may be;

- Grupo TMM must have received consents from the holders of its outstanding Notes due 2003 and Notes due 2006; and

- There must not be any insolvency or bankruptcy proceeding pending against Multimodal, TMM Holdings or TFM that has been pending for more than 60 days, and certain material adverse effects shall not have occurred.

TERMINATION

The Acquisition Agreement may be terminated prior to the closing of the Acquisition as follows:

- By written consent of KCS and Grupo TMM;

- By KCS or Grupo TMM if any order of any governmental authority permanently prohibiting the consummation of the Acquisition has become final and non-appealable or if any of the approvals of any governmental authority to perform the transactions contemplated by the Acquisition Agreement imposes any condition or requirement, the satisfaction of which is reasonably likely to have a material adverse effect on either KCS or Grupo TMM;

- By KCS if any conditions to the obligations of KCS under the Acquisition Agreement becomes incapable of fulfillment through no fault of KCS and is not waived by KCS;

- By Grupo TMM if any condition to the obligations of Grupo TMM, Multimodal and TMM Holdings (collectively, the "Sellers") under the Acquisition Agreement becomes incapable of fulfillment through no fault of Sellers and is not waived by Grupo TMM;

- By KCS if Grupo TMM has experienced a change of control, or by Grupo TMM if KCS has experienced a change of control; and

- By KCS or Grupo TMM if the closing of the Acquisition does not occur on or prior to December 31, 2004 (the "Termination Date"); provided, however, that the Termination Date may be extended by KCS and Grupo TMM by written agreement.

A termination fee of $18 million is payable in the event of termination of the Acquisition Agreement due to (i) a change of control of either KCS or Grupo TMM, in which case the party experiencing the change of control shall pay the termination fee to the other party, or (ii) the failure of the stockholders of KCS or of Grupo TMM to approve the Acquisition if at or prior to the meeting of such stockholders to approve the Acquisition, the Board of Directors of KCS, in the case of the KCS stockholders' meeting, or the Board of Directors of Grupo TMM, in the case of the Grupo TMM stockholders' meeting, has failed to recommend or has withdrawn and not reinstated its recommendation of the Acquisition, then the party whose stockholders shall not have approved the Acquisition shall pay the termination fee to the other party.

REQUIRED REGULATORY AND OTHER CONSENTS, APPROVALS AND FILINGS

Certain regulatory approvals and filings and other consents are required in connection with the closing of the Acquisition. These include, among others:

- Prior approval of the Mexican Foreign Investments Commission of control of Grupo TFM by a non-Mexican entity;
- Clearance by the Mexican Antitrust Commission of anti-competitive concerns;
- Notice to the Mexican Ministry of Communications and Transportation;
- Filing with NYSE for listing of Common Stock issuable upon conversion of Class A Convertible Common Stock;
- Grupo TMM noteholder consents;
- Hart-Scott-Rodino Act filing and clearance of investment by Multimodal in KCS; and
- KCS stockholder approval of amendments to Restated Certificate of Incorporation and issuance of KCS equity.

KCS has obtained an amendment to its Amended and Restated Credit Agreement allowing:

- KCS (NAFTA Rail) investment in further equity interests of Grupo TFM;
- KCS (NAFTA Rail) investment in equity interests representing 51% of Mexrail's issued and outstanding capital stock;
- Use of KCS cash to acquire Mexrail.

For a discussion of the filings made and the status of such filings, see "--Regulatory Matters" below.

VAT CONTINGENCY PAYMENT

Provided the Acquisition has occurred and neither KCS nor any of its subsidiaries has purchased the TFM "Class III" shares (representing 20% of the capital stock of TFM) currently held by the Mexican government upon exercise by the Mexican government of its right to compel purchase of the shares of TFM held by it (the "Put"), as compensation for Grupo TMM's services in obtaining the final settlement or resolution of TFM's claim against the Mexican Treasury for the refund of a value added tax ("VAT") payment in the original principal amount of 2,111,111,790 pesos ("VAT Claim"), KCS will make or cause TFM to make a cash payment (the "VAT Contingency Payment") to Grupo TMM as set forth below, following the date of final resolution of the VAT Claim, and the receipt by TFM or its designee of shares or cash compensation received by TFM or its designee from the Mexican government on the VAT Claim (the "VAT Payment"). The VAT Payment must consist of at least (i) all of the TFM "Class III" shares currently held by the Mexican government or (ii) a cash payment or other property acceptable to the parties which has a fair value equal to or greater than the Put Purchase Price (as defined in the Acquisition Agreement) as calculated on the date the VAT Payment is received. In such event, KCS will, at its option, pay or cause TFM to pay to Grupo TMM (iii) $100 million within 90 days thereafter or (iv) $50 million within 90 days thereafter and an additional $55 million within 365 days thereafter. If the VAT Payment exceeds the Put Purchase Price as calculated on the date the VAT Payment is received, KCS will pay or cause TFM to pay to Grupo TMM within 90 days after the VAT Payment and final resolution of the VAT Claim the first $25 million received above the Put Purchase Price, and 15% of any additional amount received above the Put Purchase Price beyond the first $25 million, not to exceed $50 million. The VAT Contingency Payment shall be made after reducing the value of VAT Payment by the amount of all expenses incurred by or on behalf of TFM in effecting final resolution of the VAT Claim and receipt of the VAT Payment. On June 12, 2003, Grupo TMM announced that on June 11, 2003 the Mexican appellate court issued a resolution regarding the VAT Claim against the ruling of the Mexican Fiscal Court issued on December 6, 2002 denying TFM the right to receive a VAT refund. In its announcement, Grupo TMM has stated that once it receives that resolution, it will evaluate its implications and provide more information.

THIRD PARTY MATTERS

Until the filing of the Certificate of Merger for the Merger, neither KCS nor Sellers can seek or entertain other offers with respect to acquisitions, mergers or business combinations of KCS or KCSR, and TMM Holdings, Multimodal, Grupo TFM or any of their respective subsidiaries, respectively. In addition, Grupo TMM will not enter into any agreement concerning any acquisition or purchase of a controlling equity interest in Grupo TMM by any competitor. These limitations are subject to the fiduciary duties of the respective Board of Directors of KCS and Grupo TMM.

INDEMNIFICATION

The representations and warranties of the Sellers and KCS survive for three to five years. The Sellers have jointly and severally agreed to indemnify KCS, the surviving corporation and each of their subsidiaries, and their respective officers, directors, employees, members, stockholders, agents and representatives harmless from and against all losses, damages, liabilities, claims, demands, obligations, deficiencies, payments, judgments, settlements, costs and expenses of any nature whatsoever ("Losses") resulting from or arising out of any inaccuracy or misrepresentation in, or breach of, any representation or warranty of Sellers in connection with the Acquisition Agreement, or any breach or nonfulfillment of any covenant or agreement of any of the Sellers in connection with the Acquisition Agreement, or any claims, causes of actions, rights asserted or demands made by any third parties arising from or relating to any of the foregoing. The Sellers' indemnification obligations for any inaccuracy or misrepresentation in, or breach of, any representation or warranty regarding Grupo TFM or its subsidiaries is limited to 51% of Losses aggregating $5 million or more. This limitation is not applicable to any Losses arising out of or resulting from any action or omission on the part of any Seller or its affiliate that involved a crime, fraud, willful misconduct or gross negligence.

KCS has agreed to indemnify the Sellers, each of their subsidiaries and each of their respective officers, directors, employees, members, stockholders, agents and representatives from and against all Losses resulting from or arising out of any inaccuracy or misrepresentation in, or breach of, any representation or warranty of KCS in connection with the Acquisition Agreement, or any breach or nonfulfillment of any covenant of KCS in connection with the Acquisition Agreement, or any claims, causes of actions, rights asserted or demands made by any third parties arising from or relating to any of the foregoing. KCS's indemnification obligations are limited to Losses aggregating $10 million or more. This limitation is not applicable to any Losses arising out of or resulting from any action or omission on the part of KCS or its affiliate that involved a crime, fraud, willful misconduct or gross negligence.

Additionally, KCS's Restated Certificate of Incorporation and Bylaws would be amended to reflect the agreements contained in the Acquisition Agreement and certain Ancillary Agreements. A number of Ancillary Agreements have been, or will be prior to the closing of the Acquisition, entered into to carry out certain objectives of the Acquisition Agreement and the Acquisition. Each of these Ancillary Agreements is described below.

FIRST AMENDMENT TO RIGHTS AGREEMENT

In connection with the Acquisition, KCS and Harris Trust & Savings Bank, as Rights Agent will enter into a First Amendment to Rights Agreement (the "Rights Agreement") dated as of September 19, 1995. The Rights Agreement will be amended to prevent any TMM Holder from becoming an Acquiring Person (as defined in the Rights Agreement), which would otherwise cause a Triggering Event (as defined in the Rights Agreement) as a result of the Acquisition. Accordingly, the First Amendment to Rights Agreement will amend Section 1(a), the definition of Acquiring Person, to provide that no person or affiliate of such person shall become an "Acquiring Person" as a result of the acquisition of beneficial ownership of (i) shares of Class A Convertible Common Stock, (ii) shares of Common Stock issued or issuable upon conversion of the Class A Convertible Common Stock, (iii) any shares of Common Stock or Class A Convertible Common Stock acquired pursuant to Section 1.2 of the Acquisition Agreement, (iv) any shares of Common Stock or Class A Convertible Common Stock acquired pursuant to the Consulting Agreement, and (v) shares of Common Stock or Class A Convertible Common Stock acquired in compliance with the Stockholders' Agreement, including upon exercise of pre-emptive rights as provided therein.

The definition of "Substantial Block" found at Section 1(z) of the Rights Agreement will also be amended to lower the threshold beneficial ownership that constitutes a "Triggering Event" from 20% to 15% (and from 15% to 13% in the event the Acquiring Person is declared by the Board of Directors to be an Adverse Person (as defined in the Rights Agreement)).

In order to conform to the foregoing amendments, subsection (iii) of Section 3(e) regarding Restrictions on transfer of Rights to Acquiring Persons shall be deleted and amended to provide that no Right (as defined in the Rights Agreement) shall be transferable or transferred other than as permitted under Section 1(a) of the Rights Agreement, as amended, to any person who, as a result of such transfer, would beneficially own 15% or more of the Rights.

Finally, Section 7(e) of the Rights Agreement will be amended to correct a clerical error.

A copy of the First Amendment to Rights Agreement is attached to this proxy statement as Appendix C.

STOCKHOLDERS' AGREEMENT

KCS, Grupo TMM, TMM Holdings, Multimodal and the Principal Stockholders plan to enter into a Stockholders' Agreement, which shall set forth the rights and duties of the parties thereto arising out or and in connection with the Acquisition Agreement and the transactions contemplated thereby.

STANDSTILL PROVISIONS

For a period of seven years from the date of the Stockholders' Agreement, Grupo TMM, TMM Holdings, Multimodal and each of the Principal Stockholders agrees that, unless specifically invited in writing to do so by the Board of Directors, such Person (as defined in the Stockholders' Agreement) will not, and will cause each of its affiliates not to, among other things:

- acquire or agree to acquire aggregate beneficial ownership of more than 20% of the Total Voting Power of KCS (as defined in the Stockholders' Agreement);

- initiate or propose any matter for submission to a vote of stockholders of KCS or participate in the making of, or solicit stockholders for the approval of, any stockholder proposal;

- grant any proxy with respect to any Voting Securities to any Person not approved in writing by KCS;

- except through its representatives on the Board of Directors (or any committee thereof) of KCS, otherwise act, alone or in concert with others, to seek to control or influence the management, Board of Directors or policies of KCS.

The standstill provisions terminate upon the earliest to occur of (i) a Change of Control of KCS (as defined in the Stockholders' Agreement), or (ii) the first date the TMM Holders beneficially own in the aggregate less than 15% of the outstanding Voting Securities of KCS for at least 30 consecutive days.

TRANSFER RESTRICTIONS

The TMM Holders may not sell, assign, transfer, pledge, hypothecate, otherwise subject to any lien, grant an option with respect to or otherwise dispose of any interest in (or enter into an agreement or understanding with respect to the foregoing) any Voting Securities beneficially owned by them (a "Disposition") except in accordance with the terms of the Stockholders' Agreement. For a period of five years from the date of the Stockholders' Agreement, the TMM Holders may not effect a Disposition:

- to a Competitor (as defined in the Stockholders' Agreement);

- to an Affiliate unless such Affiliate agrees in writing to be bound by the terms of the Stockholders' Agreement and provided that the TMM Holders shall remain responsible, jointly and severally, for any breaches of the Stockholders' Agreement by such Affiliate;

- that in the aggregate represents 5% or more of the outstanding Voting Securities to any Person other than an 13G Filer (as defined in the Stockholders' Agreement), and no disposition shall be made to any 13G Filer unless such 13G Filer would continue to be eligible to file reports pursuant to Section 13G under the Exchange Act with respect to the Voting Securities after giving effect to the proposed acquisition and KCS has been provided the right (but not the obligation) to purchase such Voting Securities;

- to any Person that would, together with such person's Affiliates or Associates (as defined in the Stockholders' Agreement) and after giving effect to the acquisition of such Voting Securities, beneficially own or have the right to acquire 15% of the Total Voting Power; and

- of any capital stock or Voting Securities or control of any Person that, directly or indirectly, beneficially owns any Voting Securities of KCS to a Competitor.

Subject to the provisions contained in the Stockholders' Agreement, a TMM Holder may pledge or hypothecate as security for any indebtedness or other obligations any or all Voting Securities beneficially owned by such Person provided that KCS shall have a right to purchase the pledged Voting Securities upon the occurrence of a Foreclosure Event (as defined in the Stockholders' Agreement).

The TMM Holders may participate in a tender or exchange offer made by an unaffiliated third party, provided the TMM Holders did not solicit the tender or exchange offer and (i) the same consideration is offered to all holders of the securities tendered in the tender offer; (ii) the transaction is approved by a majority of other KCS stockholders; (iii) the tender or exchange offer is not conditioned on financing; and (iv) the TMM Holders do not tender, or publicly disclose their intention to tender, prior to the last day before expiration of the offer.

The transfer restrictions contained in the Stockholders' Agreement terminate upon the earliest to occur of (i) a Change of Control of KCS, or (ii) the first date the TMM Holders beneficially own in the aggregate less than 15% of the outstanding Voting Securities of KCS for at least 30 consecutive days.

PRE-EMPTIVE RIGHTS

TMM Holders have the right to purchase additional shares of Class A Convertible Common Stock to maintain their percentage ownership in the event KCS authorizes the issuance or sale of any shares of Common Stock or any securities containing options or rights to acquire shares of Common Stock, except for issuances of Common Stock (including for this purpose, options, warrants and other securities convertible into or exercisable for Common Stock) issued:

- to KCS's employees, directors, consultants, agents, independent contractors or other service providers in connection with a Plan (as defined in the Stockholders' Agreement) existing as of the date of the Stockholders' Agreement or a Plan approved by the Board of Directors and adopted by KCS after the date of the Stockholders' Agreement;

- upon the conversion of Class A Convertible Common Stock;

- upon the exercise of any options, warrants, convertible or exchangeable securities which are outstanding as of the date hereof;

- in connection with the acquisition (by merger, consolidation, acquisition of assets or equity interests or otherwise) of the equity interests or assets of another Person; or

- in the event KCS issues additional equity in lieu of up to $80 million in cash at Closing.

CORPORATE GOVERNANCE

The Stockholders' Agreement provides for the Board of Directors to be comprised of eleven directors, to be selected as follows: (i) the chief executive officer of KCS and another person selected by him; (ii) two persons elected by the holders of the Class A Convertible Common Stock (reduced to one in the event the TMM Holders' ownership falls below 75% of the Voting Securities initially acquired pursuant to the Merger and reduced to zero in the event the TMM Holders' ownership falls below 40% of the Voting Securities initially acquired pursuant to the Merger); and (iii) seven independent directors designated by the chief executive officer of KCS. The Nominating Committee of the Board of Directors will consist of three Independent Directors designated by the chief executive officer of KCS. The Compensation Committee will consist of three Independent Directors designated by the chief executive officer of KCS and one Independent Director designated by the chief executive officer of Grupo TMM. The Executive Committee will consist of three Directors designated by the chief executive officer of KCS and one Director designated by the chief executive officer of Grupo TMM.

Each TMM Holder shall vote all of the Voting Securities beneficially owned by such Person and entitled to vote in the election of directors: (i) in favor of all nominees of the Nominating Committee; and (ii) against any proposal to remove any director nominated by the Nominating Committee and elected to the Board of Directors.

The TMM Holders' rights and duties under the corporate governance provisions of the Stockholders' Agreement terminate upon the earliest to occur of (i) the first date the TMM Holders beneficially own in the aggregate at least 40% of the outstanding Voting Securities initially acquired pursuant to the Merger, or (ii) a Change of Control of Grupo TMM or any of the TMM Holders.

TERMINATION

Subject to specific termination provisions contained in the Stockholders' Agreement, the entire Agreement (with a few exceptions) terminates when the TMM Holders ownership falls below 40% of the Voting Securities initially acquired pursuant to the Merger, or in the event the Class A nominees are not elected to the KCS Board of Directors (except for good cause).

REGISTRATION RIGHTS AGREEMENT

The Registration Rights Agreement to be entered into by KCS, Grupo TMM, TMM Holdings, Multimodal and certain principal stockholders of Grupo TMM, will provide Grupo TMM, TMM Holdings, Multimodal, such principal stockholders of Grupo TMM, and any Permitted Transferee (as defined in the Registration Rights Agreement) who acquires shares of Class A Convertible Common Stock or shares of Registrable Stock (as defined in the Registration Rights Agreement) and agrees to be bound by the terms and conditions of the Registration Rights Agreement (collectively, the "Holders") with certain registration rights with respect to the shares of KCS Common Stock (i) issuable upon conversion of the KCS Class A Convertible Common Stock, (ii) issued in lieu of cash at closing, (iii) issued pursuant to the Consulting Agreement and (iv) acquired on pre-emptive exercises.

REQUIRED AND INCIDENTAL REGISTRATIONS

Beginning on the 180th day following the consummation of the Acquisition, the Holders shall have the right to request, and KCS shall use commercially reasonable efforts to effect, six demand registrations. In the event KCS issues additional equity in lieu of up to $80 million in cash at Closing, the Holders shall be entitled to one additional shelf registration. Holders shall also be entitled to unlimited incidental, or "piggy-back," registrations. KCS can delay filing registrations upon the occurrence of certain events, including situations in which KCS is not eligible to use Form S-3 to effect such registration or in the event that KCS furnishes to the Holders a resolution adopted by the Board of Directors to the effect that in the good faith judgment of KCS it would be seriously detrimental for a registration statement to be filed at that time.

In the event the managing underwriters of a public offering furnish a written opinion that the amount of securities to be included in an offering exceed the maximum amount which can be marketed without materially and adversely affecting such offering, then the Holders, KCS and all other holders of KCS securities having the right to include such securities in the registration shall be subject to certain underwriting cut-backs. Holders are also subject to certain market standoff provisions during the ten days prior to and up to, but not exceeding, 90 days following the effective date of a registration statement to the same extent that KCS or its officers or directors are subject to such market standoff provisions.

REGISTRATION EXPENSES

With respect to the first four demand registrations and any incidental registrations, KCS shall pay all registration expenses, including all registration, qualification and filing fees, printing expenses, escrow fees, fees and disbursements or counsel for KCS and blue sky fees and expenses. With respect to demand registrations effected beyond the first four, the Holders whose shares are included in the applicable registration shall pay all registration expenses.

CONSULTING AGREEMENT

KCS and the consulting firm controlled by Jose Serrano Segovia ("Consulting Firm") plan to enter into a Consulting Agreement, which calls for Consulting Firm to provide certain consulting services to the KCS Board of Directors and Chief Executive Officer relating to the Mexican portion of KCS's rail network operations, including its customers and suppliers, regulatory matters and regarding the Mexican railroad industry in general. Jose Serrano Segovia is required under the terms of the Consulting Agreement to be personally involved in the provision of services by the Consulting Firm. Jose Serrano Segovia is the current Chairman of the Board of Directors of Grupo TMM and certain of its subsidiaries, including TFM and Grupo TFM and will become a director and Vice-Chairman of KCS.

TERM

The Consulting Agreement has an initial term of three years beginning on the closing date of the Acquisition Agreement. KCS has the option of extending the term of the Consulting Agreement for an additional year. In the event of a Change of Control (as defined in the Consulting Agreement), Consulting Firm agrees to continue its engagement with KCS for a period equal to the longer of (i) one year from the date of such Change of Control; or (ii) the remainder of the term and KCS agrees to continue to engage Consulting Firm during the remainder of the term.

Notwithstanding the initial three-year term, the Consulting Agreement and Consulting Firm's engagement shall terminate automatically upon the death or disability of Jose Serrano Segovia or dissolution or bankruptcy of Consulting Firm. Consulting Firm may terminate the Consulting Agreement at any time by giving at least 30 days' advance written notice to KCS or in the event of a material breach, and failure to cure the same, by KCS. Additionally, KCS may terminate the Consulting Agreement and Consulting Firm's engagement for cause, or other than for cause, subject to certain conditions specified in the Consulting Agreement.

COMPENSATION

Under the Consulting Agreement, KCS will pay to Consulting Firm an annual fee of $600,000. In addition, KCS will grant to Consulting Firm 2,100,000 shares of KCS restricted Common Stock (the "Consulting Firm Stock"), subject to the following vesting provisions:

- 525,000 shares shall become vested with ten days after TFM enters into a renegotiated or extended labor agreement with the El Sindicato de Trabajadores Ferrocarrileros de la Republica Mexicana;

- 250,000 shares shall become vested on each of the first, second and third anniversary dates of the Consulting Agreement;

- 125,000 shares shall become vested in the event KCS or any subsidiary receives the Certificate of Devolution of Taxes (Certificado de Devolucion de Impuestos) issued by the Treasury of the Mexican Federation (Tesoreria de la Federacion) in the term of Article 22 of the Tax Code of the Mexican Federation (Codigo Fiscal de la Federacion); and

- 700,000 shares shall become vested in the event KCS or any subsidiary receives the shares or cash compensation from the Mexican government as a result of TFM's claim against the Mexican Treasury for the refund of a value added tax payment. See Section 6(i) of the Consulting Agreement attached to this proxy statement as Appendix F and Section 7.13 of the Acquisition Agreement attached to this proxy statement as Appendix B.

As a condition to the vesting of Consulting Firm Stock on the first, second and third anniversary dates, KCS's Board of Directors shall review the compliance, good faith performance and existence of triggering events that would terminate the Agreement. If the Board determines that the Consulting Firm has not satisfied the requisite standard during any one-year period, the Consulting Firm Stock subject to vesting at such one-year period shall be forfeited.

If KCS extends the initial term of the Consulting Agreement, KCS will grant to Consulting Firm on the first day of the extended term an additional 525,000 shares of KCS restricted Common Stock which will vest immediately upon issuance.

TRANSFER RESTRICTIONS

Consulting Firm may not sell, transfer, assign, pledge or otherwise dispose of (whether with or without consideration and whether voluntary or involuntary or by operation of law) any interest in any shares of Consulting Firm Stock, except in accordance with the terms of the Stockholders' Agreement (described above).

MARKETING AND SERVICES AGREEMENT

The Marketing and Services Agreement to be entered into by Grupo TMM (together with its subsidiaries and affiliates), TFM and KCS (together with its subsidiaries and affiliates), provides for the parties to enter into various most favored nations provisions, requiring, among other things, (i) KCS to provide certain services to Grupo TMM on terms which are no less favorable than the terms provided to third or fourth party logistics companies; (ii) that Grupo TMM shall have the right to be the exclusive provider of Road-Railer freight services over TFM's rail system within Mexico; (iii) Grupo TMM shall have the right, but not the obligation, to operate KCS's intermodal terminals to the extent that KCS determines to utilize a third party to operate such within Mexico, the terms of such operations subject to mutual agreement of Grupo TMM and KCS; and (iv) that Grupo TMM shall have the right to make a bid for the provision of certain specified transportation related services normally provided by Grupo TMM or its affiliates, if TFM determines to have such services provided by any unaffiliated third party in Mexico or the United States. The relationships among KCS and Grupo TMM shall be those of independent contractors and neither KCS nor Grupo TMM shall be or represent itself to be an agent, employee or joint venturer of the other. Neither KCS nor Grupo TMM shall have or represent itself to have any power or authority to act for, bind or commit the other party.

The initial term of the Marketing and Services Agreement is five years from the Effective Date (as defined in the Acquisition Agreement), subject to automatic renewal for periods of one year unless terminated by Grupo TMM or KCS. Notwithstanding the foregoing, the Marketing and Services Agreement shall terminate automatically in the event that (i) TMM Logistics, a subsidiary of Grupo TMM, files any voluntary proceeding under any bankruptcy laws, or if TMM Logistics has filed against it any involuntary proceeding under any bankruptcy law which is not dismissed or stayed within 30 days or (ii) a change of control of Grupo TMM occurs and the party effecting such change of control is a Competitor (as defined in the Marketing and Services Agreement).

AGREEMENT OF ASSIGNMENT AND ASSUMPTION OF RIGHTS, DUTIES AND OBLIGATIONS.

This agreement is to be entered into by and among Grupo TMM, KCS, and Grupo TFM (a form of which is attached as Exhibit C to the Acquisition Agreement), by which Grupo TMM will assign and transfer to KCS, and KCS will accept and assume, all of Grupo TMM's rights, duties and obligations with respect to the purchase of the Put Shares (defined below) under the Put Agreement described below. KCS shall have the right to designate another party to be the purchaser of the Put Shares, however, no such designation shall relieve KCS of its obligation to pay the purchase price for such Put Shares or to indemnify Grupo TMM or its Affiliates.

According to the terms of the original share purchase agreement for the Northeast Rail lines and an Agreement, dated June 9, 1997, by and among the Federal Government of the Mexican States, Grupo TFM, Grupo TMM and KCS (the "Put Agreement"), the Mexican government has the right to sell its 20% interest in TFM through a public offering on October 31, 2003 (or prior to October 31, 2003, with the consent of Grupo TFM). If, on October 31, 2003, the Mexican government has not sold all of its capital stock in TFM, Grupo TFM is obligated under the Put Agreement following receipt of notice from the Mexican government to purchase the Mexican government's 20% interest in TFM (the "Put Shares"). In the event that Grupo TFM does not purchase the Put Shares within the sixty-day period following notification by the Mexican government, then Grupo TMM and KCS, are jointly and severally obligated to purchase the Mexican government's remaining interest in TFM. Should the Mexican government cause Grupo TMM to purchase any of the Put Shares, KCS would be obligated to purchase such shares from Grupo TMM.

THE STOCK PURCHASE AGREEMENT

Pursuant to the terms and conditions of the Stock Purchase Agreement, dated as of April 20, 2003, by and among KCS, Grupo TMM and TFM, on May 9, 2003, KCS purchased from TFM 51% of the outstanding shares of Mexrail, a wholly-owned subsidiary of TFM, for $32,680,000. KCS has an exclusive option until December 31, 2005 to purchase the remaining outstanding shares of Mexrail as of the date of the exercise of the option. KCS has deposited the initial purchased shares of Mexrail into an irrevocable voting trust pending obtaining approval by the STB of KCS's request to exercise common control over KCSR, Gateway Eastern and Tex-Mex. Tex-Mex is a wholly-owned subsidiary of Mexrail.

REPURCHASE RIGHT

TFM has a right to repurchase all of the shares of Mexrail capital stock acquired by KCS at any time for the purchase price paid by KCS, subject to any STB orders or directions. Upon any such repurchase, the Stock Purchase Agreement automatically terminates. If not exercised within two years of the date of the Stock Purchase Agreement, TFM's repurchase right expires.

TERMINATION

The Stock Purchase Agreement may be terminated as follows:

- KCS may terminate the Stock Purchase Agreement by written notice to Grupo TMM and TFM at any time prior to the Initial Closing in the event Grupo TMM or TFM has breached any material representation, warranty or covenant contained in the Stock Purchase Agreement in any material way and has continued without cure for a period of 30 days after notice of the breach; and

- Grupo TMM and TFM may terminate the Stockholders Agreement by written notice to KCS at any time prior to the Initial Closing in the event KCS has breached any material representation, warranty or covenant contained in the Stock Purchase Agreement in any material way and has continued without cure for a period of 30 days after notice of the breach.

INDEMNIFICATION

Grupo TMM and TFM have jointly and severally agreed to indemnify KCS from and against all actions, suits, proceedings, hearings, investigations, charges, complaints, claims, demands, injunctions, judgments, orders, decrees, rulings, damages, dues, penalties, fines, costs, reasonable amounts paid in settlement, liabilities, obligations, taxes, liens, losses, expenses, and fees, including court costs and reasonable attorneys' fees and expenses ("Adverse Consequences") KCS may suffer through and after the date of the claim for indemnification (including any Adverse Consequences KCS may suffer after the end of any applicable survival period) resulting from, arising out of, or caused by the breach by either Grupo TMM or TFM of any of its representations, warranties or covenants. The obligation of Grupo TMM and TFM to indemnify KCS for any breach of representation or warranty shall be limited to 51% of the Adverse Consequences and then only to the extent that such 51% of the Adverse Consequences aggregating $2 million or more. This limitation is not applicable to any Adverse Consequences arising out of or resulting from any action or omission on the part of Grupo TMM or TFM or any of their respective affiliates that involve a crime, fraud, willful misconduct or gross negligence.

KCS has agreed to indemnify Grupo TMM or TFM from and against the entirety of any Adverse Consequences that Grupo TMM or TFM may suffer through and after the date of the claim for indemnification (including any Adverse Consequences Grupo TMM or TFM may suffer after the end of any applicable survival period) resulting from, arising out of, relating to, in the nature of, or caused by the breach.

REGULATORY MATTERS

As discussed in "--Summary of the Acquisition Agreement and Related Agreements--The Acquisition Agreement" and "--Summary of the Acquisition Agreement and Related Agreements--The Stock Purchase Agreement" above, certain regulatory approvals and filings are required in connection with the closing of the Acquisition. The following actions have occurred to date:

- KCS's solicitation for permission as a foreign investor to control TFM, through Grupo TFM, was filed with the Mexican National Foreign Investments Commission on April 25, 2003. KCS expects a decision from the Foreign Investments Commission by the end of July 2003;

- KCS's Notification with respect to the acquisition of the Grupo TFM shares from Multimodal was filed with the Mexican Competition Commission on April 21, 2003. KCS has received formal written notice that the Mexican Competition Commission has approved the proposed consolidation, without conditions;

- TFM formerly notified the Secretary of Communications and Transportation of the proposed transactions on May 2, 2003;

- Grupo TMM is continuing to pursue obtaining bondholder consents;

- KCS filed with the STB on May 13, 2003 a Railroad Control Application, seeking permission to exercise common control over KCSR, Gateway Eastern and Tex-Mex. On June 9, 2003, the STB issued its decision, effective June 13, 2003, finding that the transaction proposed in KCS's application is a "minor transaction" under 49 CFR 1180.2(c), although KCS is required to supplement its application as discussed in the decision. As stated in the decision, by June 23, 2003, KCS must supplement its application to address some of the implications of KCS's acquisition of control of TFM. KCS filed the supplement on June 23, 2003. The STB also outlined a procedural schedule for consideration of KCS's application to exercise common control over KCSR, Gateway Eastern and Tex-Mex. The STB decision set October 17, 2003 as the date by which it will issue its final decision on the merits of the application;

- KCS filed its Hart-Scott-Rodino notification on May 19, 2003.

REQUIREMENT FOR STOCKHOLDER APPROVAL

KCS's listing application with the NYSE requires stockholder approval for the issuance of KCS Common Stock, or of securities convertible into or exercisable for Common Stock, that represents in the aggregate more than 20% of the issued and outstanding shares of KCS Common Stock. In addition, the listing application requires stockholder approval for the issuance of securities to a "substantial stockholder" of KCS.

As of March 31, 2003, 61,631,987 shares of Common Stock were issued and outstanding. At the closing of the Acquisition Agreement, Multimodal will acquire 18,000,000 shares of Class A Convertible Common Stock, which represents more than 20% of the issued and outstanding shares of Common Stock on a fully diluted basis, and Multimodal will become a substantial stockholder of KCS. In addition, KCS, at its option, may elect to pay up to $80 million of the $200 million cash consideration for the Grupo TFM shares by delivering a number of shares of Common Stock or Class A Convertible Common Stock determined by dividing the amount that KCS elects to pay other than in cash by $12.50. Assuming KCS elects to pay $80 million in this manner, KCS would deliver an additional 6,400,000 shares. KCS will also issue up to 2,625,000 shares of restricted Common Stock pursuant to the Consulting Agreement entered into in connection with the transactions contemplated by the Acquisition Agreement.

REQUIRED VOTE AND BOARD OF DIRECTORS' RECOMMENDATION

In accordance with the Delaware Corporation Law and KCS's Restated Certificate of Incorporation, approval of this proposal requires the affirmative vote of the holders of a majority of the outstanding shares of Voting Stock present in person or represented by proxy at the Special Meeting and that are entitled to vote on the proposal, assuming a quorum is present.

YOUR BOARD RECOMMENDS THAT YOU VOTE
"FOR"
PROPOSAL 4 - PROPOSED ISSUANCE OF
CLASS A CONVERTIBLE COMMON STOCK AND COMMON STOCK

SELECTED FINANCIAL DATA

SELECTED HISTORICAL CONSOLIDATED FINANCIAL DATA OF KCS (DOLLARS IN MILLIONS,

EXCEPT PER SHARE AND RATIO DATA)

The following table sets forth selected consolidated financial data for KCS and certain subsidiaries and affiliates. The statement of income data for the years ended December 31, 2000, 2001 and 2002 and the balance sheet data as of December 31, 2000, 2001 and 2002 have been derived from KCS's audited financial statements which are incorporated by reference in this proxy statement. The statement of income data for the years ended December 31, 1998 and 1999 and the balance sheet data as of December 31, 1998 and 1999 have been derived from KCS's audited financial statements, none of which are included in this proxy statement. The statement of income data for the three-month periods ended March 31, 2002 and 2003 and the balance sheet data as of March 31, 2002 and 2003 have been derived from KCS's unaudited financial statements, which have been incorporated by reference in this proxy statement. The unaudited balance sheet data and statement of income data as of and for the three-month periods ended March 31, 2002 and 2003 include all adjustments, consisting only of normal, recurring adjustments, which management considers necessary for a fair presentation of the financial position and results of operations of KCS as of such date and for such periods. Operating results for the three months ended March 31, 2003 are not necessarily indicative of results that may be expected for the entire year or for any future period. All periods presented reflect the 1-for-2 reverse Common Stock split to stockholders of record on June 28, 2000 paid July 12, 2000. All of the summary data presented below should be read in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the consolidated financial statements of KCS and other financial information included elsewhere or incorporated by reference in this proxy statement.

| | Three Months March 31, (unaudited) | | Year Ended De | | |
|---|---|---|---|---|---|
| | 2003 | 2002 | 2002 | 2001 | 2000 |
| Revenues | $ 140.2 | $ 143.9 | $ 566.2 | $ 583.2 | $ 578.7 |
| Equity in net earnings (losses) from unconsolidated affiliates - continuing operations | $ 7.0 | $ 4.9 | $ 43.4 | $ 27.1 | $ 22.1 |
| Income from continuing operations (i) | $ 4.7(ii) | $ 11.7 | $ 57.2 | $ 31.1(iii) | $ 16.7 |
| Income from continuing operations per common share: | | | | | |
| Basic | $ 0.08 | $ 0.20 | $ 0.94 | $ 0.53 | $ 0.29 |
| Diluted | 0.08 | 0.19 | 0.91 | 0.51 | 0.28 |
| Total Assets (iv) | $ 2,027.5 | $ 1,999.9 | $ 2,008.8 | $ 2,010.9 | $ 1,944.5 |
| Total Debt | $ 581.7 | $ 627.9 | $ 582.6 | $ 658.4 | $ 674.6 |
| Cash dividends per common share | $ --- | $ --- | $ --- | $ --- | $ --- |
| Ratio of earnings to fixed | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| charges (v) | ---(vi) | 1.6x | 1.3x | 1.1x | 1.0 |

(i) Income from continuing operations for the years ended December 31, 2002, 2001 and 2000 include certain unusual costs and expenses and other income as further described in Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operation--Results of Operations," in KCS's Annual Report on Form 10-K for the year ended December 31, 2002, which is incorporated by reference in this proxy statement. These costs include MCS implementation related costs, benefits received from the settlement of certain legal and insurance claims, severance costs and expenses associated with legal verdicts against KCS, gain recorded on the sale of operating property, among others. Other non-operating income includes gains recorded on sale of non-operating properties and investments. For the year ended December 31, 1999, income from continuing operations includes unusual costs and expenses related to facility and project closures, employee separations and related costs, labor and personal injury related issues.

(ii) Income from continuing operations for the three months ended March 31, 2003 does not include a favorable after-tax benefit of $8.9 million relating to the cumulative effect of an accounting change arising from a required change in the method of accounting for removal costs of certain track structure assets.

(iii) Income from continuing operations for the year ended December 31, 2001 excludes a charge for the cumulative effect of an accounting change of $0.4 million (net of income taxes of $0.2 million). This charge reflects KCS's adoption of Statement of Financial Accounting Standard No. 133, "Accounting for Derivative Instruments and Hedging Activities" effective January 1, 2001.

(iv) The total assets presented herein as of December 31, 1999 and 1998 include the net assets of Stilwell Financial Inc. of $814.6 million and $540.2 million, respectively. Due to the spin-off of Stilwell Financial Inc. on July 12, 2000, the total assets as of December 31, 2002, 2001 and 2000 do not include the net assets of Stilwell Financial Inc.

(v) The ratio of earnings to fixed charges is computed by dividing earnings by fixed charges. For this purpose "earnings" represent the sum of (i) pretax income from continuing operations adjusted for income (loss) from unconsolidated affiliates, (ii) fixed charges, (iii) distributed income from unconsolidated affiliates and (iv) amortization of capitalized interest, less capitalized interest. "Fixed charges" represent the sum of (i) interest expensed, (ii) capitalized interest, (iii) amortization of deferred debt issuance costs and (iv) one-third of our annual rental expense, which management believes is representative of the interest component of rental expense.

(vi) The ratio of earnings to fixed charges would have been 1:1 if a deficiency of $3.4 million was eliminated.

SELECTED HISTORICAL COMBINED AND CONSOLIDATED FINANCIAL DATA OF GRUPO TFM (AMOUNTS IN MILLIONS OF DOLLARS, EXCEPT PER SHARE AMOUNTS)

The following table sets forth selected combined and consolidated financial data for Grupo TFM and subsidiaries. The statement of income data for the years ended December 31, 2000, 2001 and 2002 and the balance sheet data as of December 31, 2001 and 2002 have been derived from Grupo TFM's audited financial statements filed as Exhibit 99.3 to KCS's Form 10-K for the year ended December 31, 2002 and incorporated by reference in this proxy statement. The statement of income data for the three-month periods ended March 31, 2002 and 2003 and the balance sheet data as of March 31, 2002 and 2003 have been derived from Grupo TFM's unaudited financial statements as provided to KCS. The statement of income data for the years ended December 31, 1998 and 1999 and the balance sheet data as of December 31, 1998, 1999 and 2000 have been derived from Grupo TFM's audited financial statements, none of which are included in this proxy statement. Operating results for the three months ended March 31, 2003 are not necessarily indicative of results that may be expected for the entire year or for any future period. Financial information in the table below for Grupo TFM is reported under U.S. GAAP.

| | Three Months March 31, (unaudited) | | Year Ended December | | |
|---|---|---|---|---|---|
| | 2003 | 2002 | 2002 | 2001 | 2000 |
| Revenues | $ 168.5 | $ 170.8 | $ 712.1 | $ 720.6 | $ 695.4 |
| Operating income | $ 31.8 | $ 35.8 | $ 171.5 | $ 199.5 | $ 145.1 |
| Net income per share | $ 1.98 | $ 1.44 | $ 12.23 | $ 7.31 | $ 4.32 |
| Total assets | $ 2,342.7 | $ 2,290.5 | $ 2,326.5 | $ 2,272.2 | $ 2,130.4 |
| Long-term debt | $ 977.5 | $ 583.0 | $ 1,002.7 | $ 570.9 | $ 811.3 |
| Long-term portion of capital lease obligations | $ 1.8 | $ 2.1 | $ 1.9 | $ 2.1 | $ --- |
| Cash dividends per common share | --- | --- | --- | --- | --- |

UNAUDITED PRO FORMA SELECTED CONSOLIDATED FINANCIAL DATA

FOR THE THREE MONTHS ENDED MARCH 31, 2003 (DOLLARS IN MILLIONS, EXCEPT PER SHARE DATA)

The following summarizes pro forma selected consolidated financial data of KCS assuming the transaction acquiring a controlling interest in Grupo TFM had been completed as of January 1, 2003 for income statement purposes and as of March 31, 2003 for balance sheet purposes.

| | KCS HISTORICAL | CONSOLIDATED GRUPO TFM | PRO FORMA ADJUSTMENTS DEBIT | PRO FORMA ADJUSTMENTS CREDIT | PRO FORM |
|---|---|---|---|---|---|

| | | | | | |
|---|---|---|---|---|---|
| Revenues | $ 140.2 | $ 168.5 | | | $ 308 |
| Equity in net earnings (losses) from unconsolidated affiliates - continuing operations | $ 7.0 | | $ 6.9(i) | | $ 0 |
| Income from continuing operations | $ 4.7 | $ 18.7 | $ 7.6 | -- | $ 15 |
| Income from continuing operations per common share: | | | | | |
| Basic (ii) | $ 0.08 | --- | | | $ 0 |
| Diluted (iii) | 0.08 | --- | | | $ 0 |
| Total Assets | $ 2,027.5 | $ 2,342.7 | $ 233.9 | $596.2 | $ 4,00 |
| Total Debt | $ 581.7 | $ 1,016.2 | | | $ 1,59 |
| Cash dividends per common share | $ --- | $ --- | | | $ |
| Book value per common share (iv) | $ 12.42 | --- | | | $ 12 |

(i) Assuming the contemplated transaction would have been consummated on January 1, 2003, KCS would have consolidated earnings of Grupo TFM and accordingly, the equity in earnings of Grupo TFM would be eliminated.

(ii) For the pro forma income from continuing operations per common share, the weighted average basic shares are calculated beginning with KCS historical average basic shares of 61,427,000 for the three months ended March 31, 2003, plus 18,000,000 assumed shares to be issued under the Acquisition Agreement. This does not take into account the up to 6,400,000 shares which could be issued, at KCS's option, in lieu of a portion of the $200 million cash payment for the Grupo TFM shares, or the up to 2,625,000 shares that could be issued under the Consulting Agreement.

(iii) For the pro forma income from continuing operations per common share, the weighted average diluted shares are calculated beginning with KCS historical average diluted shares of 62,863,000 for the three months ended March 31, 2003, plus 18,000,000 assumed shares to be issued under the Acquisition Agreement, plus 13,389,121 shares assuming full conversion of the Series C Preferred Stock into Common Stock utilizing a conversion rate of 33.4728 shares of Common Stock for each share of Series C Preferred Stock. This does not take into account the up to 6,400,000 shares which could be issued, at KCS's option, in lieu of a portion of the $200 million cash payment for the Grupo TFM shares, or the up to 2,625,000 shares that could be issued under the Consulting Agreement.

(iv) Book value per common share was calculated using the pro forma total of common stockholders' equity divided by the pro forma number of common shares outstanding.

UNAUDITED PRO FORMA SELECTED CONSOLIDATED FINANCIAL DATA

FOR THE YEAR ENDED DECEMBER 31, 2002 (DOLLARS IN MILLIONS, EXCEPT PER SHARE DATA)

The following summarizes pro forma selected consolidated financial data of KCS assuming the transaction acquiring a controlling interest in Grupo TFM had been completed as of January 1, 2002.

| | | | PRO FORMA ADJUSTMENTS | | |
|---|---|---|---|---|---|
| | KCS HISTORICAL | CONSOLIDATED GRUPO TFM | DEBIT | CREDIT | P FO |
| Revenues | $ 566.2 | $ 712.1 | | | $ 1,2 |
| Equity in net earnings (losses) from unconsolidated affiliates - continuing operations | $ 43.4 | --- | $ 45.8(i) | | $ |
| Income from continuing operations | $ 57.2(ii) | $ 137.4 | $ 51.2 | - | $ 1 |
| Income from continuing operations per common share: | | | | | |
| Basic (iii) | $ 0.94 | | | | $ |
| Diluted (iv) | 0.91 | | | | $ |
| Cash dividends per common share | $ --- | $ --- | $ --- | $ --- | $ |

(i) Assuming the contemplated transaction would have been consummated on January 1, 2002, KCS would have consolidated earnings of Grupo TFM and accordingly, the equity in earnings of Grupo TFM would be eliminated.

(ii) Income from continuing operations for the year ended December 31, 2002 includes certain unusual costs and expenses and other income as further described in Item 7, "Management's Discussion and Analysis of Financial Condition and Results of Operation--Results of Operations," in KCS's Annual Report on Form 10-K for the year ended December 31, 2002, which is incorporated by reference in this proxy statement. These costs include MCS implementation related costs, benefits received from the settlement of certain legal and insurance claims, severance costs and expenses associated with legal verdicts against KCS, gain recorded on the sale of operating property, among others. Other non-operating income includes gains recorded on sale of non-operating properties and investments.

(iii) For the pro forma income from continuing operations per common share, the weighted average basic shares are calculated beginning with KCS historical average basic shares of 60,336,000 for the year ended December 31, 2002, plus 18,000,000 assumed shares to be issued under the Acquisition Agreement. This does not take into account the up to 6,400,000 shares which could be issued, at KCS's option, in lieu of a portion of the $200 million cash payment for the Grupo TFM shares, or the up to 2,625,000 shares that could be issued under the Consulting Agreement.

(iv) For the pro forma income from continuing operations per common share, the weighted average diluted shares are calculated beginning with KCS historical average diluted shares of 62,138,000 for the year ended December 31, 2002, plus 18,000,000 assumed shares to be issued under the Acquisition Agreement, plus 13,389,121 shares assuming full conversion of the Series C Preferred Stock into Common Stock utilizing a conversion rate of 33.4728 shares of Common Stock for each share of Series C Preferred Stock. This does not take into account the up to 6,400,000 shares which could be issued, at KCS's option, in lieu of a portion of the $200 million cash payment for the Grupo TFM shares, or the up to 2,625,000 shares that could be issued under the Consulting Agreement.

## PRO FORMA FINANCIAL STATEMENTS

The following summarizes selected pro forma financial information of KCS assuming the transaction acquiring a controlling interest in Grupo TFM had been completed as of March 31, 2003.

### KANSAS CITY SOUTHERN
### PRO FORMA CONSOLIDATED CONDENSED BALANCE SHEET
### AS OF MARCH 31, 2003
### (DOLLARS IN MILLIONS, EXCEPT PER SHARE DATA)
### (UNAUDITED)

| | KCS HISTORICAL | CONSOLIDATED GRUPO TFM | A<br>DEBIT |
|---|---|---|---|
| ASSETS: | | | |
| Current Assets: | | | |
| Cash and cash equivalents | $ 64.0 | $ 44.2 | $ 193. |
| Accounts receivable, net | 108.8 | 183.0 | |
| Inventories | 36.3 | 21.6 | |
| Other current assets | 19.0 | 19.3 | |
| | 228.1 | 268.1 | 193. |
| Investments | 430.3 | 7.6 | |
| Concession rights and related assets | - | 1,205.6 | 40. |
| Properties, net | 1,339.8 | 635.7 | |
| Goodwill | 10.6 | - | |
| Deferred income taxes and employees statutory profit sharing | - | 224.1 | |
| Other assets | 18.7 | 1.6 | |
| TOTAL ASSETS | $2,027.5 | $2,342.7 | $ 233. |

| | | | |
|---|---|---|---|
| LIABILITIES AND STOCKHOLDERS' EQUITY: | | | |
| Current Liabilities: | | | |
| Debt due within one year | $ 10.0 | $ 36.9 | |
| Accounts and wages payable and accrued liabilities | 177.5 | 135.7 | 3. |
| TOTAL CURRENT LIABILITIES | 187.5 | 172.6 | 3. |
| OTHER LIABILITIES: | | | |
| Long-term debt | 571.7 | 979.3 | |
| Deferred income taxes | 392.9 | - | |
| Other deferred credits | 103.7 | 38.2 | 6. |
| TOTAL OTHER LIABILITIES | 1,068.3 | 1,017.5 | 6. |
| MINORITY INTEREST | - | 351.7 | |
| STOCKHOLDERS' EQUITY | | | |
| Preferred stock | 6.1 | - | |
| Redeemable cumulative convertible perpetual preferred stock | - | - | |
| Common / capital stock | 0.6 | 807.0 | 807. |
| New issue, non-voting common, $. 01 par | - | - | |
| Treasury shares and effect on purchase of subsidiary shares | - | (222.0) | |
| Retained earnings | 767.1 | 215.9 | 215. |
| Capital surplus | - | - | |
| Accumulated other compehensive loss | (2.1) | - | |
| Total stockholders' equity | 771.7 | 800.9 | 1,022. |
| TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY | $2,027.5 | $2,342.7 | $1,032. |

See Notes to proforma consolidated condensed financial statements

The following summarizes selected pro forma financial information of KCS assuming the transaction acquiring a controlling interest in Grupo TFM had been completed as of January 1, 2003

KANSAS CITY SOUTHERN

PRO FORMA CONSOLIDATED CONDENSED INCOME STATEMENT

FOR THE THREE MONTHS ENDED MARCH 31, 2003

(DOLLARS IN MILLIONS, EXCEPT PER SHARE DATA)

(UNAUDITED)

| | KCS HISTORICAL | CONSOLIDATED GRUPO TFM | DEBIT |
|---|---|---|---|
| REVENUES | $ 140.2 | $ 168.5 | |
| Costs and expenses | 117.5 | 115.7 | 0.9 |
| Depreciation and amortization | 15.9 | 21.0 | 0.3 |
| OPERATING INCOME | 6.8 | 31.8 | 1.2 |
| Equity in net earnings of unconsolidated affiliates: | | | |
| Grupo Transportacion Ferroviaria Mexicana, S.A. de C.V. | 6.9 | - | 6.9 |
| Other | 0.1 | - | |
| Interest expense | (11.5) | (27.5) | |
| Other income (expense) | 1.3 | (8.6) | |
| Income (loss) before income taxes and accounting change | 3.6 | (4.3) | 8.1 |
| Income tax provision (benefit) | (1.1) | (23.0) | (0.5 |
| INCOME BEFORE MINORITY INTEREST AND ACCOUNTING CHANGE | 4.7 | 18.7 | 7.6 |
| CUMULATIVE EFFECT OF ACCOUNTING CHANGE, NET OF TAX | 8.9 | - | - |
| MINORITY INTEREST | - | (3.7) | 0.7 |
| NET INCOME | $ 13.6 | $ 15.0 | $ 8.3 |
| BASIC EARNINGS PER COMMON SHARE | $ 0.22 | | |
| Basic Weighted Average Common shares outstanding (IN THOUSANDS) | 61,427 | | |
| DILUTED EARNINGS PER COMMON SHARE | $ 0.22 | | |
| Diluted Weighted Average Common shares outstanding (IN THOUSANDS) | 62,863 | | |

See Notes to proforma consolidated condensed financial statements

The following summarizes selected pro forma financial information of the Registrant assuming the transaction acquiring a controlling interest in Grupo TFM had been completed as of January 1, 2002

KANSAS CITY SOUTHERN

PRO FORMA CONSOLIDATED CONDENSED INCOME STATEMENT

FOR THE YEAR ENDED DECEMBER 31, 2002

(DOLLARS IN MILLIONS, EXCEPT PER SHARE DATA)

(UNAUDITED)

| | KCS HISTORICAL | CONSOLIDATED GRUPO TFM | PR ADJ -- DEBIT |
|---|---|---|---|
| REVENUES | $ 566.2 | $ 712.1 | |
| Costs and expenses | 456.8 | 457.6 | 3.4(1 |
| Depreciation and amortization | 61.4 | 83.0 | 1.0(1 |
| OPERATING INCOME | 48.0 | 171.5 | 4.4 |
| Equity in net earnings (losses) of unconsolidated affiliates: | | | |
| Grupo Transportacion Ferroviaria Mexicana, S.A. de C.V. | 45.8 | - | 45.8(8 |
| Other | (2.4) | - | |
| Gain on sale of Mexrail, Inc. | 4.4 | - | 4.4(9 |
| Interest expense | (45.0) | (95.8) | |
| Debt retirement costs | (4.3) | - | |
| Other income (expense) | 17.6 | (29.8) | |
| Income before income taxes | 64.1 | 45.9 | 54.6 |
| Income tax provision (benefit) | 6.9 | (91.5) | (3.4)( |
| INCOME BEFORE MINORITY INTEREST | 57.2 | 137.4 | 51.2 |
| MINORITY INTEREST | - | (27.3) | 17.0(1 |
| NET INCOME | $ 57.2 | $ 110.1 | $ 68.2 |
| BASIC EARNINGS PER COMMON SHARE | $ 0.94 | | |
| Basic Weighted Average Common shares outstanding (IN THOUSANDS) | 60,336 | | |
| DILUTED EARNINGS PER COMMON SHARE | $ 0.91 | | |
| Diluted Weighted Average Common shares outstanding (IN THOUSANDS) | 62,318 | | |

See Notes to proforma consolidated condensed financial statements

KANSAS CITY SOUTHERN
NOTES TO PRO FORMA CONSOLIDATED CONDENSED FINANCIAL STATEMENTS

INTRODUCTORY NOTE:
Kansas City Southern ("the Company") and Grupo TMM, S.A. ("TMM") announced a series of transactions that have been approved by both respective boards of directors that will, upon closing, place The Kansas City Southern Railway Company ("KCSR"), the Texas Mexican Railway Company ("Tex-Mex") and TFM, S.A. de C.V. ("TFM") under the common control of a single transportation holding company, NAFTA Rail. Grupo Transportacion Ferroviaria Mexicana, S.A. de C.V. ("Grupo TFM") holds an 80% interest in TFM, which held a 100% interest in Mexrail, Inc ("Mexrail"). Mexrail wholly-owns Tex-Mex.

The Company, upon obtaining shareholder approval, will change its name to NAFTA Rail, which will be traded on the New York Stock Exchange.

Under the terms of the agreement, TMM Multimodal, S.A. de C.V., a subsidiary of TMM, will receive 18 million shares of NAFTA Rail representing approximately 22% (20% voting, 2% subject to voting restrictions) of NAFTA Rail outstanding shares, $200 million in cash and potential additional payments of between $100 and $180 million in the event of the favorable resolution of certain contingencies relating to TFM's VAT dispute with the Mexican government. The accompany pro forma financial statements do not give effect to any such contingent payments. The Company will account for the acquisition of TMM's interest in Grupo TFM as a purchase.

The attached pro forma consolidated condensed financial statements reflect the effect of the various transactions necessary to consummate the agreements as if the transaction had occurred on January 1, 2002 for income statement purposes for the year ended December 31, 2002, on January 1, 2003 for income statement purposes for the three months ended March 31, 2003 and as of March 31, 2003 for balance sheet purposes. The historical amounts for the Company and Grupo TFM as of and for the three months ended March 31, 2003 were derived from such unaudited financial statements of the Company and Grupo TFM. The historical amounts for the year ended December 31, 2002 were derived from such audited financial statements of the Company and Grupo TFM. These pro forma financial statements are not necessarily indicative of the financial position or results of operations that would have been achieved had the transactions been consummated on the dates indicated.

NOTE 1: REMOVAL OF THE EQUITY INVESTMENT IN GRUPO TFM
-------------------------------------------------------

As a result of the Grupo TFM acquisitions, the Company will acquire a controlling interest in Grupo TFM, resulting in the consolidation of Grupo TFM's balance sheet into NAFTA Rail. Accordingly, the equity investment as of March 31, 2003 reflected on the Company's consolidated condensed balance sheet would be removed.

NOTE 2: CREATION OF IDENTIFIABLE INTANGIBLE ASSETS
--------------------------------------------------

Additional identifiable intangibles or goodwill may result from the Grupo TFM acquisition. The current value of the consideration to obtain a controlling interest in Grupo TFM exceeds the current book value of the underlying net assets by approximately $14.3 million, which is reflected on the consolidated condensed pro forma balance sheet as an addition to concession assets. The Company has not completed a fair value appraisal or any associated allocation of excess purchase price to the fair value of tangible assets as of this date. At the time those processes are completed, the allocation of the purchase price could change and may include certain identifiable intangibles assets, such as customer contracts, customer relationships or similar items. For purposes of these pro forma financial statements the Company has assumed the difference in value will be assigned to concession assets.

NOTE 3: RECOGNITION OF THE DEFERRED GAIN ON THE SALE OF MEXRAIL
----------------------------------------------------------------

On April 1, 2002, the Company sold its 49% interest in Mexrail to TFM resulting in a pre-tax gain of $4.4 million, which was reported in the Company's Consolidated Statement of Income for the year ended December 31, 2002. In addition, the transaction resulted in the recognition of a deferred gain, of which $6.4 million remained unamortized as of March 31, 2003. Assuming the transaction contemplated had occurred on March 31, 2003, the remaining unamortized gain on the April 2002 Mexrail transaction would be removed from the Company's long-term liabilities and reflected with an offsetting adjustment to concession assets as part of the transaction. Also see notes 2 and 9.

NOTE 4: TRANSACTION FINANCING
------------------------------

As described above, part of the transaction consideration includes a payment of $200 million. This payment may be made by the Company, at its option, in a combination of additional common stock issuance to TMM and cash. For purposes of these pro forma financial statements the Company has assumed that the entire payment of $200 million will be made in cash with a combination of the net proceeds of the sale of 4.25% redeemable cumulative convertible perpetual preferred stock of approximately $193.0 million, completed in April 2003, and $7.0 million of the Company's available cash. The pro forma financial statements presented herein reflect the effect of these transactions. Also see Note 6.

NOTE 5: ELIMINATION OF GRUPO TFM STOCKHOLDERS' EQUITY
------------------------------------------------------

As a result of NAFTA Rail obtaining a controlling interest in Grupo TFM, its assets and liabilities would be consolidated with NAFTA Rail. Accordingly, Grupo TFM's stockholders' equity amounts would be eliminated in the consolidation process.

NOTE 6: ISSUANCE OF NEW SECURITIES
-----------------------------------

As noted above, TMM will receive as consideration for the transaction 18 million shares of NAFTA Rail. This pro forma adjustment reflects the addition to stockholders' equity of a total of $202.7 million of equity based upon 18 million common shares as part of the initial agreement and assuming a stock price of $11.26 per share. The assumed stock price was derived by averaging the closing price of the Company's common stock five days before and five days after the announcement of the transaction on April 21, 2003. The total allocation of the new capital is $0.2 million, which is comprised of 18 million shares of new non-voting common stock with a par value of $.01 per share and $202.5 million, which is reflected as capital surplus representing the value of the stock issued in excess of par value.

In April 2003, the Company issued 400,000 shares of $1.00 par value 4.25% redeemable cumulative convertible perpetual preferred stock resulting in net proceeds of approximately $193.0 million (net of fees of $7.0 million). This transaction is reflected in the accompanying pro forma consolidated condensed balance sheet as new capital of $0.4 million, retained earnings of $90.2 million and capital surplus of $102.4 million.

NOTE 7: ELIMINATION OF EQUITY BASIS DIFFERENCE IN GRUPO TFM

The Company's share of Grupo TFM's underlying net assets utilizing the Company's current ownership percentage of approximately 46.6% was $372.9 million as compared to the amount recorded as an investment as of March 31, 2003 of approximately $386.8 million. This difference in basis, $13.9 million, results from a number of factors the most significant of which is the changing ownership interest in Grupo TFM, which produced a difference in investment basis that occurred when TFM acquired the Mexican Government's 24.6% interest in Grupo TFM during 2002. This basis difference would have been amortized over time, however, due to the contemplated transaction wherein the Company will obtain a controlling interest in Grupo TFM, the remaining basis difference will be reflected in the allocation of purchase price to Grupo TFM's assets and liabilities at the date of the transaction. The pro forma financial statements as stated herein recognize the elimination of this basis difference as an addition to concession assets on the consolidated condensed balance sheet. See Note 2.

NOTE 8: ELIMINATION OF EQUITY EARNINGS FROM GRUPO TFM

Assuming the contemplated transaction would have been consummated on January 1, 2002 or January 1, 2003, the Company would have consolidated earnings of Grupo TFM and accordingly, the equity in earnings of Grupo TFM would be eliminated.

NOTE 9: ELIMINATION OF THE GAIN ON THE SALE OF MEXRAIL

In April 2002, the Company sold to Grupo TFM its 49% interest in Mexrail. Assuming the contemplated transaction would have occurred as of January 1, 2002, the sale of Mexrail to Grupo TFM would not have occurred and accordingly, the associated gain would not have been recorded. The pro forma income statement for the year ended December 31, 2002 for Grupo TFM has been adjusted to reflect Mexrail as a consolidated subsidiary effective January 1, 2002.

NOTE 10: PROVISION FOR INCOME TAXES / DEFERRED INCOME TAXES

The pro forma consolidated condensed income statement reflects the income tax impacts of the pro forma adjustments utilizing an effective income tax rate of 38.25%, but excluding any consideration of the equity earnings of Grupo TFM, since the Company has not previously provided a tax provision on these amounts.

In addition, the recognition of additional identifiable intangible assets in the form of concession assets creates an additional deferred tax liability associated with those assets. The pro forma condensed consolidated balance sheet as of March 31, 2003 recognizes the deferred tax liability of approximately $8.3 million using the effective rate noted above.

NOTE 11: CONSOLIDATION ELIMINATIONS

These pro forma adjustments reflect the elimination of intercompany amounts between the Company, Grupo TFM and Mexrail, assuming the three entities were consolidated for financial reporting purposes.

NOTE 12: COMPUTATION OF EARNINGS PER SHARE

Basic earnings per share for the purposes of the pro forma consolidated condensed income statement reflect pro forma consolidated net income, less dividends on the Company's $25 par perferred stock of approximately $242,000 annually, less dividends on the Company's $.01 par redeemable cumulative convertible perpetual perferred stock of approximately $8.5 million annually, divided by the weighted average outstanding shares as described in Note 13 below.

Diluted earnings per share for the purposes of the pro forma consolidated condensed income statement reflect pro forma consolidated net income, less dividends on the Company's $25 par perferred stock of approximately $242,000 annually, divided by the weighted average diluted outstanding shares as described in Note 13 below.

NOTE 13: WEIGHTED AVERAGE SHARES OUTSTANDING

The weighted average basic shares outstanding are calculated beginning with the Company's historical average basic shares of 60,336,000 for the year ended December 31, 2002 and 61,427,000 for the three months ended March 31, 2003, plus 18,000,000 shares assumed to be issued as described in the Note 6 above.

The weighted average diluted shares outstanding are calculated beginning with Company historical average diluted shares of (62,318,000 for the year ended December 31, 2002 and 62,863,000 for the three months ended March 31, 2003) plus 18,000,000 shares assumed to be issued as described in the note 6 above, plus 13,389,121 shares assuming full conversion of the redeemable cumulative convertible perpetual preferred stock into common utilizing a conversion rate of 33.4728 common shares for each share of preferred.

NOTE 14: CONSULTING AGREEMENT

In connection with the transaction, the Company intends to enter into a consulting agreement with a consulting firm ("Consultant") controlled by Jose Serrano Segovia with an initial term of three years. In consideration of services provided, Consultant will receive an annual fee of $0.6 million in cash, plus 2.1 million shares of restricted common stock of the Company. The restricted stock vests based upon the achievement of certain events as defined in the consulting agreement and or ratably over the term of the agreement in certain circumstances. The pro forma condensed consolidated financial statements herein reflect the effect of these transactions as follows.

The restricted stock will be accounted for as compensation expense based upon the assumed fair market value at date of vesting and expensed in the period the stock vests.

The annual fee is reflected as additional operating costs and expenses of $0.6 million for the year ended December 31, 2002 and approximately $0.2 million for the three months ended March 31, 2003. An initial 750,000 shares of restricted stock vest ratably over the term of the agreement. For purposes of the pro forma statements of income the Company has assumed a calculated value of stock based upon the stock price of $11.26 as noted above. The resulting amount is reflected as compensation expense and amortized on a straight line basis over three years. The additional compensation expense is approximately $2.8 million for the year ended December 31, 2002 and approximately $0.7 million for the three months ended March 31, 2003. The Company recognizes that the prospective accounting for these shares will result in variable accounting treatment and the resulting expense will be dependent upon the Company's stock price at the actual time the stock vests. Since the Company cannot predict the future price of the Company's stock, the pro forma adjustments assume the stock price as noted above.

The consulting agreement provides for additional vesting of restricted stock in increments of 525,000, 125,000 and 700,000 shares depending on the achievement of certain events ("contingent shares"). These events include the completion of an agreement with TFM labor unions and events related to the VAT tax issue. While the Company cannot predict the ultimate timing of achievement of these events and thus pro forma their effect on the adjusted financial statements, the Company would intend to record compensation expense at the time these shares vest and at the fair value at that time. No adjustments for these contingent shares have been made in the attached pro forma financial statements due to the uncertainty of their realization and vesting.

NOTE 15: AMORTIZATON OF IDENTIFIABLE INTANGIBLES - CONCESSION ASSETS

The transactions as described above result in a net addition to concession assets of approximately $40.9 million. For purposes of the pro forma income statements presented herein, this balance is amortized over the remaining amortizable life of the concession assets of 33 years. This results in additional amortization expense of approximately $1.0 million for the year ended December 31, 2002 and approximately $0.3 million for the three months ended March 31, 2003.

NOTE 16:MINORITY INTEREST

As previously reported, TFM repurchased the Mexican Government's 24.6% interest in Grupo TFM in June 2002. Since the purchase of the Mexican Government 24.6% interest was completed by Grupo TFM's subsidiary, TFM, and the fact that the Mexican Government also continues to maintain a 20% minority interest in TFM, the Mexican Government retained an indirect 4.9448% minority interest in Grupo TFM through its ownership of TFM. The pro forma adjusting entries to minority interest reflect the continuing indirect minority ownership in Grupo TFM by the Mexican Government for the periods indicated. For the pro forma condensed consolidated balance sheet as of March 31, 2003 an additional $39.6 million of minority interest was added to the pro forma balances representing 4.9448% of Grupo TFM's net assets. For the pro forma condensed consolidated income statements, the amount of minority interest in Grupo TFM's US GAAP net income was computed for the periods presented resulting in additional minority interest in earnings of approximately $17.0 million for the year ended December 31, 2002 and $0.7 million for the three months ended March 31, 2003.

## CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

On June 20, 2001, KCS notified PricewaterhouseCoopers LLP ("PWC"), KCS's principal accountant during the 2000 fiscal year, that it had been replaced as KCS's principal accountant. Additionally, on June 20, 2001, KCS engaged the accounting firm of KPMG LLP as its principal accountant for the 2001 fiscal year. The decision to change certifying accountants was discussed with the Audit Committee and approved by the Chairman of the Audit Committee. Prior to the Spin-off in July 2000, KCS management had been discussing internally whether or not to competitively bid out its audit services. Given the circumstances surrounding the Spin-off, KCS management determined that it was not feasible to initiate the competitive bid process until after the completion of the audit for the year in which the Spin-off occurred. Accordingly, subsequent to the completion of the audit for the year ended December 31, 2000, KCS management initiated the competitive proposal process that began in April 2001. The selection of KPMG LLP was made after the completion of this competitive proposal process, which involved all five major accounting firms then existing. No relationship exists between KCS and KPMG LLP other than that of independent accountant and client, except as follows: NAFTA Rail, S.A. de C.V. ("NAFTA"), our Mexican affiliate and the holder of our shares of Grupo TFM, employs the retired managing partner of KPMG Cardenas Dosal, S.C., the Mexican affiliate of KPMG LLP, as our Comisario at Grupo TFM. NAFTA has the right under Mexican law to appoint a Comisario, or statutory auditor, at Grupo TFM. The Comisario's alternate, or Comisario Suplente, is a current partner of KPMG Cardenas Dosal, S.C. Both the Comisario and Comisario Suplente are paid by Grupo TFM. Our tax advisers in Mexico are affiliated with KPMG LLP. We also use KPMG, an affiliate of KPMG LLP, as our auditors in Panama.

For the 2000 fiscal year, the reports of PWC on KCS's financial statements contained no adverse opinion or disclaimer of opinion and were not qualified as to uncertainty, audit scope or accounting principle. In connection with its audits for the 2000 fiscal year and through June 20, 2001, there were no disagreements with PWC on any matter of accounting principles or practices, financial statements disclosure, or auditing scope or procedure, which disagreements if not resolved to the satisfaction of PWC would have caused them to make reference thereto in their report on the financial statements for such years, except as discussed below.

During the year ended December 31, 2000, KCS completed a transaction to monetize, for a one-time payment, the rights to the future income stream associated with certain billboard advertising sites located on the right of way of KCS's wholly owned subsidiary, KCSR. The transaction was completed with a third party vendor to KCS, which provides advertising signage services to other companies in the railroad industry. Based upon the details of the transaction, KCS believed that the associated transaction should be accounted for under the guidance of Staff Accounting Bulletin No. 101 - "Revenue Recognition in Financial Statements" ("SAB 101") and consistent with railroad industry accounting practices. After reviewing industry practice and SAB 101 related to the specifics of this transaction, KCS concluded that the appropriate criteria, of both industry accounting practices and the guidance in SAB 101, were met to record the initial one-time payment as income in the Statement of Income for the year ended December 31, 2000. KCS's then certifying accountant, PWC, believed that SAB 101 did not apply and railroad industry accounting practice would not take precedence over standards promulgated by the Financial Accounting Standards Board. PWC believed that the transaction should be evaluated under lease accounting rules which, in this instance, would require that the up-front payment be initially deferred and recognized over future periods. After further discussion between KCS and PWC, KCS recorded the transaction as recommended by PWC in the financial statements for the year ended December 31, 2000.

During the period of time that KCS was exploring with PWC the various accounting rules regarding this matter and following PWC's expression of its conclusion with regard to this matter, KCS inquired of PWC as to other avenues that might be available to KCS. PWC acknowledged that one alternative might be for KCS to seek a SAS 50 opinion from another independent accountant. In early February 2001, KCS's management discussed this transaction with KPMG LLP to obtain an understanding of relevant industry practice and application of SAB 101. Also, at KCS's request, PWC discussed the issue with representatives of the other major accounting firms, including KPMG LLP. KPMG LLP communicated to KCS that this issue was discussed with representatives of the major accounting firms and that PWC reaffirmed their earlier position on the proper accounting treatment of the transaction. KCS did not request a SAS 50 opinion or report from KPMG LLP, and none was issued. Additionally, KPMG LLP did not express any specific viewpoint to KCS regarding the accounting for the transaction. KCS's management and PWC discussed this matter with KCS's Audit Committee. Additionally, KCS authorized PWC to respond fully to inquiries of KPMG LLP concerning this matter.

KCS became aware that as a result of a reorganization during 2001 between two of the participants in the Grupo TFM venture (in which KCS has a minority interest), Grupo TFM may be reported by one of the participants as a consolidated subsidiary under International Accounting Standards. KCS has historically treated Grupo TFM as a foreign corporate joint venture under U.S. generally accepted accounting principles and, accordingly, has not provided deferred income taxes at the statutory rates on the difference between the financial accounting and income tax bases in its investment in Grupo TFM. PWC informed KCS that at the time of their replacement, PWC had not completed the analysis and testing necessary to confirm KCS's continued accounting for Grupo TFM as a foreign corporate joint venture under these circumstances and, accordingly, that PWC believed this matter represented a reportable event under Regulation S-K Item 304(a)(1)(v)(D). KCS's management and PWC discussed this matter with KCS's Audit Committee. Additionally, KCS authorized PWC to respond fully to inquiries of KPMG LLP concerning this matter.

One or more representatives of KPMG LLP are expected to be present at the Special Meeting and, if so, will have the opportunity, if desired, to make a statement and are expected to be available to respond to appropriate questions by stockholders.

## PRINCIPAL STOCKHOLDERS AND STOCK OWNED BENEFICIALLY BY DIRECTORS AND CERTAIN EXECUTIVE OFFICERS

The following table sets forth information as of the Record Date concerning the beneficial ownership of KCS's Common Stock by: (1) beneficial owners of more than five percent of any class of such stock that have publicly disclosed their ownership; (ii) the members of the Board of Directors, the Chief Executive Officer and the four other most highly compensated executive officers for 2002; (iii) the current Executive Vice President and Chief Financial Officer, whose information is being voluntarily disclosed by KCS, (iv) the former Senior Vice President and Chief Financial Officer who, but for the fact that he was no longer an executive officer of KCS at December 31, 2002, would have been included in the summary compensation table for the year ended December 31, 2002 based upon his total salary and bonus for 2002 and (v) all executive officers and directors as a group. KCS is not aware of any beneficial owner of more than five percent of the Preferred Stock. None of the directors or executive officers own any shares of Preferred Stock. No officer or director of KCS owns any equity securities of any subsidiary of KCS. Beneficial ownership is generally either the sole or shared power to vote or dispose of the shares. Except as otherwise noted, the beneficial owners have sole power to vote and dispose of the shares. KCS is not aware of any arrangement which would at a subsequent date result in a change of control of KCS. [NUMBERS TO BE UPDATED.]

| NAME AND ADDRESS | COMMON STOCK (1) | PERCENT OF CLASS (1) |
|---|---|---|
| A. Edward Allinson<br>Director | 96,033(2) | * |
| Robert H. Berry<br>Former Senior Vice President and Chief Financial Officer | 160,302(3) | * |
| Gerald K. Davies<br>Executive Vice President and Chief Operating Officer | 464,327(4) | * |
| Michael G. Fitt<br>Director | 104,800(5) | * |

| | | |
|---|---|---|
| Michael R. Haverty<br>Chairman of the Board,<br>President and Chief<br>Executive Officer | 2,340,068(6) | 3.74% |
| Jerry W. Heavin<br>Senior Vice President--Operations | 21,000(7) | * |
| James R. Jones<br>Director | 66,880(8) | * |
| Thomas A. McDonnell<br>Director | 593,165(9) | * |
| William J. Pinamont<br>Former Vice President and General Counsel | 27,168(10) | * |
| Landon H. Rowland<br>Director | 875,660(11) | 1.42% |
| Ronald G. Russ<br>Executive Vice President and<br>Chief Financial Officer | 10,000 | |
| Rodney E. Slater<br>Director | 30,000(12) | * |
| Byron G. Thompson<br>Director | 50,000(13) | * |
| Louis G. Van Horn<br>Vice President and Comptroller | 129,558(14) | * |
| All Directors and Executive Officers<br>as a Group (18 Persons)** | 5,271,972(15) | 8.29% |

* Less than one percent of the outstanding shares.

** Includes Messrs. Pinamont and Berry who are included as Named Executive Officers in the Summary Compensation Table, but who are no longer executive officers of KCS.

(1) Under applicable law, shares that may be acquired upon the exercise of options or other convertible securities that are exercisable on the Record Date, or will become exercisable within 60 days of that date, are considered beneficially owned. In computing the number of shares beneficially owned by a person and the percentage ownership of that person, shares subject to options held by that person that are exercisable on the Record Date, or exercisable within 60 days of the Record Date, are deemed outstanding. These shares are not, however, deemed outstanding for the purpose of computing the percentage ownership of any other person. In addition, under applicable law, shares that are held indirectly are considered beneficially owned. Directors and executive officers may also be deemed to own, beneficially, shares included in the amounts shown above which are held in other capacities. The holders may disclaim beneficial ownership of shares included under certain circumstances. Except as noted, the holders have sole voting and dispositive power over the shares. The list of executive officers of KCS is included in KCS's Annual Report on Form 10-K. See the last page of this proxy statement for instructions on how to obtain a copy of the Form 10-K.

(2) Mr. Allinson's beneficial ownership includes 80,000 shares that may be acquired through options that are exercisable as of, or will become exercisable within 60 days of, the Record Date and 1,200 shares held in a Keogh plan.

(3) Mr. Berry's beneficial ownership includes 10,152 shares allocated to his account in the KCS ESOP. Of the total shares listed, 145,150 shares are in revocable trusts for which Mr. Berry and his wife serve as trustees.

(4) Mr. Davies' beneficial ownership includes 395,325 shares that may be

acquired through options that are exercisable as of, or will become exercisable within 60 days of, the Record Date, and 585 shares allocated to his account in the KCS ESOP.

(5) Mr. Fitt's beneficial ownership includes 50,000 shares that may be acquired through options that are exercisable as of, or will become exercisable within 60 days of, the Record Date.

(6) Mr. Haverty's beneficial ownership includes 1,031,471 shares that may be acquired through options that are exercisable as of, or will become exercisable within 60 days of, the Record Date, 26,335 shares allocated to his account in the KCS ESOP, 11,124 shares allocated to his account in KCS's 401(k) and Profit Sharing Plan, 412 shares held by one of his children and 375,000 shares held in trusts for his children for which his brother acts as trustee.

(7) Mr. Heavin's beneficial ownership includes 20,000 shares that may be acquired through options that are exercisable as of, or will become exercisable within 60 days of, the Record Date.

(8) Mr. Jones' beneficial ownership includes 56,000 shares that may be acquired through options that are exercisable as of, or will become exercisable within 60 days of, the Record Date. Mr. Jones and his wife jointly own 3,650 of the total shares listed.

(9) Mr. McDonnell's beneficial ownership includes 3,165 shares allocated to his account in the DST ESOP, 500,000 shares held by a subsidiary of DST and for which Mr. McDonnell disclaims beneficial ownership, and 40,000 shares held by a charitable foundation and for which Mr. McDonnell disclaims beneficial ownership. Mr. McDonnell and his wife jointly own 50,000 of the total shares listed.

(10) Mr. Pinamont's beneficial ownership includes 25,261 shares that may be acquired through options that are exercisable as of, or will become exercisable within 60 days of, the Record Date, and 1,907 shares allocated to his account in the KCS's 401(k) and Profit Sharing Plan.

(11) Mr. Rowland's beneficial ownership includes 20,000 shares that may be acquired through options that are exercisable as of, or will become exercisable within 60 days of, the Record Date and 294 shares allocated to his account in the Janus Plan.

(12) Mr. Slater's beneficial ownership includes 30,000 shares that may be acquired through options that are exercisable as of, or will become exercisable within 60 days of, the Record Date.

(13) Mr. Thompson's beneficial ownership includes 40,000 shares that may be acquired through options that are exercisable as of, or will become exercisable within 60 days of, the Record Date.

(14) Mr. Van Horn's beneficial ownership includes 114,639 shares that may be acquired through options that are exercisable as of, or will become exercisable within 60 days of, the Record Date and 9,094 shares allocated to his account in the KCS ESOP. Of the 9,094 shares allocated to Mr. Van Horn's ESOP account, 4,547 shares are subject to allocation to another individual and upon such allocation, Mr. Van Horn will disclaim beneficial ownership of such shares.

(15) The number includes 2,120,731 shares that may be acquired through options that are exercisable as of, or will become exercisable within 60 days of, the Record Date and 986,361 shares otherwise held indirectly. A director

disclaims beneficial ownership of 540,000 of the total shares listed.

## STOCKHOLDER PROPOSALS

### 2004 ANNUAL MEETING PROXY STATEMENT

To be properly brought before the 2004 annual meeting of stockholders, a proposal must be either (i) specified in the notice of the meeting (or any supplement thereto) given by or at the direction of the Board of Directors, (ii) otherwise properly brought before the meeting by or at the direction of the Board of Directors, or (iii) otherwise properly brought before the meeting by a stockholder.

If a holder of KCS Common Stock wishes to present a proposal for inclusion in KCS's proxy statement for next year's annual meeting of stockholders, such proposal must be received by KCS on or before December 5, 2003. Such proposal must be made in accordance with the applicable laws and rules of the SEC and the interpretations thereof as well as KCS's Bylaws. Any such proposal should be sent to the Corporate Secretary of KCS at P.O. Box 219335, Kansas City, Missouri 64121-9335 (or if by federal express or other form of express delivery to KCS at 427 West 12th Street, Kansas City, Missouri 64105).

As described below, in order for a stockholder proposal that is not included in KCS's proxy statement for next year's annual meeting of stockholders to be properly brought before the meeting, such proposal must be delivered to the Corporate Secretary and received at KCS's executive offices no earlier than February 6, 2004 and no later than March 22, 2004 (assuming a meeting date of May 6, 2004) and such proposal must also comply with the procedures outlined below, which are set forth in KCS's Bylaws. The determination that any such proposal has been properly brought before such meeting is made by the officer presiding over such meeting.

### DIRECTOR NOMINATIONS

With respect to stockholder nominations of candidates for KCS's Board of Directors, KCS's Bylaws provide that not less than 45 days nor more than 90 days prior to the date of any meeting of the stockholders at which directors are to be elected (the "Election Meeting") any stockholder who intends to make a nomination at the Election Meeting shall deliver a notice in writing (the "Stockholder's Notice") to the Secretary of KCS setting forth (a) as to each nominee whom the stockholder proposes to nominate for election or re-election as a director, (i) the name, age, business address and residence address of the nominee, (ii) the principal occupation or employment of the nominee, (iii) the class and number of shares of capital stock of KCS that are beneficially owned by the nominee, and (iv) any other information concerning the nominee that would be required, under the rules of the SEC, in a proxy statement soliciting proxies for the election of such nominee; and (b) as to the stockholder giving the notice, (i) the name and address of the stockholder and (ii) the class and number of shares of capital stock of KCS which are beneficially owned by the stockholder and the name and address of record under which such stock is held; provided, however, that in the event that the Election Meeting is designated by the Board of Directors to be held at a date other than the first Thursday in May and less than 60 days' notice or prior public disclosure of the date of the Election Meeting is given or made to stockholders, to be timely, the Stockholder's Notice must be so delivered not later than the close of business on the 15th day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made, whichever first occurs.

The Stockholder's Notice shall include a signed consent of each such nominee to serve as a director of KCS, if elected. KCS may require any proposed nominee or stockholder proposing a nominee to furnish such other information as may reasonably be required by KCS to determine the eligibility of such proposed nominee to serve as a director of KCS or to properly complete any proxy or information statement used for the solicitation of proxies in connection with such Election Meeting.

MATTERS OTHER THAN DIRECTOR NOMINATIONS
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In addition to any other applicable requirements, for a proposal to be properly brought before the meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of KCS. To be timely, such a stockholder's notice must be delivered to or mailed and received at the principal executive offices of KCS, not less than 45 days nor more than 90 days prior to the meeting; provided, however, that in the event that the meeting is designated by the Board of Directors to be held at a date other than the first Thursday in May and less than 60 days' notice or prior public disclosure of the date of the meeting is given or made to stockholders, to be timely, the notice by the stockholder must be so received not later than the close of business on the 15th day following the day on which such notice of the date of the meeting was mailed or such public disclosure was made, whichever first occurs. A stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the meeting (i) a brief description of the business desired to be brought before the meeting and the reasons for conducting such business at the meeting, (ii) the name and address of the stockholder proposing such business, (iii) the class and number of shares of capital stock of KCS which are beneficially owned by the stockholder and the name and address of record under which such stock is held and (iv) any material interest of the stockholder in such business.

## SECTION 16(A) BENEFICIAL OWNERSHIP REPORTING COMPLIANCE

Section 16(a) of the Securities Exchange Act of 1934, as amended, requires KCS's directors, executive officers and certain other officers, and persons, legal or natural, who own more than 10 percent of KCS's Common Stock or Preferred Stock (collectively "Reporting Persons"), to file reports of their ownership of such stock, and the changes therein, with the SEC, the New York Stock Exchange and KCS (the "Section 16 Reports"). Based solely on a review of the Section 16 reports for 2002 and any amendments thereto furnished to KCS and written representations from certain of the Reporting Persons, no Reporting Person was late in filing such Section 16 Reports for fiscal year 2002.

## HOUSEHOLDING OF SPECIAL MEETING MATERIALS

Pursuant to the rules of the SEC, services that deliver KCS's communications to stockholders that hold their stock through a bank, broker or other nominee holder of record may deliver to multiple stockholders sharing the same address a single copy of this proxy statement. KCS will promptly deliver upon written or oral request a separate copy of this proxy statement to any stockholder at a shared address to which a single copy of this proxy statement was delivered. Written requests should be made to Kansas City Southern, P.O. Box 219335, Kansas City, Missouri 64121-9335 (or if sent by federal express or other form of express delivery to 427 West 12th Street, Kansas City, Missouri 64105), Attention: Corporate Secretary's Office, and oral requests may be made by calling the KCS Corporate Secretary's Office at (816) 983-1530. Any stockholder who wants to receive separate copies of the proxy statement or annual report in the future, or any stockholder who is receiving multiple copies and would like to receive only one copy per household, should contact the stockholder's bank, broker or other nominee holder of record.

## OTHER MATTERS

The Board of Directors knows of no other matters that are expected to be presented for consideration at the Special Meeting.

## FORWARD-LOOKING STATEMENTS

This proxy statement contains forward-looking comments that are not based upon historical information. Such forward-looking comments are based upon information currently available to management and management's perception thereof as of the date of this proxy statement. Readers can identify these forward-looking comments by the use of such verbs as expects, anticipates, believes or similar verbs or conjugations of such verbs. The actual results of operations of KCS could materially differ from those indicated in forward-looking comments. The differences could be caused by a number of factors or combination of factors including, but not limited to, those factors identified in the KCS's Current Report on Form 8-K dated December 11, 2001, which is on file with the U.S. Securities and Exchange Commission (File No. 1-4717) and is incorporated by reference in this proxy statement. Readers are strongly encouraged to consider these factors when evaluating forward-looking comments. KCS will not update any forward-looking comments set forth in this proxy statement. All forward-looking statements in this proxy statement are qualified in their entirety by the cautionary statements contained in this section and elsewhere in this proxy statement and in the documents KCS incorporates by reference in this proxy statement.

## WHERE YOU CAN FIND MORE INFORMATION

KCS files annual, quarterly and current reports, proxy statements and other information with the SEC. These filings are available to the public over the Internet at the SEC's web site at http://www.sec.gov. You may also read and copy any document we file at the SEC's public reference room at Room 1024, Judiciary Plaza, 450 Fifth Street, N.W., Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the public reference room. Copies of such information can be obtained by mail from the public reference room of the SEC at 450 Fifth Street, N.W., Washington, D.C. 20549 at prescribed rates. The reports and other information filed by KCS can also be inspected at the offices of the New York Stock Exchange, 20 Broad Street, New York, New York 10005. KCS's Internet address is www.kcsi.com. Through this website, KCS makes available, free of charge, its Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, and amendments to those reports, as soon as reasonably practicable after electronic filing or furnishing of these reports with the SEC.

## DOCUMENTS INCORPORATED BY REFERENCE

The SEC allows us to "incorporate by reference" certain documents, which means that we can disclose important information to you by referring you to those documents. The information in the documents incorporated by reference is considered to be part of this proxy statement, except to the extent that this proxy statement updates or supersedes the information. We incorporate by reference the documents listed below which we have previously filed with the SEC (SEC File No. 1-4717):

- Our Annual Report on Form 10-K for the year ended December 31, 2002;

- Our Quarterly Report on Form 10-Q for the quarter ended March 31, 2003; and

- Our Current Reports on Form 8-K filed on April 7, 2003, April 22, 2003, May 1, 2003, May 5, 2003 and June 26, 2003.

We also incorporate by reference the information contained in all other documents we file with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended, after the date of this proxy statement and before the date of the special meeting. The information will be considered part of this proxy statement from the date of the document filed and will supplement or amend the information contained in this proxy statement.

We will provide you, without charge, a copy of the documents we incorporate by reference in this proxy statement upon your request. To request a copy of any or all of these documents, you should write or telephone us at Kansas City Southern, P.O. Box 219335, Kansas City, Missouri 64121-9335 (or if by United Parcel Service or some other form of express delivery to 427 West 12th Street, Kansas City, Missouri 64105), Attention: Corporate Secretary's Office, or if by telephone at (816) 983-1538.

You should rely only on the information contained in this proxy statement or to which we have referred you to vote your shares at the special meeting. We have not authorized anyone to provide you with information that is different.

By Order of the Board of Directors

Michael R. Haverty
Chairman of the Board, President
and Chief Executive Officer

Kansas City, Missouri
________, 2003

APPENDIX A

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
KANSAS CITY SOUTHERN

The undersigned, Kansas City Southern, a Delaware corporation originally incorporated under the name Kansas City Southern Industries, Inc. (the "Corporation"), for the purpose of restating and integrating the Certificate of Incorporation of the Corporation originally filed January 29, 1962, as amended and supplemented (the "Certificate of Incorporation"), in accordance with the General Corporation Law of Delaware ("Delaware Corporation Law"), does hereby make and execute this Amended and Restated Certificate of Incorporation and does hereby certify that it was duly adopted in accordance with Section 245 of the Delaware Corporation Law.

First. The name of the Corporation is NAFTA Rail.

Second. Its principal office in the State of Delaware is located at 1209 Orange Street, in the City of Wilmington, County of New Castle. The name and address of its resident agent is The Corporation Trust Company, Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

Third. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under Delaware Corporation Law.

Fourth. The total number of shares of stock which the Corporation shall have authority to issue is FOUR HUNDRED FIFTY-TWO MILLION EIGHT HUNDRED FORTY THOUSAND (452,840,000) shares, of which (i) Eight Hundred Forty Thousand (840,000) shares having a par value of $25 each shall be Preferred Stock, (ii) Two Million (2,000,000) shares having a par value of $1 each shall be New Series Preferred Stock, and (iii) Four Hundred Fifty Million (450,000,000) shares having a par value of $0.01 each shall be Common Securities, of which Four Hundred Million (400,000,000) shares shall be designated "Common Stock," and Fifty Million (50,000,000) Shares shall be designated "Class A Convertible Common Stock," (referred to herein collectively with the Common Stock as the "Common Securities").

The designations and the powers, preferences and rights, and the qualifications, limitations or restrictions of the shares of each class are as follows:

a. PREFERRED STOCK

i. The holders of the Preferred Stock shall be entitled to receive from the net earnings of the Corporation dividends thereon up to but not exceeding the rate of Four per cent per annum, as the same may be ascertained and determined by the directors, and in their discretion declared, before any dividends shall be declared or paid upon the New Series Preferred Stock or the Common Securities for the same period, but such dividends on the Preferred Stock shall not be cumulative, nor shall the Preferred Stock during such period be entitled to participate in any other or additional earnings or profits, but such additional earnings or profits may be subject to application by the directors to dividends upon the New Series Preferred Stock or the Common Securities or other uses of the Corporation, as they may determine.

ii. In case of liquidation or dissolution of the Corporation, the holders of Preferred Stock shall be entitled to receive payment in the amount of the par value thereof before any payment or liquidation is made upon the New Series Preferred Stock or the Common Securities, and shall not thereafter participate further in the property of the Corporation or the proceeds of the sale thereof.

iii. Whenever no dividends shall have been paid on the Preferred Stock for six quarter-annual periods, the holders of the issued and outstanding Preferred Stock shall have the right, voting as a class, to elect two directors at the next stockholders' meeting held for the election of directors, and shall continue to have such right at each stockholders' meeting thereafter held for the election of directors until dividends shall have been paid on the Preferred Stock for four consecutive quarter-annual periods. In determining the number of quarter-annual periods for which no dividends have been paid, no quarter-annual period shall be counted if dividends shall have been paid at any time thereafter for four consecutive quarter-annual periods. At any meeting at which the holders of Preferred Stock shall have the foregoing right, voting as a class, to elect two directors, they shall not be entitled to vote for the election of any other directors. Except as otherwise provided in this subparagraph (a)(iii) of Paragraph FOURTH, the voting rights of holders of Preferred Stock shall be those set forth in subparagraph (c)(iii) of this Paragraph FOURTH.

b. NEW SERIES PREFERRED STOCK

i. The Board of Directors of the Corporation (hereinafter referred to as the "Board of Directors") is hereby expressly authorized at any time, and from time to time, to create and provide for the issuance of shares of New Series Preferred Stock in one or more series and, by filing a certificate pursuant to the Delaware Corporation Law (hereinafter referred to as a "New Series Preferred Stock Designation"), to establish the number of shares to be included in each such series, and to fix the designations, preferences and relative, participating, optional or other special rights of the shares of each such series and the qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions providing for the issue thereof adopted by the Board of Directors, including, but not limited to, the following:

A. the designation of and the number of shares constituting such series, which number the Board of Directors may thereafter (except as otherwise provided in the New Series Preferred Stock Designation) increase or decrease (but not below the number of shares of such series then outstanding);

B. the dividend rate for the payment of dividends on such series, if any, the conditions and dates upon which such dividends shall be payable, the preference or relation which such dividends, if any, shall bear to the dividends payable on any other class or classes of or any other series of capital stock, the conditions and dates upon which such dividends, if any, shall be payable, and whether such dividends, if any, shall be cumulative or non-cumulative;

C. whether the shares of such series shall be subject to redemption by the Corporation, and, if made subject to such redemption, the times, prices and other terms and conditions of such redemption;

D. the terms and amount of any sinking fund provided for the purchase or redemption of the shares of such series;

E. whether or not the shares of such series shall be convertible into or exchangeable for shares of any other class or classes of, any other series of any class or classes of capital stock of, or any other security of, the Corporation or any other corporation , and, if provision be made for any such conversion or exchange, the times, prices, rates, adjustments and any other terms and conditions of such conversion or exchange;

F. the extent, if any, to which the holders of the shares of such series shall be entitled to vote as a class or otherwise with respect to the election of directors or otherwise;

G. the restrictions, if any, on the issue or reissue of shares of the same series or of any other class or series;

H. the amounts payable on and the preferences, if any, of the shares of such series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation; and

I. any other relative rights, preferences and limitations of that series.

Notwithstanding the foregoing, no series of New Series Preferred Stock may be issued if the terms hereof amend, alter, change or repeal the powers, preferences, or rights vested in the holders of the Preferred Stock by this Amended and Restated Certificate of Incorporation.

ii. DIVIDENDS. Dividends on the outstanding New Series Preferred Stock of each series shall be declared and paid or set apart for payment after dividends on the Preferred Stock at the rate provided in subparagraph (a)(i) of this Paragraph FOURTH shall have been declared and paid or set apart for the same quarter-annual period. Dividends on any shares of New Series Preferred Stock shall not be cumulative unless and to the extent set forth in a certificate filed pursuant to law.

iii. LIQUIDATION. In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, each series of New Series Preferred Stock shall be subordinate to the Preferred Stock.

c. GENERAL PROVISIONS

i. Shares of any series of New Series Preferred Stock which have been redeemed, retired or purchased by the Corporation (whether through the operation of a sinking or purchase fund or otherwise) or which, if convertible or exchangeable, have been so converted or exchanged shall thereafter have the status of authorized but unissued shares of New Series Preferred Stock of the Corporation, and may thereafter be reissued as part of the same series or may be reclassified and reissued by the Board of Directors in the same manner as any other authorized and unissued shares of New Series Preferred Stock.

ii. No holder of shares of any class of stock authorized or issued pursuant hereto or hereafter authorized or issued shall have any pre-emptive or preferential right of subscription to any shares of any class of stock of this Corporation, either now or hereafter authorized, or to any obligations convertible into stock of any class of this Corporation, issued or sold, nor any right of subscription to any thereof, other than such, if any, as the Board of Directors in its discretion may from time to time determine, and at such prices as the Board of Directors in its discretion may from time to time fix.

iii. Each holder of Common Securities, each holder of shares of Preferred Stock, and each holder of shares of New Series Preferred Stock entitled to vote by the certificate filed pursuant to law with respect to any series of New Series Preferred Stock or as provided by law if this Amended and Restated Certificate provides for New Series Preferred Stock (such shares of Common Securities, Preferred Stock and New Series Preferred Stock being referred to in this subparagraph as voting shares), shall be entitled to vote on the basis of one vote for each voting share held by him, except

A. as provided in Paragraph TWELFTH;

B. as provided in subparagraph (a)(iii) of this Paragraph FOURTH; and

C. in elections for directors when the holders of the Preferred Stock do not have the right, voting as a class, to elect two directors, each holder of voting shares shall be entitled to as many votes as shall equal the number of shares which he is entitled to vote, multiplied by the number of directors to be elected, and he may cast all of such votes for a single director or may distribute them among the number to be voted for, or any two or more of them as he may see fit.

iv. The Board of Directors may from time to time issue scrip in lieu of fractional shares of stock. Such scrip shall not confer upon the holder any right to dividends or any voting or other rights of a stockholder of the Corporation, but the Corporation shall from time to time, within such time as the Board of Directors may determine or without limit of time if the Board of Directors so determines, issue one or more whole shares of stock upon the surrender of scrip for fractional shares aggregating the number of whole shares issuable in respect to the scrip so surrendered, provided that the scrip so surrendered shall be properly endorsed for transfer if in registered form.

v. For purposes of applying Paragraph TWELFTH hereof, New Series Preferred Stock shall not be considered preferred stock as that term is used therein.

d. NEW SERIES PREFERRED STOCK, SERIES A

i. DESIGNATION AND AMOUNT. The shares of such series shall be designated as "New Series Preferred Stock, Series A (the "Series A Preferred Stock") and the number of shares initially constituting such series shall be 150,000 (which number may be increased or decreased by the Board of Directors without a vote of Stockholders).

ii. Dividends and Distributions.

A. Subject to any prior and superior rights of the holders of any series of Preferred Stock ranking prior and superior to the shares of Series A Preferred Stock with respect to dividends, the holders of shares of Series A Preferred Stock shall be entitled prior to the payment of any dividends on shares ranking junior to the Series A Preferred Stock to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the last day of March, June, September and December in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Preferred Stock, in an amount per share (rounded to the nearest cent) equal to the greater of (a) $10.00 or (b) subject to the provision for adjustment hereinafter set forth, 1,000 times the aggregate per share amount of all cash dividends, and 1,000 times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions other than a dividend payable in Common Securities or a subdivision of the outstanding shares of Common Securities (by reclassification or otherwise), declared on the Common Securities, since the immediately preceding Quarterly Dividend Payment Date, or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of any whole or fractional share of Series A Preferred Stock. In the event the Corporation shall at any time after October 12, 1995 (the "Rights Declaration Date") (i) declare any dividend on Common Securities payable in shares of Common Securities, (ii) subdivide the outstanding Common Securities, or (iii) combine the outstanding Common Securities into a smaller number of shares, then in each such case the amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Securities outstanding immediately after such event and the denominator of which is the number of shares of Common Securities that were outstanding immediately prior to such event. Such adjustment shall be made successively whenever such a dividend or change in the Common Securities is consummated.

B. The Corporation shall declare a dividend or distribution on the Series A Preferred Stock as provided in subparagraph (d)(ii)(A) of this Paragraph FOURTH above immediately after it declares a dividend or distribution on the Common Securities (other than a dividend payable in shares of Common Securities); PROVIDED, that in the event no dividend or distribution shall have been declared on the Common Securities during the period between any Quarterly Dividend Payment Date and the next subsequent Quarterly Dividend Payment Date, a dividend of $10.00 per share on the Series A Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

C. Dividends shall begin to accrue and be cumulative on outstanding shares of Series A Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such shares of Series A Preferred Stock, unless the date of issue of such shares is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such shares shall begin to accrue from the date of issue of such shares, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be no more than 30 days prior to the date fixed for the payment thereof.

iii. VOTING RIGHTS. The holders of shares of Series A Preferred Stock shall have the following voting rights:

A. Subject to the provision for adjustment hereinafter set forth, each 1/1,000th share of Series A Preferred Stock shall entitle the holder thereof to one vote on all matters voted on at a meeting of the stockholders of the Corporation. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Common Securities payable in shares of Common Securities, (ii) subdivide the outstanding Common Securities or (iii) combine the outstanding Common Securities into a smaller number of shares, then in each such case the number of votes per share to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction the numerator of which is the number of shares of Common Securities outstanding immediately after such event and the denominator of which is the number of shares of Common Securities that were outstanding immediately prior to such event. Such adjustment shall be made successively whenever such a dividend or change in the Common Securities is consummated.

B. Except as otherwise provided herein or by law, the holders of shares of Series A Preferred Stock and the holders of shares of Common Securities shall vote together as one class on all matters voted on at a meeting of stockholders of the Corporation.

C. Except as set forth herein, holders of Series A Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Securities as set forth herein) for taking any corporate action.

iv. Certain Restrictions.

A. Whenever quarterly dividends or other dividends or distributions payable on the Series A Preferred Stock as provided in subparagraph (e)(ii) of this Paragraph FOURTH are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Preferred Stock outstanding, shall have been paid in full, the Corporation shall not:

1. declare or pay dividends on, make any other distributions on, or redeem or purchase or otherwise acquire for consideration any shares of capital stock of the Corporation ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock;

2. declare or pay dividends on or make any other distributions on any shares of capital stock of the Corporation ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except dividends paid ratably on the

Series A Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

3. redeem or purchase or otherwise acquire for consideration shares of any capital stock of the Corporation ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock; provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such parity stock in exchange for shares of any capital stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series A Preferred Stock; or

4. purchase or otherwise acquire for consideration any shares of Series A Preferred Stock or any shares of stock ranking on a parity with the Series A Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

B. The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of capital stock of the Corporation unless the Corporation could, under subparagraph (e)(iv)(A) of this Paragraph FOURTH, purchase or otherwise acquire such shares at such time and in such manner.

v. REACQUIRED SHARES. Any shares of Series A Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of New Series Preferred Stock and may be reissued as part of a new series of New Series Preferred Stock to be created by resolution or resolutions of the Board of Directors, subject to the conditions and restrictions on issuance set forth herein.

vi. Liquidation, Dissolution or Winding Up.

A. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, no distribution shall be made on any shares of capital stock of the Corporation that rank junior (whether as to dividends or upon liquidation, dissolution or winding up) to Series A Preferred Stock unless prior hereto the holders of shares of Series A Preferred Stock shall have received an amount per share equal to 1,000 times the aggregate amount to be distributed per share to holders of the Common Securities.

B. In the event, however, that there are not sufficient assets available to permit payment in full of the Series A liquidation preference and the liquidation preferences of all other series of preferred stock, if any, which rank on a parity with the Series A Preferred Stock, then such remaining assets shall be distributed ratably to the holders of such parity shares in proportion to their respective liquidation preferences.

C. In the event the Corporation shall at any time after the Rights Declaration Date (i) declare any dividend on Common Securities payable in shares of Common Securities, (ii) subdivide the outstanding Common Securities or (iii) combine the outstanding Common Securities into a smaller number of shares, then in each such case the amount that the holders of the Series A Preferred Stock were entitled to receive upon liquidation, dissolution or winding up of the Corporation immediately prior to such event shall be adjusted by multiplying such number by a fraction the numerator of which is the number of shares of Common Securities outstanding immediately after such event and the denominator of which is the number of shares of Common Securities that were outstanding immediately prior to such event. Such adjustment shall be made successively whenever such a dividend or change in the Common Securities is consummated.

vii. MERGER; CONSOLIDATION, ETC. In case the Corporation shall enter into any merger, consolidation, combination or other transaction in which the shares of Common Securities are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case each share of Series A Preferred Stock shall at the same time be similarly exchanged or changed in an amount per share (subject to the provision for adjustment hereinafter set forth) equal to 1,000 times the aggregate amount of stock, securities, cash and/or other property (payable in kind), as the case may be, into which or for which each share of Common Securities is changed or exchanged. In the event the Corporation shall at any time after the Rights Declaration Date (a) declare any dividend on Common Securities payable in shares of Common Securities, (b) subdivide the outstanding Common Securities, or (c) combine the outstanding Common Securities into a smaller number of shares, then, in each such case, the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series A Preferred Stock shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Securities outstanding immediately after such event and the denominator of which is the number of shares of Common Securities that were outstanding immediately prior to such event. Such adjustment shall be made successively whenever such a dividend or change in the Common Securities is consummated.

viii. NO REDEMPTION. The Series A Preferred Stock shall not be redeemable.

ix. RANKING. The Series A Preferred Stock shall rank on a parity with all other series of the Corporation's Preferred Stock as to the payment of dividends and other distribution of assets, unless the terms of any such other series shall provide otherwise.

x. AMENDMENT. This Amended and Restated Certificate of Incorporation of the Corporation shall not be further amended in any manner that would materially alter or change the powers, preferences, rights, qualifications, limitations and restrictions of the Series A Preferred Stock so as to affect them adversely without the affirmative vote of the holders of a majority or more of the outstanding shares of Series A Preferred Stock, voting separately as a class.

xi. FRACTIONAL SHARES. Series A Preferred Stock may be issued in fractions of a share, which shall entitle the holder, in proportion to such holder's fractional shares, to exercise voting rights, receive dividends, participate in distributions and to have the benefit of all other rights of holders of Series A Preferred Stock.

e. 4.25% REDEEMABLE CUMULATIVE CONVERTIBLE PERPETUAL PREFERRED STOCK, SERIES C

i. NUMBER AND DESIGNATION. 400,000 shares of the New Series Preferred Stock of the Corporation shall be designated as "4.25% Redeemable Cumulative Convertible Perpetual Preferred Stock, Series C" (the "Series C Convertible Preferred Stock").

ii. CERTAIN DEFINITIONS. As used in this subparagraph (e) of Paragraph FOURTH, the following terms shall have the following meanings, unless the context otherwise requires:

"AFFILIATE" of any Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person. For the purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"AGENT MEMBERS" shall have the meaning assigned to it in subparagraph (e)(xv)(A) of this Paragraph FOURTH..

"BOARD OF DIRECTORS" means either the board of directors of the Corporation or any duly authorized committee of such board.

"BUSINESS DAY" means any day other than a Saturday, Sunday or a day on which state or U.S. federally chartered banking institutions in New York, New York are not required to be open.

"CAPITAL STOCK" of any Person means any and all shares, interests, participations or other equivalents however designated of corporate stock or other equity participations, including partnership interests, whether general or limited, of such Person and any rights (other than debt securities convertible or exchangeable into an equity interest), warrants or options to acquire an equity interest in such Person.

"CLOSING SALE PRICE" of the shares of Common Stock or other capital stock or similar equity interests on any date means the closing sale price per share (or, if no closing sale price is reported, the average of the closing bid and ask prices or, if more than one in either case, the average of the average closing bid and the average closing ask prices) on such date as reported on the principal United States securities exchange on which shares of Common Stock or such other capital stock or similar equity interests are traded or, if the shares of Common Stock or such other capital stock or similar equity interests are not listed on a United States national or regional securities exchange, as reported by Nasdaq or by the National Quotation Bureau Incorporated. In the absence of such quotations, the Corporation shall be entitled to determine the Closing Sale Price on the basis it considers appropriate. The Closing Sale Price shall be determined without reference to extended or after hours trading.

"COMMON SHARE LEGEND" shall have the meaning assigned to it in subparagraph (e)(xvi)(F) of this Paragraph FOURTH.

"COMMON STOCK" means any stock of any class of the Corporation that has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation and that is not subject to redemption by the Corporation. Subject to the provisions of subparagraph (e)(ix) of this Paragraph FOURTH, however, shares issuable on conversion of the Series C Convertible Preferred Stock shall include only shares of the class designated as common stock of the Corporation at the date of this Amended and Restated Certificate of Incorporation (namely, the Common Stock, par value $0.01 per share) or shares of any class or classes resulting from any reclassification or reclassifications thereof and that have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation and which are not subject to redemption by the Corporation; PROVIDED that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable on conversion shall be substantially in the proportion that the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

"CONVERSION AGENT" shall have the meaning assigned to it in subparagraph (e)(xvii)(A) of this Paragraph FOURTH.

"CONVERSION PRICE" per share of Series C Convertible Preferred Stock means, on any date, the Liquidation Preference divided by the Conversion Rate in effect on such date.

"CONVERSION RATE" per share of Series C Convertible Preferred Stock means 33.4728 shares of Common Stock, subject to adjustment pursuant to subparagraph (e)(viii) of this Paragraph FOURTH.

"CORPORATION" shall have the meaning assigned to it in the preamble to this Amended and Restated Certificate of Incorporation, and shall include any successor to such Corporation.

"CURRENT MARKET PRICE" shall mean the average of the daily Closing Sale Prices per share of Common Stock for the ten consecutive Trading Days selected by the Corporation commencing no more than 30 Trading Days before and ending not later than the earlier of such date of determination and the day before the "ex" date with respect to the issuance, distribution, subdivision or combination requiring such computation immediately prior to the date in question. For purpose of this paragraph, the term "ex" date, (1) when used with respect to any issuance or distribution, means the first date on which the Common Stock trades, regular way, on the relevant exchange or in the relevant market from which the Closing Sale Price was obtained without the right to receive such issuance or distribution, and (2) when used with respect to any subdivision or combination of shares of Common Stock, means the first date on which the Common Stock trades, regular way, on such exchange or in such market after the time at which such subdivision or combination becomes effective. If another issuance, distribution, subdivision or combination to which subparagraph (e)(viii)(D) of this Paragraph FOURTH applies occurs during the period applicable for calculating "Current Market Price" pursuant to this definition, the "Current Market Price" shall be calculated for such period in a manner determined by the Board of Directors to reflect the impact of such issuance, distribution, subdivision or combination on the Closing Sale Price of the Common Stock during such period

"DEPOSITARY" means DTC or its successor depositary.

"DIVIDEND PAYMENT DATE" means February 15, May 15, August 15 and November 15 each year, or if any such date is not a Business Day, on the next succeeding Business Day.

"DIVIDEND PERIOD" shall mean the period beginning on, and including, a Dividend Payment Date and ending on, and excluding, the immediately succeeding Dividend Payment Date.

"DTC" shall mean The Depository Trust Corporation, New York, New York.

"EXCHANGE ACT" shall mean the Securities Exchange Act of 1934, as amended.

"FAIR MARKET VALUE" shall mean the amount which a willing buyer would pay a willing seller in an arm's-length transaction.

"FUNDAMENTAL CHANGE" means the occurrence of any transaction or event (whether by means of an exchange offer, liquidation, tender offer, consolidation, merger, combination, reclassification, recapitalization or otherwise) in connection with which all or substantially all of the Common Stock shall be exchanged for, converted into, acquired for or constitutes solely the right to receive consideration which is not all or substantially all common stock that is (or, upon consummation of or immediately following such transaction or event, which will be) listed on a United States national securities exchange or approved (or, upon consummation of or immediately following such transaction or event, which will be approved) for quotation on the Nasdaq National Market or any similar United States system of automated dissemination of quotations of securities prices.

"FUNDAMENTAL CHANGE PURCHASE DATE" shall have the meaning assigned to it in subparagraph (e)(xi)(A) of this Paragraph FOURTH.

"GLOBAL PREFERRED SHARES" shall have the meaning assigned to it in subparagraph (e)(xv)(A) of this Paragraph FOURTH.

"GLOBAL SHARES LEGEND" shall have the meaning assigned to it in subparagraph (e)(xv)(A).

"INITIAL PURCHASERS" shall have the meaning assigned to it in the Placement Agreement.

"JUNIOR STOCK" shall have the meaning assigned to it in subparagraph (e)(iii)(A) of this Paragraph FOURTH.

"LIQUIDATION PREFERENCE" shall have the meaning assigned to it in subparagraph (e)(v)(A) of this Paragraph FOURTH.

"MOODY'S" means Moody's Investors Services and its successors.

"OFFICER" means the Chairman of the Board, a Vice Chairman of the Board, the President, any Vice President, the Treasurer, any Assistant Treasurer, the Controller, any Assistant Controller, the Secretary, any Assistant Treasurer or any Assistant Secretary of the Corporation.

"OUTSTANDING" means, when used with respect to Series C Convertible Preferred Stock, as of any date of determination, all shares of Series C Convertible Preferred Stock outstanding as of such date; PROVIDED, however, that, if such Series C Convertible Preferred Stock is to be redeemed, notice of such redemption has been duly given pursuant to this Amended and Restated Certificate of Incorporation and the Paying Agent holds, in accordance with this Amended and Restated Certificate of Incorporation, money sufficient to pay the Redemption Price for the shares of Series C Convertible Preferred Stock to be redeemed, then immediately after such Redemption Date such shares of Series C Convertible Preferred Stock shall cease to be outstanding; PROVIDED FURTHER that, in determining whether the holders of Series C Convertible Preferred Stock have given any request, demand, authorization, direction, notice, consent or waiver or taken any other action hereunder, Series C Convertible Preferred Stock owned by the Corporation shall be deemed not to be Outstanding, except that, in determining whether the Registrar shall be protected in relying upon any such request, demand, authorization, direction, notice, consent, waiver or other action, only Series C Convertible Preferred Stock which the Registrar has actual knowledge of being so owned shall be deemed not to be Outstanding.

"PARITY STOCK" shall have the meaning assigned to it in subparagraph (e)(iii)(B) of this Paragraph FOURTH.

"PAYING AGENT" shall have the meaning assigned to it in subparagraph (e)(xvii)(A) of this Paragraph FOURTH.

"PERSON" means an individual, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or organization, including a government or political subdivision or an agency or instrumentality thereof.

"PLACEMENT AGREEMENT" means the Placement Agreement dated as of April 29, 2003 among the Corporation, Morgan Stanley & Co. Incorporated and Deutsche Bank Securities Inc. relating to the Series C Convertible Preferred Stock.

"PURCHASE PRICE" means an amount equal to 100% of the Liquidation Preference per share of Series C Convertible Preferred Stock being purchased, plus an amount equal to any accumulated and unpaid dividends, including Special Dividends, if any, (whether or not earned or declared) thereon to, but excluding, the Fundamental Change Purchase Date; PROVIDED that if a Fundamental Change Purchase Date falls after a Record Date and on or prior to the corresponding Dividend Payment Date, the Purchase Price will only be an amount equal to the Liquidation Preference per share of Series C Convertible Preferred Stock being purchased.

"RECORD DATE" means (i) with respect to the dividends payable on February 15, May 15, August 15 and November 15 of each year, February 1, May 1, August 1 and November 1 of each year, respectively, or such other record date, not more than 60 days and not less than 10 days preceding the applicable Dividend Payment Date, as shall be fixed by the Board of Directors and (ii) solely for the purpose of adjustments to the Conversion Rate pursuant to subparagraph (e)(viii) of this Paragraph FOURTH, with respect to any dividend, distribution or other transaction or event in which the holders of Common Stock have the right to receive any cash, securities or other property or in which the Common Stock (or other applicable security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of stockholders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors or by statute, contract or otherwise).

"REDEMPTION DATE" means a date that is fixed for redemption of the Series C Convertible Preferred Stock by the Corporation in accordance with subparagraph (e)(vi) of this Paragraph FOURTH.

"REDEMPTION PRICE" means an amount equal to the Liquidation Preference per share of Series C Convertible Preferred Stock being redeemed, plus an amount equal to all accumulated and unpaid dividends, including Special Dividends, if any, (whether or not earned or declared) thereon to, but excluding, the Redemption Date; PROVIDED that if the Redemption Date shall occur after a Record Date and before the related Dividend Payment Date, the Redemption Price shall be only an amount equal to the Liquidation Preference per share of Series C Convertible Preferred Stock being redeemed.

"REGISTRAR" shall have the meaning assigned to it in subparagraph (e)(xiii) of this Paragraph FOURTH.

"REGISTRATION DEFAULT" shall have the meaning assigned to it in the Registration Rights Agreement.

"REGISTRATION RIGHTS AGREEMENT" means the Registration Rights Agreement dated as of May 5, 2003, among the Corporation, Morgan Stanley & Co. Incorporated and Deutsche Bank Securities Inc relating to the Series C Convertible Preferred Stock.

"RESTRICTED SHARES LEGEND" shall have the meaning assigned to it in subparagraph (e)(xv)(A) of this Paragraph FOURTH.

"RIGHTS" shall have the meaning assigned to it in subparagraph (e)(x) of this Paragraph FOURTH.

"RIGHTS AGREEMENT" means the Rights Agreement dated as of September 19, 1995 between the Corporation and Harris Trust & Savings Bank, as Rights Agent thereunder.

"RIGHTS PLAN" shall have the meaning assigned to it in subparagraph (e)(x) of this Paragraph FOURTH.

"S&P" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies Inc., and its successors.

"SECURITIES ACT" means the Securities Act of 1933, as amended.

"SENIOR STOCK" shall have the meaning assigned to it in subparagraph (e)(iii)(C) of this Paragraph FOURTH.

"SERIES C CONVERTIBLE PREFERRED STOCK" shall have the meaning assigned to it in subparagraph (e)(i) of this Paragraph FOURTH.

"SERIES C CONVERTIBLE PREFERRED STOCK DIRECTOR" shall have the meaning assigned to it in subparagraph (e)(xi)(C) of this Paragraph FOURTH.

"SHELF REGISTRATION STATEMENT" shall have the meaning assigned to it in the Registration Rights Agreement.

"SPECIAL DIVIDENDS" shall have the meaning assigned to it in subparagraph (e)(iv)(F) of this Paragraph FOURTH.

"SUBSIDIARY" means, with respect to any Person, (a) any corporation, association or other business entity of which more than 50% of the total voting power of shares of capital stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person (or a combination thereof) and (b) any partnership (i) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (ii) the only general partners of which are such Person or one or more Subsidiaries of such Person (or any combination thereof).

"TRADING DAY" means a day during which trading in securities generally occurs on the New York Stock Exchange or, if the Common Stock is not listed on the New York Stock Exchange, on the principal other national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not listed on a national or regional securities exchange, on Nasdaq or, if the Common Stock is not quoted on Nasdaq, on the principal other market on which the Common Stock is then traded.

"TRADING PRICE" of the Series C Convertible Preferred Stock, on any date of determination, means the average of the secondary market bid quotations obtained by the Corporation or a calculation agent appointed by the Corporation for the purpose of determining the Trading Price for 50,000 shares of Series C Convertible Preferred Stock at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers that the Corporation or such calculation agent selects; PROVIDED that if three such bids cannot reasonably be obtained by the Corporation or such calculation agent, but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by us or the calculation agent, that one bid shall be used; PROVIDED FURTHER that if the Corporation or such calculation agent cannot reasonably obtain at least one bid for 50,000 shares of Series C Convertible Preferred Stock from a nationally recognized securities dealer, or in the Corporation's reasonable judgment, the bid quotations are not indicative of the secondary market value of the Series C Convertible Preferred Stock, then the Trading Price per share of Series C Convertible Preferred Stock shall be deemed to be less than 98% of the product of the Closing Sale Price of the Common Stock and the Conversion Rate on such date.

"TRANSFER AGENT" shall have the meaning assigned to it in subparagraph (e)(xiii) of this Paragraph FOURTH.

iii. RANK. The Series C Convertible Preferred Stock shall, with respect to dividend rights and rights upon liquidation, winding-up or dissolution, rank:

A. senior to the Common Stock and any other class or series of Capital Stock of the Corporation, the terms of which do not expressly provide that such class or series ranks senior to or on a parity with the Series C Convertible Preferred Stock as to dividend rights and rights on liquidation, winding-up and dissolution of the Corporation (collectively, the "Junior Stock");

B. on a parity with any other class or series of Capital Stock of the Corporation, the terms of which expressly provide that such class or series ranks on a parity with the Series C Convertible Preferred Stock as to dividend rights and rights on liquidation, winding-up and dissolution of the Corporation (collectively, the "Parity Stock"); and

C. junior to each class or series of Capital Stock of the Corporation, the terms of which expressly provide that such class or series ranks senior to the Series C Convertible Preferred Stock as to dividend rights and rights on liquidation, winding-up and dissolution of the Corporation (collectively, together with any warrants, rights, calls or options exercisable for or convertible into such Capital Stock, the "Senior Stock").

iv. Dividends.

A. Holders of Series C Convertible Preferred Stock shall be entitled to receive, when, as and if, declared by the Board of Directors, out of funds legally available for the payment of dividends, cash dividends at the annual rate of 4.25% of the Liquidation Preference per share. Such dividends shall be payable in arrears in equal amounts quarterly on each Dividend Payment Date, beginning August 15, 2003, in preference to and in priority over dividends on any Junior Stock but subject to the rights of any holders of Senior Stock or Parity Stock.

B. Dividends shall be cumulative from the initial date of issuance or the last Dividend Payment Date for which accumulated dividends were paid, whichever is later, whether or not funds of the Corporation are legally available for the payment of such dividends. Each such dividend shall be payable to the holders of record of shares of the Series C Convertible Preferred Stock, as they appear on the Corporation's stock register at the close of business on a Record Date. Accumulated and unpaid dividends for any past Dividend Periods may be declared and paid at any time, without reference to any Dividend Payment Date, to holders of record on such date, not more than 45 days preceding the payment date thereof, as may be fixed by the Board of Directors.

C. Accumulated and unpaid dividends for any past Dividend Period (whether or not earned and declared) shall cumulate dividends at the annual rate of 4.25% and shall be payable in the manner set forth in this subparagraph (e)(iv) of this Paragraph FOURTH.

D. The amount of dividends payable for each full Dividend Period for the Series C Convertible Preferred Stock shall be computed by dividing the annual dividend rate by four. The amount of dividends payable for the initial Dividend Period, or any other period shorter or longer than a full Dividend Period, on the Series C Convertible Preferred Stock shall be computed on the basis of 30-day months and a 12-month year. Holders of Series C Convertible

Preferred Stock shall not be entitled to any dividends, whether payable in cash, property or stock, in excess of cumulative dividends, as herein provided, on the Series C Convertible Preferred Stock.

E. No dividend shall be declared or paid or set apart for payment or other distribution declared or made, whether in cash, obligations or shares of Capital Stock of the Corporation or other property, directly or indirectly, upon any shares of Junior Stock or Parity Stock, nor shall any shares of Junior Stock or Parity Stock be redeemed, repurchased or otherwise acquired for consideration by the Corporation through a sinking fund or otherwise, unless all accumulated and unpaid dividends, including Special Dividends, if any, through the most recent Dividend Payment Date (whether or not there are funds of the Corporation legally available for the payment of dividends) on the shares of Series C Convertible Preferred Stock and any Parity Stock have been or contemporaneously are declared and paid in full or set apart for payment; PROVIDED, however, that, notwithstanding any provisions of this subparagraph (e)(iv)(E) of Paragraph FOURTH to the contrary, the Corporation may redeem, repurchase or otherwise acquire for consideration Series C Convertible Preferred Stock and Parity Stock pursuant to a purchase or exchange offer made on the same terms to all holders of such Series C Convertible Preferred Stock and Parity Stock. When dividends are not paid in full, as aforesaid, upon the shares of Series C Convertible Preferred Stock, all dividends declared on the Series C Convertible Preferred Stock and any other Parity Stock shall be declared and paid either (1) pro rata so that the amount of dividends so declared on the shares of Series C Convertible Preferred Stock and each such other class or series of Parity Stock shall in all cases bear to each other the same ratio as accumulated dividends on the shares of Series C Convertible Preferred Stock and such class or series of Parity Stock bear to each other or (2) on another basis that is at least as favorable to the holders of the Series C Convertible Preferred Stock entitled to receive such dividends.

F. Upon a Registration Default, additional dividends shall accumulate on the Series C Convertible Preferred Stock at the rate of 0.50% per annum, whether or not funds of the Corporation are legally available for the payment of such additional dividends, (such additional dividends, the "Special Dividends"), from and including the date on which any such Registration Default shall occur to but excluding the date on which all Registration Defaults have been cured.

v. Liquidation Preference.

A. In the event of any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary, before any payment or distribution of the Corporation's assets (whether capital or surplus) shall be made to or set apart for the holders of Junior Stock, holders of Series C Convertible Preferred Stock shall be entitled to receive $500 per share of Series C Convertible Preferred Stock (the "Liquidation Preference") plus an amount equal to all dividends, including Special Dividends, (whether or not earned or declared) accumulated and unpaid thereon to the date of final distribution to such holders; but such holders shall not be entitled to any further payment. If, upon any liquidation, dissolution or winding-up of the Corporation, the Corporation's assets, or proceeds thereof, distributable among the holders of Series C Convertible Preferred Stock are insufficient to pay in full the preferential amount aforesaid and liquidating payments on any Parity Stock, then such assets, or the proceeds thereof, shall be distributed among the holders of the Series C Convertible Preferred Stock and any other Parity Stock ratably in accordance with the respective amounts that would be payable on such shares of Series C Convertible Preferred Stock and any such other Parity Stock if all amounts payable thereon were paid in full.

B. Neither the voluntary sale, conveyance, exchange or transfer, for cash, shares of stock, securities or other consideration, of all or substantially all of the Corporation's property or assets nor the consolidation, merger or amalgamation of the Corporation with or into any corporation or the consolidation, merger or amalgamation of any corporation with or into the Corporation shall be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the Corporation.

C. Subject to the rights of the holders of any Parity Stock, after payment has been made in full to the holders of the Series C Convertible Preferred Stock, as provided in this subparagraph (e)(v) of Paragraph FOURTH, holders of Junior Stock shall, subject to the respective terms and provisions (if any) applying thereto, be entitled to receive any and all assets remaining to be paid or distributed, and the holders of Series C Convertible Preferred Stock shall not be entitled to share therein.

vi. REDEMPTION OF THE SERIES C CONVERTIBLE PREFERRED STOCK. Shares of Series C Convertible Preferred Stock shall be redeemable by the Corporation in accordance with this subparagraph (e)(vi) of Paragraph FOURTH.

A. The Corporation may not redeem any shares of Series C Convertible Preferred Stock before May 20, 2008. On or after May 20, 2008, the Corporation shall have the option to redeem, subject to subparagraph (e)(vi)(K) of this Paragraph FOURTH, some or all the shares of Series C Convertible Preferred Stock at the Redemption Price, but only if the Closing Sale Price of the Common Stock for 20 Trading Days within a period of 30 consecutive Trading Days ending on the Trading Day prior to the date the Corporation gives notice of such redemption pursuant to this subparagraph (e)(vi) of Paragraph FOURTH exceeds 135% of the Conversion Price in effect on each such Trading Day.

B. In the event the Corporation elects to redeem shares of Series C Convertible Preferred Stock, the Corporation shall:

1. send a written notice to the Registrar and Transfer Agent of the Redemption Date, stating the number of shares to be redeemed and the Redemption Price, at least 35 days before the Redemption Date (unless a shorter period shall be satisfactory to the Registrar and Transfer Agent);

2. send a written notice by first class mail to each holder of record of the Series C Convertible Preferred Stock at such holder's registered address, not fewer than 30 nor more than 90 days prior to the Redemption Date stating:

(a) the Redemption Date;

(b) the Redemption Price and whether such Redemption Price will be paid in cash, shares of Common Stock, or, if a combination thereof, the percentages of the Redemption Price in respect of which the Corporation will pay in cash and shares of Common Stock;

(c) the Conversion Price and the Conversion Ratio;

(d) the name and address of the Paying Agent and Conversion Agent;

(e) that shares of Series C Convertible Preferred Stock called for redemption may be converted at any time before 5:00 p.m., New York City time on the Business Day immediately preceding the Redemption Date;

(f) that holders who want to convert shares of the Series C Convertible Preferred Stock must satisfy the requirements set forth in subparagraph (e)(vi) of this Paragraph FOURTH of this Amended and Restated Certificate of Incorporation;

(g) that shares of the Series C Convertible Preferred Stock called for redemption must be surrendered to the Paying Agent to collect the Redemption Price;

(h) if fewer than all the outstanding shares of the Series C Convertible Preferred Stock are to be redeemed by the Corporation, the number of shares to be redeemed;

(i) that, unless the Corporation defaults in making payment of such Redemption Price, dividends in respect of the shares of Series C Convertible Preferred Stock called for redemption will cease to accumulate on and after the Redemption Date;

(j) the CUSIP number of the Series C Convertible Preferred Stock; and

(k) any other information the Corporation wishes to present; and

3. (a) publish the information set forth in subparagraph (e)(vi)(B)(2) of this Paragraph FOURTH once in a daily newspaper printed in the English language and of general circulation in the Borough of Manhattan, The City of New York, (b) issue a press release containing such information and (c) publish such information on the Corporation's web site on the World Wide Web.

C. The Redemption Price shall be payable, at the Corporation's election, in cash, shares of Common Stock, or a combination of cash and shares of Common Stock; PROVIDED that the Corporation shall not be permitted to pay all or any portion of the Redemption Price in shares of Common Stock unless:

1. the Corporation shall have given timely notice pursuant to subparagraph (e)(vi)(B) of this Paragraph FOURTH of its intention to purchase all or a specified percentage of the Series C Convertible Preferred Stock with shares of Common Stock as provided herein;

2. the Corporation shall have registered such shares of Common Stock under the Securities Act and the Exchange Act, in each case, if required;

3. such shares of Common Stock have been approved for listing of on a national securities exchange or have been approved for quotation in an inter-dealer quotation system of any registered United States national securities association; and

4. any necessary qualification or registration under applicable state securities laws have been obtained, if required.

If the foregoing conditions are not satisfied with respect to any holder or holders of Series C Convertible Preferred Stock prior to the close of business on the last day prior to the Redemption Date and the Corporation has elected to purchase the Series C Convertible Preferred Stock pursuant to this subparagraph through the issuance of shares of Common Stock, then, notwithstanding any election by the Corporation to the contrary, the Corporation shall pay the entire Redemption Price of the Series C Convertible Preferred Stock of such holder or holders in cash.

D. Payment of the specified portion of the Redemption Price in shares of Common Stock pursuant to subparagraph (e)(vi) of this Paragraph FOURTH shall be made by the issuance of a number of shares of Common Stock equal to the quotient obtained by dividing (i) the portion of the Redemption Price, as the case may be, to be paid in shares of Common Stock by (ii) 97.5% of the average of the Closing Sale Prices of the Common Stock for the 5 Trading Days ending on the third Trading Day prior to the Redemption Date (appropriately adjusted to take into account the occurrence during such period of any event described in subparagraph (e)(viii) of this Paragraph FOURTH. The Corporation shall not issue fractional shares of Common Stock in payment of the Redemption Price. Instead, the Corporation shall pay cash based on the Closing Sale Price of the Common Stock on the Redemption Date for all fractional shares. Upon determination of the actual number of shares of Common Stock to be issued upon redemption of the Series C Convertible Preferred Stock, the Corporation shall be required to disseminate a press release through Dow Jones & Corporation, Inc. or Bloomberg Business News containing this information or publish the information on the Corporation's web site or through such other public medium as the Corporation may use at that time.

E. If the Corporation gives notice of redemption, then, by 12:00 p.m., New York City time, on the Redemption Date, to the extent sufficient funds are legally available, the Corporation shall, with respect to:

1. shares of the Series C Convertible Preferred Stock

held by DTC or its nominees, deposit or cause to be deposited, irrevocably with DTC cash or shares of Common Stock, as applicable, sufficient to pay the Redemption Price and shall give DTC irrevocable instructions and authority to pay the Redemption Price to holders of such shares of the Series C Convertible Preferred Stock; and

2. shares of the Series C Convertible Preferred Stock held in certificated form, deposit or cause to be deposited, irrevocably with the Paying Agent cash or shares of Common Stock, as applicable, sufficient to pay the Redemption Price and shall give the Paying Agent irrevocable instructions and authority to pay the Redemption Price to holders of such shares of the Series C Convertible Preferred Stock upon surrender of their certificates evidencing their shares of the Series C Convertible Preferred Stock.

F. If on the Redemption Date, DTC and/or the Paying Agent holds or hold money or shares of Common Stock, as applicable, sufficient to pay the Redemption Price for the shares of Series C Convertible Preferred Stock delivered for redemption as set forth herein, dividends shall cease to accumulate as of the Redemption Date on those shares of the Series C Convertible Preferred Stock called for redemption and all rights of holders of such shares shall terminate, except for the right to receive the Redemption Price pursuant to this subparagraph (e)(vi) of Paragraph FOURTH and the right to convert such shares of Series C Convertible Preferred Stock as provided in subparagraph (e)(vii)(A)(3) of this Paragraph FOURTH

G. Payment of the Redemption Price for shares of the Series C Convertible Preferred Stock is conditioned upon book-entry transfer or physical delivery of certificates representing the Series C Convertible Preferred Stock, together with necessary endorsements, to the Paying Agent at any time after delivery of the notice of redemption.

H. If the Redemption Date falls after a Record Date and before the related Dividend Payment Date, holders of the shares of Series C Convertible Preferred Stock at the close of business on that Record Date shall be entitled to receive the dividend payable on those shares on the corresponding Dividend Payment Date.

I. If fewer than all the outstanding shares of Series C Convertible Preferred Stock are to be redeemed, the number of shares to be redeemed shall be determined by the Board of Directors and the shares to be redeemed shall be selected by lot or pro rata (with any fractional shares being rounded to the nearest whole share) as may be determined by the Board of Directors

J. Upon surrender of a certificate or certificates representing shares of the Series C Convertible Preferred Stock that is or are redeemed in part, the Corporation shall execute and the Transfer Agent shall authenticate and deliver to the holder, a new certificate of certificates representing shares of the Series C Convertible Preferred Stock in an amount equal to the unredeemed portion of the shares of Series C Convertible Preferred Stock surrendered for partial redemption.

K. Notwithstanding the foregoing provisions of this subparagraph (e)(vi) of Paragraph FOURTH, unless full cumulative dividends (whether or not declared) on all outstanding shares of Series C Convertible Preferred Stock have been paid or contemporaneously are declared and paid or set apart for payment for all Dividend Periods terminating on or before the Redemption Date, none of the shares of Series C Convertible Preferred Stock shall be redeemed, and no sum shall be set aside for such redemption, unless pursuant to a purchase or exchange offer made on the same terms to all holders of Series C Convertible Preferred Stock and any Parity Stock. The Corporation may not redeem the Series C Convertible Preferred Stock if (i) as of the date of giving the redemption notice of any redemption pursuant to this subparagraph (e)(vi) of Paragraph FOURTH, such redemption would, if such date where the Redemption Date, reduce the net assets of the Corporation remaining after such redemption below twice the aggregate amount payable upon voluntary or involuntary liquidation, dissolution or winding up to the holders of Senior Stock or Parity Stock upon such liquidation, dissolution or winding up, or (ii) all cumulative dividends for the current and all prior dividend periods have not been declared and paid or have not been declared and set apart for payment on all shares of the Corporation having a right to cumulative dividends.

vii. Conversion.

A. RIGHT TO CONVERT. Each share of Series C Convertible Preferred Stock shall be convertible in accordance with, and subject to, this subparagraph (e)(vii) of Paragraph FOURTH into a number of fully paid and non-assessable shares of Common Stock (as such shares shall then be constituted) equal to the Conversion Rate in effect at such time. The Series C Convertible Preferred Stock shall be convertible only upon any of the events, and for the period, specified in the following clauses 1 through 5 below. Notwithstanding the foregoing, if any shares of Series C Convertible Preferred Stock are to be redeemed pursuant to subparagraph (e)(vi) of this Paragraph FOURTH, such conversion right shall cease and terminate, as to the shares of the Series C Convertible Preferred Stock to be redeemed, at 5:00 p.m., New York City time on the Business Day immediately preceding the Redemption Date, unless the Corporation shall default in the payment of the Redemption Price therefor, as provided herein. Upon the determination that holders of the Series C Convertible Preferred Stock are or will be entitled to convert shares of Series C Convertible Preferred Stock in accordance with any of the following provisions, the Corporation shall issue a press release and publish such information on its website on the World Wide Web.

1. Conversion Rights Based on Common Stock Price. At any time after June 30, 2003, the Series C Convertible Preferred Stock may be surrendered for conversion into shares of Common Stock in any fiscal quarter of the Corporation (and only during such fiscal quarter), if, as of the last day of the preceding fiscal quarter of the Corporation, the Closing Sale Price of the Common Stock for at least 20 Trading Days in a period of 30 consecutive Trading Days ending on the last Trading Day of such fiscal quarter is more than 110% of the Conversion Price as of the last day of such preceding fiscal quarter.

2. Conversion Rights Upon Credit Rating Events. The Series C Convertible Preferred Stock may be surrendered for

conversion after the earlier of (a) the date the Series C Convertible Preferred Stock is assigned a credit rating by both S&P and Moody's and (b) May 3, 2003, in each case, during any period in which (1) the credit rating assigned to the Series C Convertible Preferred Stock by S&P is below CCC, (2) the credit rating assigned to the Series C Convertible Preferred Stock by Moody's is below Caa3, (3) either S&P or Moody's does not assign a credit rating to the Series C Convertible Preferred Stock or (4) any rating is suspended or withdrawn by either S&P or Moody's.

3. Conversion Rights Upon Notice of Redemption. The Series C Convertible Preferred Stock that has been called for redemption pursuant to subparagraph (e)(vi) of this Paragraph FOURTH hereof may be surrendered at any time prior to 5:00 p.m. New York City time on the Business Day immediately preceding the Redemption Date.

4. Conversion Rights Upon Occurrence of Certain Corporate Transactions.

(a) If the Corporation is a party to a consolidation, merger or binding share exchange pursuant to which shares of Common Stock would be converted into cash, securities or other property as set forth in subparagraph (e)(ix) of this Paragraph FOURTH, each share of Series C Convertible Preferred Stock may be surrendered for conversion at any time from and after the date that is 15 days prior to the anticipated effective date of the transaction until 15 days after the actual date of such transaction and, at the effective time of the transaction, the right to convert a Series C Convertible Preferred Stock into shares of Common Stock shall be changed into a right to convert such Series C Convertible Preferred Stock into the kind and amount of cash, securities or other property of the Corporation or another Person that the holder would have received if the holder had converted such Series C Convertible Preferred Stock immediately prior to the transaction.

(b) If the Corporation distributes to all holders of any class of Common Stock (1) rights or warrants entitling them to purchase, for a period expiring within 45 days of the record date for such distribution, Common Stock at less than the average Closing Sale Price for the 10 Trading Days preceding the declaration date for such distribution, or (2) cash, assets, debt securities or rights to purchase the Corporation's securities, which distribution has a per share value exceeding 5% of the Closing Sale Price of the Common Stock on the Trading Day immediately preceding the declaration date for such distribution, the Series C Convertible Preferred Stock may be surrendered for conversion on the date that the Corporation gives notice to the holders of such right, which shall not be less than 20 days prior to the time ("Ex-Dividend Time") immediately prior to the commencement of "ex-dividend" trading for such distribution on the New York Stock Exchange or such other principal national or regional exchange or market on which the Common Stock is then listed or quoted for such dividend or distribution, and the Series C Convertible Preferred Stock may be surrendered for conversion at any time thereafter until the earlier of close of business on the Business Day prior to the Ex-Dividend Time and the date the

Corporation announces that such dividend or distribution will not take place. Notwithstanding the foregoing, holders shall not have the right to surrender shares of Series C Convertible Preferred Stock for conversion pursuant to this subparagraph (e)(vii)(A)(4)(b) of Paragraph FOURTH if they will otherwise participate in the distribution described above without first converting Series C Convertible Preferred Stock into Common Stock.

5. Conversion Upon Satisfaction Of Trading Price Condition. The Series C Convertible Preferred Stock may be surrendered for conversion any time during the five Business Day period after any five consecutive Trading Day period in which the Trading Price for each day of such five Trading Day period was less than 98% of the product of the Closing Sale Price and the Conversion Rate in effect on each such Trading Day.

B. Conversion Procedures.

1. Conversion of shares of the Series C Convertible Preferred Stock may be effected by any holder thereof upon the surrender to the Corporation, at the principal office of the Corporation or at the office of the Conversion Agent as may be designated by the Board of Directors, of the certificate or certificates for such shares of the Series C Convertible Preferred Stock to be converted accompanied a complete and manually signed Notice of Conversion (as set forth in the form of Series C Convertible Preferred Stock certificate attached hereto) along with (A) appropriate endorsements and transfer documents as required by the Registrar or Conversion Agent and (B) if required pursuant to subparagraph (e)(vii)(C) of this Paragraph FOURTH funds equal to the dividend payable on the next Dividend Payment Date. In case such Notice of Conversion shall specify a name or names other than that of such holder, such notice shall be accompanied by payment of all transfer taxes payable upon the issuance of shares of Common Stock in such name or names. Other than such taxes, the Corporation shall pay any documentary, stamp or similar issue or transfer taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of the Series C Convertible Preferred Stock pursuant hereto. The conversion of the Series C Convertible Preferred Stock will be deemed to have been made on the date (the "Conversion Date") such certificate or certificates have been surrendered and the receipt of such Notice of Conversion and payment of all required transfer taxes, if any (or the demonstration to the satisfaction of the Corporation that such taxes have been paid). Promptly (but no later than two Business Days) following the Conversion Date, the Corporation shall deliver or cause to be delivered (i) certificates representing the number of validly issued, fully paid and nonassessable full shares of Common Stock to which the holder of shares of the Series C Convertible Preferred Stock being converted (or such holder's transferee) shall be entitled, and (ii) if less than the full number of shares of the Series C Convertible Preferred Stock evidenced by the surrendered certificate or certificates is being converted, a new certificate or certificates, of like tenor, for the number of shares evidenced by such surrendered certificate or certificates

less the number of shares being converted. On the Conversion Date, the rights of the holder of the Series C Convertible Preferred Stock as to the shares being converted shall cease except for the right to receive shares of Common Stock and the Person entitled to receive the shares of Common Stock shall be treated for all purposes as having become the record holder of such shares of Common Stock at such time.

2. Anything herein to the contrary notwithstanding, in the case of Global Preferred Shares, Notices of Conversion may be delivered and shares of the Series C Convertible Preferred Stock representing beneficial interests in respect of such Global Preferred Shares may be surrendered for conversion in accordance with the applicable procedures of the Depositary as in effect from time to time.

C. Dividend and Other Payments Upon Conversion.

1. If a holder of shares of Series C Convertible Preferred Stock exercises conversion rights, such shares will cease to accumulate dividends as of the end of the day immediately preceding the Conversion Date. On conversion of the Series C Convertible Preferred Stock, except for conversion during the period from the close of business on any Record Date corresponding to a Dividend Payment Date to the close of business on the Business Day immediately preceding such Dividend Payment Date, in which case the holder on such Dividend Record Date shall receive the dividends payable on such Dividend Payment Date, accumulated and unpaid dividends on the converted share of Series C Convertible Preferred Stock shall not be cancelled, extinguished or forfeited, but rather shall be deemed to be paid in full to the holder thereof through delivery of the Common Stock (together with the cash payment, if any, in lieu of fractional shares) in exchange for the Series C Convertible Preferred Stock being converted pursuant to the provisions hereof. Shares of the Series C Convertible Preferred Stock surrendered for conversion after the close of business on any Record Date for the payment of dividends declared and before the opening of business on the Dividend Payment Date corresponding to that Record Date must be accompanied by a payment to the Corporation in cash of an amount equal to the dividend payable in respect of those shares on such Dividend Payment Date; PROVIDED that a holder of shares of the Series C Convertible Preferred Stock on a Record Date who converts such shares into shares of Common Stock on the corresponding Dividend Payment Date shall be entitled to receive the dividend payable on such shares of the Series C Convertible Preferred Stock on such Dividend Payment Date, and such holder need not include payment to the Corporation of the amount of such dividend upon surrender of shares of the Series C Convertible Preferred Stock for conversion.

2. Notwithstanding the foregoing, if shares of the Series C Convertible Preferred Stock are converted during the period between the close of business on any Record Date and the opening of business on the corresponding Dividend Payment Date and the Corporation has called such shares of the Series C Convertible Preferred Stock for redemption during such period, or the Corporation has designated a Fundamental Change Purchase Date during such period, then,

in each case, the holder who tenders such shares for conversion shall receive the dividend payable on such Dividend Payment Date and need not include payment of the amount of such dividend upon surrender of shares of the Series C Convertible Preferred Stock for conversion.

D. FRACTIONAL SHARES. In connection with the conversion of any shares of the Series C Convertible Preferred Stock, no fractions of shares of Common Stock shall be issued, but the Corporation shall pay a cash adjustment in respect of any fractional interest in an amount equal to the fractional interest multiplied by the Closing Sale Price of the Common Stock on the Conversion Date, rounded to the nearest whole cent.

E. TOTAL SHARES. If more than one share of the Series C Convertible Preferred Stock shall be surrendered for conversion by the same holder at the same time, the number of full shares of Common Stock issuable on conversion of those shares shall be computed on the basis of the total number of shares of the Series C Convertible Preferred Stock so surrendered.

F. Reservation of Shares; Shares to be Fully Paid; Compliance with Governmental Requirements; Listing of Common Stock. The Corporation shall:

1. at all times reserve and keep available, free from preemptive rights, for issuance upon the conversion of shares of the Series C Convertible Preferred Stock such number of its authorized but unissued shares of Common Stock as shall from time to time be sufficient if necessary to permit the conversion of all outstanding shares of the Series C Convertible Preferred Stock;

2. prior to the delivery of any securities that the Corporation shall be obligated to deliver upon conversion of the Series C Convertible Preferred Stock, comply with all applicable federal and state laws and regulations that require action to be taken by the Corporation (including, without limitation, the registration or approval, if required, of any shares of Common Stock to be provided for the purpose of conversion of the Series C Convertible Preferred Stock hereunder);

3. ensure that all shares of Common Stock delivered upon conversion of the Series C Convertible Preferred Stock, upon delivery, be duly and validly issued and fully paid and nonassessable, free of all liens and charges and not subject to any preemptive rights.

viii. CONVERSION RATE ADJUSTMENTS. The Conversion Rate shall be adjusted from time to time by the Corporation in accordance with the provisions of this subparagraph (e)(viii) of Paragraph FOURTH.

A. If the Corporation shall hereafter pay a dividend or make a distribution to all holders of the outstanding Common Stock in shares of Common Stock, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect at the opening of business on the date following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution by a fraction,

1. the numerator of which shall be the sum of the number of shares of Common Stock outstanding at the close of business on the date fixed for the determination of stockholders entitled to receive such dividend or other distribution plus the total number of shares of Common Stock constituting such dividend or other distribution; and

2. the denominator of which shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination,

such increase to become effective immediately after the opening of business on the day following the date fixed for such determination. If any dividend or distribution of the type described in this subparagraph (e)(viii) of Paragraph FOURTH is declared but not so paid or made, the Conversion Rate shall again be adjusted to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

B. If the Corporation shall issue rights or warrants to all holders of any class of Common Stock entitling them (for a period expiring within forty-five (45) days after the date fixed for determination of stockholders entitled to receive such rights or warrants) to subscribe for or purchase shares of Common Stock at a price per share less than the average of the Closing Sale Prices of the Common Stock for the 10 Trading Days preceding the declaration date for such distribution, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to the date fixed for determination of stockholders entitled to receive such rights or warrants by a fraction,

1. the numerator of which shall be the number of shares of Common Stock outstanding on the date fixed for determination of stockholders entitled to receive such rights or warrants plus the total number of additional shares of Common Stock offered for subscription or purchase, and

2. the denominator of which shall be the sum of the number of shares of Common Stock outstanding at the close of business on the date fixed for determination of stockholders entitled to receive such rights or warrants plus the number of shares that the aggregate offering price of the total number of shares so offered would purchase at a price equal to the average of the Closing Sale Prices of the Common Stock for the 10 Trading Days preceding the declaration date for such distribution.

Such adjustment shall be successively made whenever any such rights or warrants are issued, and shall become effective immediately after the opening of business on the day following the date fixed for determination of stockholders entitled to receive such rights or warrants. To the extent that shares of Common Stock are not delivered after the expiration of such rights or warrants, the Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect had the adjustments made upon the issuance of such rights or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights or warrants are not so issued, the

Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such date fixed for the determination of stockholders entitled to receive such rights or warrants had not been fixed. In determining whether any rights or warrants entitle the holders to subscribe for or purchase shares of Common Stock at a price less than the average of the Closing Sale Prices of the Common Stock for the 10 Trading Days preceding the declaration date for such distribution, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Corporation for such rights or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

C. If the outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock, the Conversion Rate in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately increased, and conversely, in case outstanding shares of Common Stock shall be combined into a smaller number of shares of Common Stock, the Conversion Rate in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately reduced, such increase or reduction, as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

D. If the Corporation shall, by dividend or otherwise, distribute to all holders of its Common Stock shares of any class of Capital Stock of the Corporation or evidences of its indebtedness or assets (including securities, but excluding (x) any rights or warrants referred to in subparagraph (e)(viii)(B) of this Paragraph FOURTH, (y) any dividend or distribution (I) paid exclusively in cash or (II) referred to in subparagraph (e)(viii)(A) of this Paragraph FOURTH and (z) any distribution referred to in subparagraph (e)(viii)(G) of this Paragraph FOURTH) (any of the foregoing hereinafter in this called the "Distributed Property")), then, in each such case, the Conversion Rate shall be increased so that the same shall be equal to the rate determined by multiplying the Conversion Rate in effect on the Record Date with respect to such distribution by a fraction,

1. the numerator of which shall be the Current Market Price on such Record Date; and

2. the denominator of which shall be the Current Market Price on such Record Date less the Fair Market Value (as determined by the Board of Directors, whose determination shall be conclusive, and described in a resolution of the Board of Directors) on the Record Date of the portion of the Distributed Property so distributed applicable to one share of Common Stock,

such adjustment to become effective immediately prior to the opening of business on the day following such Record Date; PROVIDED that if the then Fair Market Value (as so determined) of the portion of the Distributed Property so distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price on the Record

Date, in lieu of the foregoing adjustment, adequate provision shall be made so that each holder of Series C Convertible Preferred Stock shall have the right to receive upon conversion the amount of Distributed Property such holder would have received had such holder converted each share Series C Convertible Preferred Stock on the Record Date. If such dividend or distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. If the Board of Directors determines the Fair Market Value of any distribution for purposes of this by reference to the actual or when issued trading market for any securities, it must in doing so consider the prices in such market over the same period used in computing the Current Market Price on the applicable Record Date.

Rights or warrants (including rights under the Corporation's Rights Agreement) distributed by the Corporation to all holders of Common Stock entitling the holders thereof to subscribe for or purchase shares of the Corporation's capital stock (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events ("Trigger Event"): (i) are deemed to be transferred with such shares of Common Stock; (ii) are not exercisable; and (iii) are also issued in respect of future issuances of Common Stock, shall be deemed not to have been distributed for purposes of this subparagraph (e)(viii)(D) of Paragraph FOURTH (and no adjustment to the Conversion Rate under this subparagraph (e)(viii)(D) of Paragraph FOURTH will be required) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this subparagraph (e)(viii)(D) of Paragraph FOURTH. If any such right or warrant, including any such existing rights or warrants distributed prior to the date of this Amended and Restated Certificate of Incorporation, are subject to events, upon the occurrence of which such rights or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and record date with respect to new rights or warrants with such rights (and a termination or expiration of the existing rights or warrants without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in the preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this subparagraph (e)(viii)(D) of Paragraph FOURTH was made, (1) in the case of any such rights or warrants that shall all have been redeemed or repurchased without exercise by any holders thereof, the Conversion Rate shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per share redemption or repurchase price received by a holder or holders of Common Stock with respect to such rights or warrants (assuming such holder had retained such rights or warrants), made to all holders of Common Stock as of the date of such redemption or repurchase, and (2) in the case of such rights or warrants that shall have expired or been terminated without exercise thereof, the Conversion Rate shall be readjusted as if such expired or terminated rights and warrants had not been issued.

For purposes of this subparagraph (e)(viii)(D) and subparagraph (e)(viii)(A) and (B) of Paragraph FOURTH, any dividend or distribution to which this subparagraph (e)(viii)(D) of Paragraph FOURTH is applicable that also includes shares of Common Stock, or rights or warrants to subscribe for or purchase shares of Common Stock (or both), shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, assets or shares of capital stock other than such shares of Common Stock or rights or warrants (and any Conversion Rate adjustment required by this subparagraph (e)(viii)(D) of Paragraph FOURTH with respect to such dividend or distribution shall then be made) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such rights or warrants (and any further Conversion Rate adjustment required by subparagraph (e)(viii)(A) and (B) of this Paragraph FOURTH with respect to such dividend or distribution shall then be made), except (A) the Record Date of such dividend or distribution shall be substituted as "the date fixed for the determination of stockholders entitled to receive such dividend or other distribution", "the date fixed for the determination of stockholders entitled to receive such rights or warrants" and "the date fixed for such determination" within the meaning of subparagraph (e)(viii)(A) and (B) of this Paragraph FOURTH and (B) any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding at the close of business on the date fixed for such determination" within the meaning of subparagraph (e)(viii)(A) of this Paragraph FOURTH.

E. If the Corporation shall, by dividend or otherwise, distribute to all holders of its Common Stock cash, excluding any dividend or distribution in connection with the liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, to the extent that the aggregate amount of cash distributions per share of Common Stock in any twelve month period exceeds the greater of (x) the annualized amount per share of Common Stock of the next preceding quarterly cash dividend on the Common Stock to the extent that such preceding quarterly dividend did not require any adjustment of the Conversion Rate pursuant to this subparagraph (e)(viii)(E) of Paragraph FOURTH (as adjusted to reflect subdivisions, or combinations of the Common Stock), and (y) 5% of the average of the Closing Sale Price during the ten Trading Days immediately prior to the date of declaration of such dividend, then, in such case, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to the close of business on such record date by a fraction,

1. the numerator of which shall be the Current Market Price on such record date; and

2. the denominator of which shall be the Current Market Price on such record date less the amount of cash so distributed (including only the amount of cash distributed in excess of the threshold set forth above) applicable to one share of Common Stock,

such adjustment to be effective immediately prior to the opening of business on the day following the Record Date; PROVIDED that if the portion of the cash so distributed applicable to one share of Common Stock is equal to or greater than the Current Market Price on the record date, in lieu of the foregoing adjustment, adequate provision shall be made so that each holder of Series C Convertible Preferred Stock shall have the right to receive upon conversion the amount of cash such holder would have received had such holder converted each share of Series C Convertible Preferred Stock on the Record Date. If such dividend or distribution is not so paid or made, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. If any adjustment is required to be made as set forth in this subparagraph (e)(viii)(E) of Paragraph FOURTH as a result of a distribution that is a quarterly dividend, such adjustment shall be based upon the amount by which such distribution exceeds the amount of the quarterly cash dividend permitted to be excluded pursuant hereto. If an adjustment is required to be made as set forth in this subparagraph (e)(viii)(E) of Paragraph FOURTH above as a result of a distribution that is not a quarterly dividend, such adjustment shall be based upon the full amount of the distribution.

F. If a tender or exchange offer made by the Corporation or any Subsidiary for all or any portion of the Common Stock shall expire and such tender or exchange offer (as amended upon the expiration thereof) shall require the payment to stockholders of consideration per share of Common Stock having a Fair Market Value (as determined by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors) that as of the last time (the "Expiration Time") tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended) exceeds the Closing Sale Price of a share of Common Stock on the Trading Day next succeeding the Expiration Time, the Conversion Rate shall be increased so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to the Expiration Time by a fraction,

1. the numerator of which shall be the sum of (x) the Fair Market Value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Expiration Time (the shares deemed so accepted up to any such maximum, being referred to as the "Purchased Shares") and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares) at the Expiration Time and the Closing Sale Price of a share of Common Stock on the Trading Day next succeeding the Expiration Time, and

2. the denominator of which shall be the number of

shares of Common Stock outstanding (including any tendered or exchanged shares) at the Expiration Time multiplied by the Closing Sale Price of a share of Common Stock on the Trading Day next succeeding the Expiration Time,

such adjustment to become effective immediately prior to the opening of business on the day following the Expiration Time. If the Corporation is obligated to purchase shares pursuant to any such tender or exchange offer, but the Corporation is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made.

G. If the Corporation pays a dividend or makes a distribution to all holders of its Common Stock consisting of capital stock of any class or series, or similar equity interests, of or relating to a Subsidiary or other business unit of the Corporation, the Conversion Rate shall be increased so that the same shall be equal to the rate determined by multiplying the Conversion Rate in effect on the Record Date with respect to such distribution by a fraction,

1. the numerator of which shall be the sum of (A) the average of the Closing Sale Prices of the Common Stock for the ten (10) Trading Days commencing on and including the fifth Trading Day after the date on which "ex-dividend trading" commences for such dividend or distribution on The New York Stock Exchange or such other national or regional exchange or market which such securities are then listed or quoted (the "Ex-Dividend Date") plus (B) the fair market value of the securities distributed in respect of each share of Common Stock for which this subparagraph (e)(viii)(G) of Paragraph FOURTH applies, which shall equal the number of securities distributed in respect of each share of Common Stock multiplied by the average of the Closing Sale Prices of those distributed securities for the ten (10) Trading Days commencing on and including the fifth Trading Day after the Ex-Dividend Date; and

2. the denominator of which shall be the average of the Closing Sale Prices of the Common Stock for the ten (10) Trading Days commencing on and including the fifth Trading Day after the Ex-Dividend Date,

such adjustment to become effective immediately prior to the opening of business on the day following fifteenth Trading Day after the Ex-Dividend Date; PROVIDED that if (x) the average of the Closing Sale Prices of the Common Stock for the ten (10) Trading Days commencing on and including the fifth Trading Day after the Ex-Dividend Date minus (y) the fair market value of the securities distributed in respect of each share of Common Stock for which this subparagraph (e)(viii)(G) of Paragraph FOURTH applies (as calculated in subparagraph (e)(viii)(G)(1) above) is less than $1.00, then the adjustment provided by for by this subparagraph (e)(viii)(G) of Paragraph FOURTH shall not be made and in lieu thereof the provisions of subparagraph (e)(ix) of this Paragraph FOURTH shall apply to such distribution.

H. In case of a tender or exchange offer made by a Person other than the Corporation or any Subsidiary of the Corporation for an amount that increases the offeror's ownership of Common Stock to more than 25% of the Common Stock outstanding and shall involve the payment by such Person of consideration per share of Common Stock having a Fair Market Value (as determined by the Board of Directors, whose determination shall be conclusive, and described in a resolution of the Board of Directors) that as of the last time (the "Offer Expiration Time") tenders or exchanges may be made pursuant to such tender or exchange offer (as it shall have been amended) exceeds the Closing Sale Price of the Common Stock on the Trading Day next succeeding the Offer Expiration Time, and in which, as of the Offer Expiration Time the Board of Directors is not recommending rejection of the offer, the Conversion Rate shall be adjusted so that the same shall equal the rate determined by multiplying the Conversion Rate in effect immediately prior to the Offer Expiration Time by a fraction,

1. the numerator of which shall be the sum of (x) the Fair Market Value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Offer Expiration Time (the shares deemed so accepted, up to any such maximum, being referred to as the "Accepted Purchased Shares") and (y) the product of the number of shares of Common Stock outstanding (less any Accepted Purchased Shares) at the Offer Expiration Time and the Closing Sale Price of the Common Stock on the Trading Day next succeeding the Offer Expiration Time, and

2. the denominator of which shall be the number of shares of Common Stock outstanding (including any tendered or exchanged shares) at the Offer Expiration Time multiplied by the Closing Sale Price of the Common Stock on the Trading Day next succeeding the Offer Expiration Time,

such adjustment to become effective immediately prior to the opening of business on the day following the Offer Expiration Time. In the event that such Person is obligated to purchase shares pursuant to any such tender or exchange offer, but such Person is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender or exchange offer had not been made. Notwithstanding the foregoing, the adjustment described in this subparagraph (e)(viii)(H) of Paragraph FOURTH shall not be made if, as of the Offer Expiration Time, the offering documents with respect to such offer disclose a plan or intention to cause the Corporation to engage in any transaction described in subparagraph (e)(ix) of this Paragraph FOURTH.

I. The Corporation may make such increases in the Conversion Rate in addition to those required by subparagraphs (e)(viii)(A), (B), (C), (D), (E), (F), (G) and (H) of this Paragraph FOURTH as the Board of Directors considers to be advisable to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes. To the extent permitted by applicable law, the Corporation from time to time may increase the Conversion Rate by any amount for any period of time if the Board of Directors shall have made a determination that such increase would be in the best interests of the Corporation, which determination shall be conclusive. Whenever the Conversion Rate is increased pursuant to the preceding sentence, the Corporation shall mail to holders of the Series C Convertible Preferred Stock a notice of the increase prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which they will be in effect.

J. No adjustment in the Conversion Rate shall be required unless such adjustment would require an increase or decrease of at least one percent (1%) in such rate; PROVIDED that any adjustments that by reason of this subparagraph (e)(viii)(J) of Paragraph FOURTH are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this subparagraph (e)(viii) of Paragraph FOURTH shall be made by the Corporation and shall be made to the nearest cent or to the nearest one-ten thousandth (1/10,000) of a share, as the case may be. No adjustment need be made for rights to purchase Common Stock pursuant to a Corporation plan for reinvestment of dividends or interest or, except as set forth in this subparagraph (e)(viii) of Paragraph FOURTH, for any issuance of Common Stock or convertible or exchangeable securities or rights to purchase Common Stock or convertible or exchangeable securities. To the extent the Securities become convertible into cash, assets, property or securities (other than Capital Stock of the Corporation), subject to subparagraph (e)(ix) of this Paragraph FOURTH, no adjustment need be made thereafter as to the cash, assets, property or such securities. Dividends will not accrue on any cash into which the Series C Convertible Preferred Stock is convertible.

K. Whenever the Conversion Rate is adjusted as herein provided, the Corporation shall promptly file with the Conversion Agent an Officer's certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a responsible officer of the Conversion Agent shall have received such Officer's certificate, the Conversion Agent shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Corporation shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to the each holder of Series C Convertible Preferred Stock at his last address appearing on the register within twenty (20) days after execution thereof. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

L. For purposes of this subparagraph (e)(viii) of Paragraph FOURTH, the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Corporation, unless such treasury shares participate in any distribution or dividend that requires an adjustment pursuant to this subparagraph (e)(viii) of Paragraph FOURTH, but shall include shares issuable in respect of scrip certificates issued in lieu of fractions of shares of Common Stock.

ix. Effect of Reclassification, Consolidation, Merger or Sale on Conversion Privilege.

A. If any of the following events occur, namely (i) any reclassification or change of the outstanding shares of Common Stock (other than a subdivision or combination to which subparagraph (e)(viii)(C) of this Paragraph FOURTH applies), (ii) any consolidation, merger or combination of the Corporation with another Person as a result of which holders of Common Stock shall be entitled to receive stock, other securities or other property or assets (including cash) with respect to or in exchange for such Common Stock, or (iii) any sale or conveyance of all or substantially all of the properties and assets of the Corporation to any other Person as a result of which holders of Common Stock shall be entitled to receive stock, other securities or other property or assets (including cash) with respect to or in exchange for such Common Stock, then each share of Series C Convertible Preferred Stock shall be convertible into the kind and amount of shares of stock, other securities or other property or assets (including cash) receivable upon such reclassification, change, consolidation, merger, combination, sale or conveyance by a holder of a number of shares of Common Stock issuable upon conversion of such Series C Convertible Preferred Stock (assuming, for such purposes, a sufficient number of authorized shares of Common Stock are available to convert all such Series C Convertible Preferred Stock) immediately prior to such reclassification, change, consolidation, merger, combination, sale or conveyance assuming such holder of Common Stock did not exercise his rights of election, if any, as to the kind or amount of stock, other securities or other property or assets (including cash) receivable upon such reclassification, change, consolidation, merger, combination, sale or conveyance (provided that, if the kind or amount of stock, other securities or other property or assets (including cash) receivable upon such reclassification, change, consolidation, merger, combination, sale or conveyance is not the same for each share of Common Stock in respect of which such rights of election shall not have been exercised ("non-electing share"), then for the purposes of this subparagraph (e)(ix) of Paragraph FOURTH the kind and amount of stock, other securities or other property or assets (including cash) receivable upon such reclassification, change, consolidation, merger, combination, sale or conveyance for each non-electing share shall be deemed to be the kind and amount so receivable per share by a plurality of the non-electing shares).

B. The Corporation shall cause notice of the application of this subparagraph (e)(ix) of Paragraph FOURTH within twenty (20) days after the occurrence of the events specified in subparagraph (e)(ix)(A) of this Paragraph FOURTH and shall issue a press release containing such information and publish such information on its website on the World Wide Web. Failure to deliver such notice shall not affect the legality or validity of such supplemental indenture.

C. The above provisions of this paragraph shall similarly apply to successive reclassifications, changes, consolidations, mergers, combinations, sales and conveyances, and the provisions of subparagraph (e)(viii) of this Paragraph FOURTH shall apply to any shares of Capital Stock received by the holders of Common

Stock in any such reclassification, change, consolidation, merger, combination, sale or conveyance.

D. If this subparagraph (e)(ix) of Paragraph FOURTH applies to any event or occurrence, subparagraph (e)(viii) of this Paragraph FOURTH shall not apply.

x. RIGHTS ISSUED IN RESPECT OF COMMON STOCK ISSUED UPON CONVERSION. Each share of Common Stock issued upon conversion of the Series C Convertible Preferred Stock shall be entitled to receive the appropriate number of common stock or preferred stock purchase rights, as the case may be, including without limitation, the rights under the Rights Agreement (collectively, the "Rights"), if any, that shares of Common Stock are entitled to receive and the certificates representing the Common Stock issued upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any shareholder rights agreement adopted by the Corporation, as the same may be amended from time to time (in each case, a "Rights Plan"). Provided that such Rights Plan requires that each share of Common Stock issued upon conversion of Series C Convertible Preferred Stock at any time prior to the distribution of separate certificates representing the Rights be entitled to receive such Rights, then, notwithstanding anything else to the contrary in this Amended and Restated Certificate of Incorporation, there shall not be any adjustment to the conversion privilege or Conversion Rate as a result of the issuance of Rights, but an adjustment to the Conversion Rate shall be made pursuant to subparagraph (e)(viii)(D) of this Paragraph FOURTH upon the separation of the Rights from the Common Stock.

xi. Fundamental Change.

A. REPURCHASE RIGHT. If there shall occur a Fundamental Change, shares of Series C Convertible Preferred Stock shall be purchased by the Corporation at the option of the holders thereof as of the date specified by the Corporation that is not less than 20 Business Days nor more than 35 Business Days after the occurrence of the Fundamental Change (the "Fundamental Change Purchase Date"), subject to satisfaction by or on behalf of any holder of the requirements set forth in subparagraph (e)(xi)(C) of this Paragraph FOURTH . The Purchase Price shall be paid, at the option of the Corporation, in cash, shares of Common Stock, or any combination thereof; PROVIDED that the Corporation shall not be permitted to pay all or any portion of the Purchase Price in shares of Common Stock unless:

1. the Corporation shall have given timely notice pursuant to subparagraph (e)(xi)(B) of this Paragraph FOURTH hereof of its intention to purchase all or a specified percentage of the Preferred Shares with shares of Common Stock as provided herein;

2. the Corporation shall have registered such shares of Common Stock under the Securities Act and the Exchange Act, in each case, if required;

3. such shares of Common Stock have been approved for listing of on a national securities exchange or have been approved for quotation in an inter-dealer quotation system of any registered United States national securities association; and

4. any necessary qualification or registration under

applicable state securities laws have been obtained, if required;

PROVIDED FURTHER that if the Corporation shall be prohibited under any agreements applicable to it from paying the Purchase Price in cash, or an event of default (howsoever described) shall arise under any such agreement upon the payment of the Purchase Price in cash, then, notwithstanding any notice by the Corporation to the contrary, the Corporation shall, to the extent not prohibited by such agreements and applicable law, pay the Purchase Price in Common Stock or, in the case of a merger in which the Corporation is not the surviving Person, Common Stock of the surviving Person or its direct or indirect parent. If the foregoing conditions to pay the Purchase Price in shares of Common Stock are not satisfied with respect to any holder or holders of Series C Convertible Preferred Stock prior to the close of business on the last day prior to the Fundamental Change Purchase Date and the Corporation has elected to purchase the Series C Convertible Preferred Stock pursuant to this subparagraph through the issuance of shares of Common Stock, then, notwithstanding any election by the Corporation to the contrary, the Corporation shall pay the entire Purchase Price of the Series C Convertible Preferred Stock of such holder or holders in cash.

B. NOTICE TO HOLDERS. Within 15 Business Days after the occurrence of a Fundamental Change, the Corporation shall mail a written notice of the Fundamental Change to each holder, issue a press release containing such notice and publish such notice on its website on the World Wide Web. The notice shall include the form of a Fundamental Change Purchase Notice to be completed by the holder and shall state:

1. the date of such Fundamental Change and, briefly, the events causing such Fundamental Change;

2. the date by which the Fundamental Change Purchase Notice pursuant to this subparagraph (e)(xi) of Paragraph FOURTH must be given;

3. the Fundamental Change Purchase Date;

4. the Purchase Price that will be payable with respect to the shares of Series C Convertible Preferred Stock as of the Fundamental Change Purchase Date, and whether such Purchase Price will be paid in cash, shares of Common Stock, or, if a combination thereof, the percentages of the Purchase Price in respect of which the Corporation will pay in cash and shares of Common Stock;

5. the name and address of each Paying Agent and Conversion Agent;

6. the Conversion Rate and any adjustments thereto;

7. that Series C Convertible Preferred Stock as to which a Fundamental Change Purchase Notice has been given may be converted into Common Stock pursuant to this Amended and Restated Certificate of Incorporation only to the extent that the Fundamental Change Purchase Notice has been withdrawn in accordance with the terms of this Amended and Restated Certificate of Incorporation;

8. the procedures that the holder of Series C Convertible Preferred Stock must follow to exercise rights under this subparagraph (e)(xi) of Paragraph FOURTH; and

9. the procedures for withdrawing a Fundamental Change Purchase Notice, including a form of notice of withdrawal.

If any of the Series C Convertible Preferred Stock is in the form of Global Preferred Shares, then the Corporation shall modify such notice to the extent necessary to accord with the procedures of the Depositary applicable to the purchase of Global Preferred Shares.

C. Conditions to Purchase.

1. A holder of shares of Series C Convertible Preferred Stock may exercise its rights specified in subparagraph (e)(xi)(A) of this Paragraph FOURTH upon delivery of a written notice (which shall be in substantially the form included as an attachment to the Series C Convertible Preferred Stock (attached as Exhibit E hereto) and which may be delivered by letter, overnight courier, hand delivery, facsimile transmission or in any other written form and, in the case of Global Preferred Shares, may be delivered electronically or by other means in accordance with the Depositary's customary procedures) of the exercise of such rights (a "Fundamental Change Purchase Notice") to any Transfer Agent at any time prior to the close of business on the Business Day immediately before the Fundamental Change Purchase Date.

2. The delivery of such share of Series C Convertible Preferred Stock to the Transfer Agent (together with all necessary endorsements) at the office of such Transfer Agent shall be a condition to the receipt by the holder of the Fundamental Change Purchase Price.

3. Any purchase by the Corporation contemplated pursuant to the provisions of this subparagraph (e)(xi)(C) of Paragraph FOURTH shall be consummated by the delivery of the consideration to be received by the holder promptly following the later of the Fundamental Change Purchase Date and the time of delivery of such share of Series C Convertible Preferred Stock to the Transfer Agent in accordance with this subparagraph (e)(xi) of Paragraph FOURTH.

D. WITHDRAWAL OF FUNDAMENTAL CHANGE. Notwithstanding anything herein to the contrary, any holder of Series C Convertible Preferred Stock delivering to a Transfer Agent the Fundamental Change Purchase Notice shall have the right to withdraw such Fundamental Change Purchase Notice in whole or as to a portion thereof that is a share of Series C Convertible Preferred Stock or an integral multiple thereof at any time prior to the close of business on the Business Day before the Fundamental Change Purchase Date by delivery of a written notice of withdrawal to the Transfer Agent in accordance with provisions of this subparagraph (e)(xi)(D) of Paragraph FOURTH. The Transfer Agent shall promptly notify the Corporation of the receipt by it of any Fundamental Change Purchase Notice or written withdrawal thereof. A Fundamental Change Purchase Notice may be withdrawn by means of a written notice of withdrawal delivered to the office of the Transfer Agent in accordance with the Fundamental Change Purchase Notice at any time prior to the close of business on the applicable Fundamental Change Purchase Date specifying:

1. if certificated shares of Series C Convertible Preferred Stock have been issued, the certificate numbers for such shares in respect of which such notice of withdrawal is being submitted, or if not, such information as required by the Depositary;

2. the number of shares of Series C Convertible Preferred Stock, in integral multiples, with respect to which such notice of withdrawal is being submitted; and

3. the number of shares of Series C Convertible Preferred Stock, if any, that remain subject to the original Fundamental Change Purchase Notice and have been or will be delivered for purchase by the Corporation.

The Transfer Agent will promptly return to the respective holders thereof any shares of Series C Convertible Preferred Stock with respect to which a Fundamental Change Purchase Notice has been withdrawn in compliance with this Amended and Restated Certificate of Incorporation, in which case, upon such return, the Fundamental Change Purchase Notice with respect thereto shall be deemed to have been withdrawn.

E. GLOBAL PREFERRED SHARES. Anything herein to the contrary notwithstanding, in the case of Global Preferred Shares, any Fundamental Change Purchase Notice may be delivered or withdrawn and the shares of Series C Convertible Preferred Stock in respect of such Global Preferred Shares may be surrendered or delivered for purchase in accordance with the applicable procedures of the Depositary as in effect from time to time.

F. EFFECT OF FUNDAMENTAL CHANGE PURCHASE NOTICE. Upon receipt by the Transfer Agent of the Fundamental Change Purchase Notice, the holder of the shares of Series C Convertible Preferred Stock in respect of which such Fundamental Change Purchase Notice was given shall (unless such Fundamental Change Purchase Notice is withdrawn as specified below) thereafter be entitled to receive the Purchase Price with respect to such shares of Series C Convertible Preferred Stock, subject to subparagraph (e)(xi)(C) of this Paragraph FOURTH hereof. Such Purchase Price shall be paid to such holder promptly following the later of (a) the Fundamental Change Purchase Date with respect to such shares of Series C Convertible Preferred Stock and (b) the time of delivery of such shares of Series C Convertible Preferred Stock to the Transfer Agent by the holder thereof in the manner required by this subparagraph. Shares of Series C Convertible Preferred Stock in respect of which a Fundamental Change Purchase Notice has been given by the holder thereof may not be converted into Common Stock on or after the date of the delivery of such Fundamental Change Purchase Notice unless such Fundamental Change Purchase Notice has first been validly withdrawn as specified in subparagraph (e)(xi)(D) of this Paragraph FOURTH above.

G. PAYMENT OF PURCHASE PRICE IN COMMON STOCK. Payment of the specified portion of the Purchase Price in shares of Common Stock pursuant to subparagraph (e)(xi)(A) of this Paragraph FOURTH hereof shall be made by the issuance of a number of shares of Common Stock equal to the quotient obtained by dividing (i) the portion of the Purchase Price, as the case may be, to be paid in shares of Common Stock by (ii) 97.5% of the average of the Closing Sale Prices of the Common Stock for the 5 Trading Days ending on the third Trading Day prior to the Fundamental Change Purchase Date (appropriately adjusted to take into account the occurrence, during such period of any event described in subparagraph (e)(viii) of this Paragraph FOURTH). The Corporation will not issue fractional shares of Common Stock in payment of the Purchase Price. Instead, the Corporation will pay cash based on the Closing Sale Price for all fractional shares on the Fundamental Change Purchase Date. If a holder of Series C Convertible Preferred Stock elects to have more than one share of Series C Convertible Preferred Stock purchased, the number of shares of Common Stock shall be based on the aggregate number of shares of Series C Convertible Preferred Stock to be purchased. Upon determination of the actual number of shares of Common Stock to be issued upon repurchase of Series C Convertible Preferred Stock, the Corporation shall be required to disseminate a press release through Dow Jones & Corporation, Inc. or Bloomberg Business News containing this information or publish the information on the Corporation's Web site or through such other public medium as the Corporation may use at that time.

H. DEPOSIT OF PURCHASE PRICE. Prior to 11:00 a.m. (New York City time) on the Business Day immediately following the Fundamental Change Purchase Date, the Corporation shall deposit with the Paying Agent an amount of cash (in immediately available funds if deposited on such Business Day), Common Stock, or combination of cash and Common Stock, as applicable, sufficient to pay the aggregate Purchase Price of all shares of Series C Convertible Preferred Stock or portions thereof which are to be purchased as of the Fundamental Change Purchase Date. The manner in which the deposit required by this subparagraph (e)(xi)(H) of this Paragraph FOURTH is made by the Corporation shall be at the option of the Corporation, PROVIDED, however, that such deposit shall be made in a manner such that the Paying Agent shall have immediately available funds on the date of deposit. If a Paying Agent holds, in accordance with the terms hereof, cash, Common Stock or cash and Common Stock, as applicable, sufficient to pay the Purchase Price of any share of Series C Convertible Preferred Stock for which a Fundamental Change Purchase Notice has been tendered and not withdrawn in accordance with this Amended and Restated Certificate of Incorporation on the Business Day following the Fundamental Change Purchase Date then, immediately after such Fundamental Change Purchase Date, such share of Series C Convertible Preferred Stock will cease to be outstanding, dividends (including Special Dividends) will cease to accrue and the rights of the holder in respect thereof shall terminate (other than the right to receive the Purchase Price as aforesaid). The Corporation shall publicly announce the number of shares of Series C Convertible Preferred Stock purchased as a result of such Fundamental Change on or as soon as practicable after the Fundamental Change Purchase Date.

I. SERIES C CONVERTIBLE PREFERRED STOCK PURCHASED IN PART. Upon surrender of a certificate or certificates representing shares of the Series C Convertible Preferred Stock that is or are purchased in part, the Corporation shall execute and the Transfer Agent shall authenticate and deliver to the holder, a new certificate of certificates representing shares of the Series C

Convertible Preferred Stock in an amount equal to the unpurchased portion of the shares of Series C Convertible Preferred Stock surrendered for partial purchase.

J. REPAYMENT TO THE CORPORATION. The Paying Agent shall return to the Corporation any cash that remains unclaimed for two years, subject to applicable unclaimed property law, together with interest, if any, thereon held by them for the payment of the Fundamental Change Purchase Price; PROVIDED, however, that to the extent that the aggregate amount of cash deposited by the Corporation pursuant to this subparagraph exceeds the aggregate Purchase Price of the Series C Convertible Preferred Stock or portions thereof which the Corporation is obligated to purchase as of the Fundamental Change Purchase Date, then on the Business Day following the Fundamental Change Purchase Date, the Paying Agent shall return any such excess to the Corporation. Thereafter, any holder entitled to payment must look to the Corporation for payment as general creditors, unless an applicable abandoned property law designates another Person.

xii. Voting Rights.

A. The holders of record of shares of the Series C Convertible Preferred Stock shall not be entitled to any voting rights except as hereinafter provided in this subparagraph (e)(xii) of Paragraph FOURTH, as otherwise provided in this Amended and Restated Certificate of Incorporation, or as otherwise provided by law.

B. The affirmative vote of holders of at least two-thirds of the outstanding shares of the Series C Convertible Preferred Stock and all other preferred stock ranking on a parity with the Series C Convertible Preferred Stock with like voting rights , voting as a single class, in person or by proxy, at a special meeting called for the purpose, or by written consent in lieu of meeting, shall be required to alter, repeal or amend, whether by merger, consolidation, combination, reclassification or otherwise, any provisions of this Amended and Restated Certificate of Incorporation if the amendment would amend, alter or affect the powers, preferences or rights of the Preferred Stock, so as to adversely affect the holders thereof, including, without limitation, the creation of, or increase in the authorized number of, shares of any class or series of Senior Stock; PROVIDED HOWEVER, that (i) any increase in the amount of the authorized common stock or authorized preferred stock or the creation and issuance of other series of common stock or preferred stock ranking on a parity with or junior to the preferred stock as to dividends and upon liquidation will not be deemed to materially and adversely affect such powers, preference or special rights; and (ii) the creation of, or increase in the authorized number of, shares of any class or series of Senior Stock shall be deemed to materially and adversely affect such powers, preference or special rights.

C. If at any time (1) dividends on any shares of Series C Convertible Preferred Stock or any other class or series of Parity Stock having like voting rights shall be in arrears for dividend periods, whether or not consecutive, containing in the aggregate a number of days equivalent to six calendar quarters or (2) the Corporation shall have failed to pay the Redemption Price when due or the Purchase Price when due, then, in each case, the holders of shares of Series C Convertible Preferred Stock (voting separately as a class with all other series of preferred stock ranking on parity with the Series C Convertible Preferred Stock upon which like voting rights have been conferred and are exercisable) will be entitled to elect at the next annual meeting of the stockholders of the Corporation or at a special meeting called for such purpose, whichever is earlier, two of the authorized number of the Corporation's directors (each, a "Series C Convertible Preferred Stock Director") at the next annual meeting of stockholders and each subsequent meeting until all dividends accumulated on the Series C Convertible Preferred Stock have been fully paid or set aside for payment. The term of office of such Series C Convertible Preferred Stock Directors will terminate immediately upon the termination of the right of the holders of Series C Convertible Preferred Stock to vote for directors. Each holder of shares of the Series C Convertible Preferred Stock will have one vote for each share of Series C Preferred Stock held. At any time after voting power to elect directors shall have become vested and be continuing in the holders of the Series C Convertible Preferred Stock pursuant to this subparagraph (e)(xii)(C) of Paragraph FOURTH, or if a vacancy shall exist in the offices of Series C Convertible Preferred Stock Directors, the Board of Directors may, and upon written request of the holders of record of at least 25% of the Outstanding Series C Convertible Preferred Stock addressed to the Chairman of the Board of the Corporation shall, call a special meeting of the holders of the Series C Convertible Preferred Stock (voting separately as a class with all other series of preferred stock ranking on parity with the Series C Convertible Preferred Stock upon which like voting rights have been conferred and are exercisable) for the purpose of electing the Series C Convertible Preferred Stock Directors that such holders are entitled to elect. At any meeting held for the purpose of electing Series C Convertible Preferred Stock Directors, the presence in person or by proxy of the holders of at least a majority of the Outstanding Series C Convertible Preferred Stock shall be required to constitute a quorum of such Series C Convertible Preferred Stock. Any vacancy occurring in the office of a Series C Convertible Preferred Stock Director may be filled by the remaining Series C Convertible Preferred Stock Director unless and until such vacancy shall be filled by the holders of the Series C Convertible Preferred Stock and other Parity Stock having like voting rights, if any. The Series C Convertible Preferred Stock Directors shall agree, prior to their election to office, to resign upon any termination of the right of the holders of Series C Convertible Preferred Stock to vote as a class for Series C Convertible Preferred Stock Directors as herein provided, and upon such termination, the Series C Convertible Preferred Stock Directors then in office shall forthwith resign.

xiii. TRANSFER AGENT AND REGISTRAR. The duly appointed Transfer Agent and Registrar for the Series C Convertible Preferred Stock shall be UMB Bank, N.A. The Corporation may, in its sole discretion, remove the Transfer Agent in accordance with the agreement between the Corporation and the Transfer Agent; provided that the Corporation shall appoint a successor transfer agent who shall accept such appointment prior to the effectiveness of such removal.

xiv. CURRENCY. All shares of Series C Convertible Preferred Stock shall be denominated in U.S. currency, and all payments and distributions thereon or with respect thereto shall be made in U.S. currency. All references herein to "$"or "dollars" refer to U.S.

currency.

xv. FORM.

A. Series C Convertible Preferred Stock shall be issued in the form of one or more permanent global shares of Series C Convertible Preferred Stock in definitive, fully registered form with the global legend (the "Global Shares Legend") and, until such time as otherwise determined by the Corporation and the Registrar, the restricted shares legend (the "Restricted Shares Legend"), each as set forth on the form of Series C Convertible Preferred Stock certificate attached hereto as Exhibit A (each, a "Global Preferred Share"), which is hereby incorporated in and expressly made a part of this Amended and Restated Certificate of Incorporation. The Global Preferred Share may have notations, legends or endorsements required by law, stock exchange rules, agreements to which the Corporation is subject, if any, or usage (provided that any such notation, legend or endorsement is in a form acceptable to the Corporation). The Global Preferred Share shall be deposited on behalf of the holders of the Series C Convertible Preferred Stock represented thereby with the Registrar, at its New York office, as custodian for DTC or a Depositary, and registered in the name of the Depositary or a nominee of the Depositary, duly executed by the Corporation and countersigned and registered by the Registrar as hereinafter provided. The aggregate number of shares represented by each Global Preferred Share may from time to time be increased or decreased by adjustments made on the records of the Registrar and the Depositary or its nominee as hereinafter provided. This subparagraph (e)(xv) of Paragraph FOURTH shall apply only to a Global Preferred Share deposited with or on behalf of the Depositary. The Corporation shall execute and the Registrar shall, in accordance with this subparagraph, countersign and deliver initially one or more Global Preferred Shares that (i) shall be registered in the name of Cede & Co. or other nominee of the Depositary and (ii) shall be delivered by the Registrar to Cede & Co. or pursuant to instructions received from Cede & Co. or held by the Registrar as custodian for the Depositary pursuant to an agreement between the Depositary and the Registrar. Members of, or participants in, the Depositary ("Agent Members") shall have no rights under this Amended and Restated Certificate of Incorporation with respect to any Global Preferred Share held on their behalf by the Depositary or by the Registrar as the custodian of the Depositary or under such Global Preferred Share, and the Depositary may be treated by the Corporation, the Registrar and any agent of the Corporation or the Registrar as the absolute owner of such Global Preferred Share for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Corporation, the Registrar or any agent of the Corporation or the Registrar from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and its Agent Members, the operation of customary practices of the Depositary governing the exercise of the rights of a holder of a beneficial interest in any Global Preferred Share. Owners of beneficial interests in Global Preferred Shares shall not be entitled to receive physical delivery of certificated shares of Series C Convertible Preferred Stock, unless (x) DTC is unwilling or unable to continue as Depositary for the Global Preferred Share and the Corporation does not appoint a qualified replacement for DTC within 90 days, (y) DTC ceases to be a "clearing agency" registered under the Exchange Act or (z) the Corporation decides to discontinue the use of book-entry transfer through DTC (or any successor Depositary). In either such case, the Global Preferred Share shall be exchanged in whole for definitive shares of Series C Convertible Preferred Stock in registered form, with the same terms and of an equal aggregate Liquidation Preference, and bearing a Restricted Shares Legend (unless the Corporation determines otherwise in accordance with applicable law). Definitive shares of Series C Convertible Preferred Stock shall be registered in the name or names of the Person or Person specified by DTC in a written instrument to the Registrar.

B. 1. An Officer shall sign the Global Preferred Share for the Corporation, in accordance with the Corporation's bylaws and applicable law, by manual or facsimile signature.

2. If an Officer whose signature is on a Global Preferred Share no longer holds that office at the time the Transfer Agent authenticates the Global Preferred Share, the Global Preferred Share shall be valid nevertheless.

3. A Global Preferred Share shall not be valid until an authorized signatory of the Transfer Agent manually countersigns Global Preferred Share. The signature shall be conclusive evidence that the Global Preferred Share has been authenticated under this Amended and Restated Certificate of Incorporation. Each Global Preferred Share shall be dated the date of its authentication.

xvi. Registration; Transfer.

A. The Series C Convertible Preferred Stock and the Common Stock issuable upon conversion of the shares of Series C Convertible Preferred Stock have not been registered under the Securities Act and may not be resold, pledged or otherwise transferred prior to the date when they no longer constitute "restricted securities" for purposes of Rule 144(k) under the Securities Act other than (i) to the Corporation, (ii) to "qualified institutional buyers" pursuant to and in compliance with Rule 144A under the Securities Act ("Rule 144A"), (iii) pursuant to an exemption from the registration requirements of the Securities Act provided by Rule 144 under the Securities Act or (iv) pursuant to an effective registration statement under the Securities Act, in each case, in accordance with any applicable securities laws of any state of the United States.

B. Notwithstanding any provision to the contrary herein, so long as a Global Preferred Share remains outstanding and is held by or on behalf of the Depositary, transfers of a Global Preferred Share, in whole or in part, or of any beneficial interest therein, shall only be made in accordance with this subparagraph (e)(xvi) of Paragraph FOURTH; PROVIDED, however, that a beneficial interest in a Global Preferred Share bearing the Restricted Shares Legend may be transferred to a Person who takes delivery thereof in the form of a beneficial interest in a different Global Preferred Share not bearing the Restricted Shares Legend in accordance with the transfer restrictions set forth in the Restricted Shares Legend and the provisions set forth in subparagraph (e)(xvi)(C)(2) of this Paragraph FOURTH.

C. 1. Except for transfers or exchanges made in accordance with subparagraph (e)(xvi)(C)(2) of this Paragraph FOURTH, transfers of a Global Preferred Share shall be limited to transfers of such Global Preferred Share in whole, but not in part, to nominees of the Depositary or to a successor of the Depositary or such successor's nominee.

2. If an owner of a beneficial interest in a Global Preferred Share deposited with the Depositary or with the Registrar as custodian for the Depositary wishes at any time to transfer its interest in such Global Preferred Share bearing the Restricted Shares Legend to a Person who is eligible to take delivery thereof in the form of a beneficial interest in a Global Preferred Share not bearing the Restricted Shares Legend, such owner may, subject to the rules and procedures of the Depositary, cause the exchange of such interest for a new beneficial interest in the applicable Global Preferred Share. Upon receipt by the Registrar at its office in The City of New York of (A) instructions from the holder directing the Registrar to transfer its interest in the applicable Global Preferred Share, such instructions to contain the name of the transferee and appropriate account information, (B) a certificate in the form of Certificate of Transfer on the reverse side of the form of Series C Convertible Preferred Stock certificate attached hereto as Exhibit B, given by the transferor, to the effect set forth therein, and (C) such other certifications, legal opinions and other information as the Corporation or the Registrar may reasonably require to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act, then the Registrar shall instruct the Depositary to reduce or cause to be reduced such Global Preferred Share bearing the Restricted Shares Legend (in the form attached as Schedule A) by the number of shares of the beneficial interest therein to be exchanged and to debit or cause to be debited from the account of the Person making such transfer the beneficial interest in the Global Preferred Share that is being transferred, and concurrently with such reduction and debit, the Registrar will instruct the Depositary to increase or cause to be increased the applicable Global Preferred Share not bearing the Restricted Shares Legend by the aggregate number of shares being exchanged and to credit or cause to be credited to the account of the transferee the beneficial interest in the Global Preferred Share that is being transferred.

D. Except in connection with a Shelf Registration Statement contemplated by and in accordance with the terms of the Registration Rights Agreement relating to the Series C Convertible Preferred Stock and shares of Common Stock issuable on conversion of the Series C Convertible Preferred Stock (collectively, the "Registrable Securities") if shares of Series C Convertible Preferred Stock are issued upon the transfer, exchange or replacement of Series C Convertible Preferred Stock bearing the Restricted Shares Legend, or if a request is made to remove such Restricted Shares Legend on Series C Convertible Preferred Stock, the Series C Convertible Preferred Stock so issued shall bear the Restricted Shares Legend and the Restricted Shares Legend shall not be removed unless there is delivered to the Corporation and the Registrar such satisfactory evidence, which may include an opinion of counsel licensed to practice law in the State of New York, as may be reasonably required by the Corporation or the Registrar, that neither the legend nor the restrictions on transfer set forth therein are required to ensure that transfers thereof comply with the provisions of Rule 144A or Rule 144 under the Securities Act or that such shares of Series C Convertible Preferred Stock are not "restricted securities" within the meaning of Rule 144 under the Securities Act. Upon provision of such satisfactory evidence, the Registrar, at the direction of the Corporation, shall countersign and deliver shares of Series C Convertible Preferred Stock that do not bear the Restricted Shares Legend.

E. The Corporation will refuse to register any transfer of Series C Convertible Preferred Stock or any Common Stock issuable upon conversion of the shares of Series C Convertible Preferred Stock that is not made in accordance with the provisions of the Restricted Shares Legend and the provisions of Rule 144A or pursuant to a registration statement that has been declared effective under the Securities Act or pursuant to an available exemption from the registration requirements of the Securities Act; PROVIDED that the provisions of this subparagraph D shall not be applicable to any Series C Convertible Preferred Stock that does not bear any Restricted Shares Legend or to any Common Stock that does not bear the Common Share Legend.

F. Common Stock issued upon a conversion of the Series C Convertible Preferred Stock prior to the effectiveness of a Shelf Registration Statement shall be delivered in certificated form and shall bear the common share legend (the "Common Share Legend") set forth in Exhibit C hereto and include on its reverse side the Form of Certificate of Transfer for Common Stock set out in Exhibit D. If (i) shares of Common Stock issued prior to the effectiveness of a Shelf Registration Statement are to be registered in a name other than that of the holder of Series C Convertible Preferred Stock or (ii) shares of Common Stock represented by a certificate bearing the Common Share Legend are transferred subsequently by such holder, then the holder must deliver to the Registrar a certificate in substantially the form of Exhibit D as to compliance with the restrictions on transfer applicable to such Common Stock and the Registrar shall not be required to register any transfer of such Common Stock not so accompanied by a properly completed certificate. Such Common Share Legend may be removed, and new certificates representing the Common Stock may be issued, upon the presentation of satisfactory evidence that such Common Share Legend is no longer required as described above in subparagraph (e)(xvi)(C) of this Paragraph FOURTH with respect to the Series C Convertible Preferred Stock.

xvii. Paying Agent and Conversion Agent.

A. The Corporation shall maintain in the Borough of Manhattan, City of New York, State of New York (i) an office or agency where Series C Convertible Preferred Stock may be presented for payment (the "Paying Agent") and (ii) an office or agency where Series C Convertible Preferred Stock may be presented for conversion (the "Conversion Agent"). The Transfer Agent shall act as Paying Agent and Conversion Agent, unless another Paying Agent or Conversion Agent is appointed by the Corporation. The Corporation may appoint the Registrar, the Paying Agent and the Conversion Agent and may appoint one or more additional paying agents and one or more additional conversion agents in such other locations as it shall determine. The term "Paying Agent" includes any additional paying agent and the term

"Conversion Agent" includes any additional conversion agent. The Corporation may change any Paying Agent or Conversion Agent without prior notice to any holder. The Corporation shall notify the Registrar of the name and address of any Paying Agent or Conversion Agent appointed by the Corporation. If the Corporation fails to appoint or maintain another entity as Paying Agent or Conversion Agent, the Registrar shall act as such. The Corporation or any of its Affiliates may act as Paying Agent, Registrar, co-registrar or Conversion Agent.

B. Payments due on the Series C Convertible Preferred Stock shall be payable at the office or agency of the Corporation maintained for such purpose in The City of New York and at any other office or agency maintained by the Corporation for such purpose. Payments shall be payable by United States dollar check drawn on, or wire transfer (provided, that appropriate wire instructions have been received by the Registrar at least 15 days prior to the applicable date of payment) to a U.S. dollar account maintained by the holder with, a bank located in New York City; PROVIDED that at the option of the Corporation, payment of dividends may be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Series C Convertible Preferred Stock register. Notwithstanding the foregoing, payments due in respect of beneficial interests in the Global Preferred Share shall be payable by wire transfer of immediately available funds in accordance with the procedures of the Depositary.

xviii. HEADINGS. The headings of the paragraphs and subparagraphs of this Amended and Restated Certificate of Incorporation are for convenience of reference only and shall not define, limit or affect any of the provisions hereof.

f. COMMON SECURITIES

i. Voting Rights.

A. COMMON STOCK. Except as set forth herein or as otherwise required by law, each outstanding share of Common Stock shall be entitled to vote on each matter on which the stockholders of the Corporation shall be entitled to vote, including the election of directors, and each holder of Common Stock shall be entitled to one vote for each share of such stock held by such holder. B. CLASS A CONVERTIBLE COMMON STOCK. Each holder of Class A Convertible Common Stock shall be entitled to one vote for each share of such stock held by such holder. Except as set forth herein or as otherwise required by law, each outstanding share of Class A Convertible Common Stock shall be entitled to vote:

1. on each matter on which the stockholders of the Corporation shall be entitled to vote, including the election of directors, provided that, with respect to the election of directors other than the Class A Directors, the Class A Convertible Common Stock shall be voted in favor of nominees recommended by the Board of Directors who were nominated in compliance with Article V of the Stockholders' Agreement, and

2. separately as a class, to elect Class A Director(s) as provided below:

(a) From and after the effectiveness of this Amended and Restated Certificate of Incorporation until such time as the TMM Holders cease to beneficially own in the aggregate at least 75% of the Voting Securities initially acquired by MM pursuant to the Merger contemplated by the Acquisition Agreement (80% if a Change of Control of TMM or any TMM Holder shall have occurred), two members of the Board of Directors will be elected by the holders of the Class A Convertible Common Stock voting as a separate class.

(b) At such time as the TMM Holders cease to beneficially own in the aggregate at least 75% of the Voting Securities initially acquired by MM pursuant to the Merger contemplated by the Acquisition Agreement (80% if a Change of Control of TMM or any TMM Holder shall have occurred) and provided that such TMM Holders continue to beneficially own in the aggregate at least 40% of the Voting Securities initially acquired by MM pursuant to the Merger contemplated by the Acquisition Agreement, the number of directors which the holders of Class A Convertible Common Stock have the right to elect voting as a separate class will be decreased from two to one.

(c) At such time as the TMM Holders cease to beneficially own in the aggregate at least 40% of the Voting Securities initially acquired by MM pursuant to the Merger contemplated by the Acquisition Agreement, the right of the holders of Class A Convertible Common Stock voting as a separate class to elect any member of the Board of Directors shall terminate.

(d) Notwithstanding anything contained herein to the contrary, if a Change of Control of TMM or any TMM Holder shall have occurred and the acquiror is a Competitor, the right of the holders of Class A Convertible Common Stock voting as a separate class to elect any member(s) of the Board of Directors shall immediately terminate.

ii. DIVIDENDS AND DISTRIBUTIONS. Subject to the prior rights of holders of all classes of stock at the time outstanding having prior rights as to dividends, the Board of Directors may cause dividends to be paid to the holders of shares of Common Securities out of funds legally available for the payment of dividends by declaring an amount per share as a dividend. When and as dividends or other distributions (including without limitation any grant or distribution of rights to subscribe for or purchase shares of capital stock or securities or indebtedness convertible into capital stock of the Corporation) are declared, whether payable in cash, in property or in shares of stock of the Corporation the holders of Common Securities shall be entitled to share equally, share for share, in such dividends or other distributions as if all such shares were of a single class.

iii. LIQUIDATION. Subject to the prior rights of holders of all classes of stock outstanding having prior rights with respect to the assets of the Corporation, in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, holders of Common Securities shall be entitled to share ratably according to the number of shares held by them, in all assets of the Corporation available for distribution to its stockholders.

iv. Conversion.

A. CONVERSION OF CLASS A CONVERTIBLE COMMON STOCK. The Class A Convertible Common Stock is not convertible into any other security except as expressly set forth herein:

1. Optional Conversion. Any shares of Class Convertible Common Stock may be converted at any time at the option of the holder thereof into an equal number of shares of Common Stock.

2. Mandatory Conversion. The shares of Class A Convertible Common Stock shall be converted into shares of Common Stock automatically as set forth below:

(a) subject to the Transfer Restrictions, upon a Transfer by any TMM Holder of any shares of Class A Convertible Common Stock to a Person other than TMM, TMMH, MM, or the Principal Stockholders or an entity which is an Affiliate of TMM, TMMH, MM, or of the Principal Stockholders, any shares of Class A Convertible Common Stock so Transferred shall automatically, without any action on part of the transferor, the transferee or the Corporation, be converted into an equal number of shares of Common Stock upon the consummation of such Transfer.

(b) all outstanding shares of Class A Convertible Common Stock shall be converted automatically, without any action on the part of any Person, into an equal number of shares of Common Stock on the first day on which the TMM Holders, in the aggregate, cease to beneficially own, in the aggregate, at least 40% of the Voting Securities initially acquired by MM pursuant to the Merger contemplated by the Acquisition Agreement; or

(c) all outstanding shares of Class A Convertible Common Stock shall be converted automatically, without any action on the part of any Person, into an equal number of shares of Common Stock upon the occurrence of a Change of Control of the Corporation;

(d) all outstanding shares of Class A Convertible Common Stock held by any TMM Holder shall be converted automatically, without any action on the part of any Person, into an equal number of shares of Common Stock upon the occurrence of a Change of Control of such TMM Holder, if after such Change of Control a Competitor has Beneficial Ownership of more than a majority of the Total Voting Power of such TMM Holder.

B. Conversion Procedures and Effect.

1. Mechanics of Optional Conversion. In order to facilitate optional conversions of Class A Convertible Common Stock into Common Stock, any TMM Holder shall, at its option, deliver written notice of the proposed conversion of Class A Convertible Common Stock into an equal number of shares of Common Stock (a "Conversion Notice"), together with the certificate or certificates representing such shares to be converted, to the offices or agencies maintained by the Corporation for such purposes (the "Conversion Agent"). The Conversion Notice shall state the number of shares being converted. As promptly as practicable

after the surrender of such shares of Class A Convertible Common Stock as aforesaid, the Corporation shall issue and deliver at such Conversion Agent to such TMM Holder a certificate for the number of full shares of Common Stock issuable upon the conversion of such shares. A certificate will be issued for the balance of the shares of Class A Convertible Common Stock in any case in which fewer than all of the shares of Class A Convertible Common Stock represented by a certificate are to be converted.

2. Mechanics of Automatic Conversion. Following any automatic conversion, the share or shares of Class A Convertible Common Stock so converted shall cease to be outstanding (notwithstanding the fact that the holder or holders may not have surrendered the certificate or certificates representing such Class A Convertible Common Stock for conversion), and such certificate or certificates shall thereafter represent solely the right to receive a certificate or certificates for Common Stock issuable upon conversion of the Class A Convertible Common Stock so converted, upon surrender of such certificate or certificates to the Conversion Agent. As promptly as practicable after the surrender of such shares of Class A Convertible Common Stock as aforesaid, the Corporation shall issue and deliver at such Conversion Agent to such holder, or on the holder's written order, a certificate or certificates for the number of full shares of Common Stock issuable upon the conversion of such shares.

3. Mechanics of Transfers to Third Parties. In order to facilitate transfers of Class A Convertible Common Stock and, except for Transfers to Affiliates in accordance with the Stockholders' Agreement, the conversion of such shares into Common Stock on the Corporation's stock transfer records) in connection with any permitted Transfer hereunder, the transferring TMM Holder shall deliver, at least one (1) business day prior to the proposed trade date of such Transfer, written notice of the proposed Transfer (a "Transfer Notice"), together with the certificate or certificates representing the shares to be transferred, to the Conversion Agent. The Transfer Notice shall state the number of shares being transferred and converted, and the name or names, together with the address or addresses, in which the certificate or certificates for Common Stock which shall be issuable upon such conversion shall be issued. As promptly as practicable after the surrender of such shares of Class A Convertible Common Stock as aforesaid, the Corporation shall issue and deliver at such Conversion Agent to such holder, or on the holder's written order, a certificate or certificates for the number of full shares of Common Stock issuable upon the conversion of such shares. Certificates will be issued for the balance of the shares of Class A Convertible Common Stock in any case in which fewer than all of the shares of Class A Convertible Common Stock represented by a certificate are to be transferred and converted.

4. Timing and Effect. Each conversion of Class A Convertible Common Stock in accordance herewith shall be deemed to have been effected immediately prior to the close of business on the date the share is converted automatically, or in the case of optional conversions or

transfers to third parties on the date the Conversion Notice or Transfer Notice is received by the Conversion Agent, in accordance herewith. In each such case the person or persons in whose name or names any certificate or certificates for Common Stock shall be issuable upon such conversion shall be deemed to have become the holder or holders of record of the Common Stock represented thereby at the effective date of such conversion, unless the stock transfer books of the Corporation shall be closed on such date, in which event such conversion shall be deemed to have been effected immediately following the opening of business on the next day on which the stock transfer books of the Corporation shall be open.

C. Stock Splits; Adjustments.

1. If the Corporation shall in any manner subdivide (by stock split, stock dividend or otherwise) or combine (by reverse stock split or otherwise) the outstanding shares of any class of Common Securities, the outstanding shares of each other class of Common Securities shall be subdivided or combined, as the case may be, to the same extent, share and share alike, and effective provision shall be made for the protection of the conversion rights hereunder.

2. In case of any reorganization, reclassification or change of shares of any class of Common Securities (other than a change in par value or from par to no par value as a result of a subdivision or combination), or in case of any consolidation of the Corporation with one or more corporations or a merger of the Corporation with another corporation, each holder of a share of Common Securities, irrespective of class, shall have the right at any time thereafter, so long as the conversion right hereunder with respect to such share would exist had such event not occurred, to convert such share into the kind and amount of shares of stock and other securities and properties (including cash) receivable upon such reorganization, reclassification, change, consolidation, merger, sale, lease or other disposition by a holder of the number of shares of the class of Common Stock into which such shares of Common Stock might have been converted immediately prior to such reclassification, change, consolidation, merger, sale, lease or other disposition. In the event of such a reorganization, reclassification, change, consolidation, merger, sale, lease or other disposition, effective provision shall be made in the certificate of incorporation of the resulting or surviving corporation or otherwise for the protection of the conversion rights of the shares of Common Stock of each class that shall be applicable, as nearly as reasonably may be, to any such other shares of stock and other securities and property deliverable upon conversion of shares of Common Stock into which such Common Stock might have been converted immediately prior to such event.

D. RESERVATION OF SHARES. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of each class of Common Securities or its treasury shares, solely for the purposes of issuance upon the conversion of shares of any class of Common Securities, such number of shares of such class as are then issuable upon the conversion of all outstanding shares of each such class of Common Securities.

E. PAYMENT OF TRANSFER TAXES. The issuance of certificates for shares of any class of Common Securities upon conversion of shares of any other class of Common Securities shall be made without charge to the holders of such shares for any issuance tax in respect thereof or other cost incurred by the Corporation in connection with such conversion and the related issuance of shares of Common Securities; provided, however, that the Corporation shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any certificate in a name other than that of the holder of the Common Securities converted and no such issue or delivery shall be made unless and until the person requesting such issue or delivery has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

v. Restrictions on Transfer.

A. Dispositions to Competitors.

1. For a period of five years from and after the effectiveness of this Amended and Restated Certificate of Incorporation, the TMM Holders shall not, directly or indirectly, alone or in concert with others, sell, assign, transfer, pledge, hypothecate, otherwise subject to any lien, grant any option with respect to or otherwise dispose of any interest in (or enter into an agreement or understanding with respect to the foregoing) any Voting Securities (a "Disposition") to a Competitor; provided that no Disposition pursuant to a Public Offering or a Rule 144 Transaction will be deemed to violate this prohibition if the selling TMM Holder(s) invoke and follow or require participating underwriters or brokers to invoke and follow, appropriate and reasonable procedures (subject to the prior approval of the Corporation, which shall not be unreasonably withheld) designed to prevent the sale of such Voting Securities to any Competitor.

2. After the earliest of (a) five years following the date hereof, or (b) the first date on which the TMM Holders beneficially own in the aggregate, directly or indirectly and alone or as part of a Group, less than 15% of the outstanding Voting Securities of the Corporation, (such earlier time being referred to herein as the "ROFR Commencement Date"), any TMM Holder may sell Voting Securities to a Competitor so long as the procedures set forth in this subparagraph (f)(v)(A)(1) of Paragraph FOURTH are followed. If after the ROFR Commencement Date the selling TMM Holder proposes to sell Voting Securities to a Competitor (it being agreed that no Disposition pursuant to a Public Offering or a Rule 144 Transaction will be deemed to give rise to this right of first refusal), then the Corporation shall have a right of first refusal. If such a Disposition to a Competitor is proposed, the selling TMM Holder shall deliver a written notice to the Corporation advising the Corporation of the number of Voting Securities such holder desires to sell and the bona fide terms, including price, of any such proposed transaction. The

Corporation shall have the right (but not the obligation) to purchase, in whole but not in part, such Voting Securities at a per share cash purchase price equal to the purchase price in the agreement between the selling TMM Holder and a Competitor. In order to exercise its purchase rights hereunder, the Corporation must deliver a written notice to the seller to such effect within 10 business days after receipt of written notice of the proposed sale. If the Corporation timely elects to purchase the Voting Securities specified in the notice, it shall complete the purchase within 60 days from the delivery of such notice, unless a longer time is required to secure any regulatory approvals, in which case the purchase shall occur on the second business day after the receipt of any such required approvals. Unless the Corporation exercises its Right of First Refusal by delivering written notice to the selling TMM Holder prior to the expiration of the offering period described above, the selling TMM Holder shall be entitled to sell such Voting Securities which the Corporation has not elected to purchase during the 120 days following such expiration on terms and conditions no more favorable to the purchasers thereof than those offered to the Corporation. Any Voting Securities not so sold by the selling TMM Holder during such 120 day period may not thereafter be sold unless again offered to the Corporation pursuant to the terms of this provision. This purchase right shall be assignable, in whole or in part, by the Corporation to any other Person, but no such assignment shall relieve the Corporation of its obligation to assure payment of the purchase price for any Voting Securities as to which a notice of election to exercise the Right of First Refusal is made by the Corporation or any such assignee.

B. DISPOSITIONS TO AFFILIATES. For a period of five years from and after the effectiveness of this Amended and Restated Certificate of Incorporation, each of the TMM Holders shall not, directly or indirectly, alone or in concert with others, effect a Disposition of Voting Securities to any Affiliate of either TMM, TMMH or MM or any Affiliate of any Principal Stockholders unless such Affiliate agrees in writing to be bound by the terms of the Stockholders' Agreement and provided that the TMM Holders shall remain responsible, jointly and severally, for any breaches of the Stockholders' Agreement by such Affiliate (provided that any TMM Holder which is a Principal Stockholder shall be severally responsible only for breaches by an Affiliate of the Principal Stockholder to which such Principal Stockholder effects a Distribution).

C. DISPOSITIONS TO CERTAIN HOLDERS. Subject to the provisions of subparagraphs (f)(v)(A) and (B) of this Paragraph FOURTH, the TMM Holders may sell any or all Voting Securities beneficially owned by such Person provided that:

1. No Disposition (whether in a single transaction or series of transactions) that in the aggregate represents 5% or more of the outstanding Voting Securities shall be made to any Person (other than a Permitted Underwriter or an Affiliate pursuant to and in accordance with subparagraph (f)(v)(B) of this Paragraph FOURTH) other than a Person who is eligible to file reports pursuant to Rule 13d-1 under the Exchange Act (a "13G Filer"), unless such Person would not

be so eligible with respect to the Voting Securities acquired from the Disposition; and

2. No Disposition (whether in a single transaction or series of transactions) of Voting Securities that in the aggregate represents 5% or more of the outstanding Voting Securities shall be made to any 13G Filer unless:

(a) such 13G Filer would continue to be eligible to file reports pursuant to Section 13G under the Exchange Act with respect to the Voting Securities after giving effect to the proposed acquisition of such Voting Securities; and

(b) the selling TMM Holder shall have delivered a written notice to the Corporation advising the Corporation of the number of Voting Securities the seller desires to sell and the terms, including price, of the proposed transaction and the Corporation has been provided the right (but not the obligation) to purchase, in whole or in part, such Voting Securities at a per share cash purchase price equal to the purchase price in the proposed transaction. In order to exercise its purchase rights hereunder, the Corporation must deliver a written notice to the seller to such effect within five business days after receipt of written notice of the proposed sale. Upon the expiration of the offering period described above, the selling TMM Holder shall be entitled to sell such Voting Securities which the Corporation has not elected to purchase during the 120 days following such expiration on terms and conditions no more favorable to the purchasers thereof than those offered to the Corporation. Any Voting Securities not so sold by the selling TMM Holder during such 120 day period may not thereafter be sold unless again offered to the Corporation pursuant to the terms of this provision. This purchase right shall be assignable, in whole or in part, by the Corporation to any other Person, but no such assignment shall relieve the Corporation of its obligation to assure payment of the purchase price for any Voting Securities as to which the Corporation has delivered such a written notice.

3. Notwithstanding the provisions of subparagraph (f)(v)(C)(1) and (C)(2) of this Paragraph FOURTH, no Disposition (whether in a single transaction or a series of transactions) shall be made to any Person or Group that would, together with such Person's Affiliates and Associates and after giving effect to the acquisition of such Voting Securities, beneficially own or have the right to acquire more than 15% of the Total Voting Power.

D. PLEDGES. Subject to the provisions contained herein a TMM Holder may pledge or hypothecate as security for any indebtedness or other obligations any or all Voting Securities beneficially owned by such Person; provided that such TMM Holder obtains written consent from the pledgee that upon the occurrence of an event which gives the pledgee the right to foreclose on the pledged Voting Securities ("Foreclosure Event") such pledgee shall provide to the Corporation prompt written notice of such Foreclosure Event and provide the Corporation the right to purchase, in whole or in part, such Voting Securities at a cash purchase price equal to the average closing price of the Corporation's Common Stock on the New York Stock Exchange over the five consecutive trading days preceding the date of receipt of the notice of the pending foreclosure sale. In order to exercise its purchase rights hereunder, the Corporation must deliver a written notice to the pledgee to such effect within five business days after receipt of written notice of the Foreclosure Event and complete such purchase within 60 days from the delivery of such notice unless a longer time is required to secure any regulatory approvals, in which case the purchase shall occur on the second business day after the receipt of any such required approvals. This purchase right shall be assignable, in whole or in part, by the Corporation to any other Person, but no such assignment shall relieve the Corporation of its obligation to assure payment of the purchase price for any Voting Securities as to which the Corporation has delivered such a written notice.

E. MECHANICS OF TRANSFER AND CONVERSION. Each of the TMM, MM and the Principal Stockholders shall, and shall cause each of their respective Affiliates to, comply with the procedures and provisions regarding the transfer and conversion of Class A Convertible Common Stock set forth in this Amended and Restated Certificate of Incorporation of the Corporation.

F. PERMITTED DISPOSITIONS IN CONNECTION WITH CERTAIN TRANSACTIONS. Notwithstanding the provisions of this subparagraph (f)(v) of Paragraph FOURTH, the TMM Holders shall be permitted to make a Disposition in connection with any tender or exchange offer made by an unaffiliated third party to acquire the Corporation's Common Stock so long as the following conditions are satisfied (1) the TMM Holders are in compliance with the provisions of Section 2.1(a) of the Stockholders' Agreement with respect to such tender or exchange offer; (2) such tender or exchange offer must be for all of the outstanding Voting Securities; (3) the offeror shall have made a commitment to effect a merger after the completion of the tender or exchange offer to provide the same consideration being provided to the holders of the securities tendered in the tender offer; (4) the holders of a majority of the Voting Securities of the Corporation, other than the Voting Securities beneficially owned by the TMM Holders, shall have tendered their Voting Securities pursuant to such tender or exchange offer and such Voting Securities shall not have been withdrawn; (5) such tender or exchange offer shall not be subject to any financing condition; and (6) the TMM Holders may not tender, or publicly disclose their intention to tender, prior to the business day immediately preceding the scheduled expiration of the tender or exchange offer.

G. EFFECT OF NON-COMPLIANCE. Any attempted Disposition of any Voting Securities in violation of any provision of this Amended and Restated Certificate of Incorporation or the Stockholders' Agreement shall be void, and the Corporation shall not record such Disposition on its books or treat any purported transferee of such Voting Securities as the owner of such shares for any purpose including without limitation, voting, receiving dividends or other distributions and being entitled to any benefits of this Amended and Restated Certificate of Incorporation or the Stockholders' Agreement.

H. The TMM Holders shall not, directly or indirectly, alone or in concert with others, effect a Disposition of Voting Securities, except as otherwise provided herein, in the Stockholders' Agreement or in the Registration Rights Agreement.

I. TERMINATION. Except for subparagraph (f)(v)(A)(2) of this Paragraph FOURTH (which shall survive indefinitely), the rights and obligations under this subparagraph (f)(v) of Paragraph FOURTH shall immediately and irrevocably terminate:

1. on the first date the TMM Holders beneficially own in the aggregate less than 15% of the outstanding Voting Securities of the Corporation for at least 30 consecutive days, provided any subsequent purchase of Voting Securities of the Corporation by any of the TMM Holders during the five (5) year period following the date of the Stockholders' Agreement shall be subject to the provisions of Section 203 of the Delaware General Corporate Law and the terms of the Corporation's Rights Agreement with Harris Trust & Savings Bank, Rights Agent, dated September 15, 1995, as in effect on the date hereof; or

2. a Change of Control of the Corporation.

vi. Pre-Emptive Rights.

A. Subject to subparagraph (f)(vi)(D) of this Paragraph FOURTH below, except for issuances of Common Stock (including for this purpose, options, warrants and other securities convertible into or exercisable for Common Stock) issued:

1. to the Corporation's employees, directors, consultants, agents, independent contractors or other service providers in connection with a Plan existing on the date hereof or a Plan approved by the Board of Directors and adopted by the Corporation after the date hereof;

2. upon the conversion of Class A Convertible Common Stock;

3. upon the exercise of any options, warrants, convertible or exchangeable securities which are outstanding as of the date hereof; or

4. in connection with the acquisition (by merger, consolidation, acquisition of assets or equity interests or otherwise) of the equity interests or assets of another Person;

if the Corporation authorizes the issuance or sale of any shares of Common Stock or any securities containing options or rights to acquire any shares of Common Stock (other than as a dividend on the outstanding Common Stock), the Corporation shall first notify then-existing TMM Holders of Class A Convertible Common Stock of such proposed transaction and offer to sell to each such Person a number of shares of Class A Convertible Common Stock (or, as applicable, options, warrants or other securities convertible into or exercisable for Class A Convertible Common Stock) equal to the product obtained by multiplying the number shares of Common Stock or securities containing options or rights to acquire Common Stock authorized to be sold by the Corporation by a fraction, (1) the numerator of which is the number of shares of Common Stock owned by such Person or issuable upon conversion of the Class A Convertible Common Stock held by such Person and (2) the denominator of which is the total of all outstanding Voting Securities. Each TMM Holder of Class A Convertible Common Stock shall be entitled to purchase such Class A Convertible Common

Stock (or, as applicable, options, warrants or other securities convertible into or exercisable for Class A Convertible Common Stock) at the same price and on the same terms and conditions as such Common Stock (or, as applicable, options, warrants or other securities convertible into or exercisable for Common Stock) are to be offered to any other Persons. To the extent that any TMM Holder elects not to participate in such pre-emptive rights, each of the other TMM Holders shall have a pro rata right to purchase at the same price and on the same terms and conditions the Voting Securities which such non-participating TMM Holder had the right but elected not to purchase; provided that the exercise of such right does not extend the time for written notice set forth in subparagraph (f)(vi)(B) of this Paragraph FOURTH. The purchase price for all stock and securities offered to such TMM Holders shall be payable in cash or, to the extent that other payment is to be made by the other Persons to whom stock or securities are so offered, on such other payment terms.

B. In order to exercise its purchase rights hereunder, a TMM Holder of Class A Convertible Common Stock must deliver a written notice to the Corporation to such effect within ten business days after receipt of written notice from the Corporation describing in reasonable detail the stock or securities being offered, the purchase price thereof, the payment terms, such holder's percentage allotment, and the number of shares of Class A Convertible Common Stock (or, as applicable, options, warrants or other securities convertible into or exercisable for Class A Convertible Common Stock) such holder has the right to purchase hereunder.

C. Upon the expiration of the offering period described above, the Corporation shall be entitled to sell such stock or securities which such TMM Holders have not elected to purchase during the 120 days following such expiration on terms and conditions no more favorable to the purchasers thereof than those offered to such TMM Holders. Any stock or securities not so sold by the Corporation during such 120 day period may not thereafter be sold unless again offered to the TMM Holders of Class A Convertible Common Stock pursuant to the terms of this subparagraph (f)(vi) of Paragraph FOURTH.

D. The rights of the TMM Holders of Class A Convertible Common Stock under this subparagraph (f)(vi) of Paragraph FOURTH shall immediately and irrevocably terminate on the date that the TMM Holders do not beneficially own in the aggregate at least 40% of the Voting Securities initially acquired by MM pursuant to the Acquisition Agreement.

vii. CERTAIN DEFINITIONS. As used in subparagraph (f) of this Paragraph FOURTH, the following terms shall have meanings shown below:

"ACQUISITION AGREEMENT" means a certain Acquisition Agreement dated April 20, 2003, by and among the Corporation, Kara Sub, TMM, TMMH and MM.

"AFFILIATE" means, with respect to any Person, (i) any other Person directly or indirectly through one or more intermediaries controlling or controlled by, or under direct or indirect common control with, such specified Person; (ii) any other Person that owns, directly or indirectly, ten percent or more of such Person's capital stock or other equity interests or any officer or director of any such Person or other Person or, (iii) with respect to any natural Person, any person having a relationship with such Person by blood, marriage or adoption not more remote than first cousin; PROVIDED, HOWEVER, that for the purposes of this subparagraph (f) of Paragraph FOURTH of this Amended and Restated Certificate of Incorporation, (w) the Corporation and its subsidiaries and Affiliates shall not be deemed Affiliates of TMM, TMMH, MM or any of their respective subsidiaries and (x) TMM, TMMH, MM and any of their respective subsidiaries and Affiliates shall not be deemed Affiliates of the Corporation and its subsidiaries. For purposes hereof, (y) a "subsidiary" of a Person means any other Person more than 50% of the outstanding Voting Securities of which are owned, directly or indirectly, by such Person and (z) "control" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" shall have correlative meanings.

"ASSOCIATE" shall have the meaning set forth in Rule 12b-2 under the Exchange Act.

"BENEFICIAL OWNERSHIP" shall be determined pursuant to Rule 13d-3 of the Securities Exchange Act of 1934 or, if Rule 13d-3 shall be rescinded and there shall be no successor rule or statutory provision thereto, pursuant to Rule 13d-3 as in effect on the date hereof.

"CHANGE OF CONTROL" means, with respect to Person, the occurrence of any of the following:

(a) any Person or Group, other than a subsidiary or any employee benefit plan (or any related trust) of TMM or a subsidiary, becomes the beneficial owner of 20% or more of the Voting Securities representing 20% or more of the combined Total Voting Power of all Voting Securities of such Person, except that (1) no such Person or Group shall be deemed to beneficially own any securities held by such Person or a subsidiary or any employee benefit plan (or any related trust) of such Person or a subsidiary, or (2) no Person who or which, together with all Affiliates of such Person, was the beneficial owner of 20% or more of the Voting Securities representing 20% or more of the combined Total Voting Power of all Voting Securities of such Person issued and outstanding as of 5:00 p.m., New York time, on the date of Closing (as defined in the Acquisition Agreement) shall be deemed as a result thereof to have caused a Change of Control of such Person hereunder; provided, however, that if such Person or any of its Affiliates, after 5:00 p.m., New York time, on the date of Closing, (A) acquires, in one or more transactions, beneficial ownership of an additional number of Voting Securities which exceeds 5% of the then-outstanding Voting Securities or Total Voting Power and (B) beneficially owns after such acquisition 20% or more of the Voting Securities representing 20% or more of the combined Total Voting Power of all Voting Securities of such Person, then such Person shall be deemed to have caused a Change of Control hereunder; or

(b) within a period of 24 months or less, the individuals who, as of any date, constitute the board of directors of such Person (the "Incumbent Directors") cease for any reason to constitute at least 75% of the members of such board of directors unless at the end of such period, at least 75% of the individuals then constituting such board of directors were either Incumbent Directors or nominated upon the recommendation of at least 75% of the Incumbent Directors or other directors so nominated; or

(c) approval by the stockholders of such Person of any of the following: (1) a merger, reorganization or consolidation ("Acquisition") with respect to which the individuals and entities who were the respective beneficial owners of the stock and Voting Securities of the Person immediately before such Acquisition do not, after such Acquisition, beneficially own, directly or indirectly, more than 80% of, respectively, the common stock and the combined voting power of the Voting Securities of the Person resulting from such Acquisition in substantially the same proportion as their ownership immediately before such Acquisition, (2) a liquidation or dissolution of such Person, or (3) the sale or other disposition of all or substantially all of the assets of such Person.

"COMPETITOR" means Canadian National Railway, Canadian Pacific Railway Company, Union Pacific Corporation, Burlington Northern Santa Fe Corporation, CSX Corporation, Norfolk Southern Corp., Ferrocarril Mexicano, S.A. de C.V., Ferrocarril del Sureste, S.A. de C.V., Grupo Mexico, S.A. de C.V., the Anschutz Corporation, Carlos Slim Helu, and any other Person who operates a railroad in the United States, Mexico or Canada after the date hereof, which, if operated in the United States would be regarded as a Class 1 railroad, and any of their respective successors or Affiliates.

"EXCHANGE ACT" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC thereunder.

"GROUP" shall have the meaning specified in Section 13(d)(3) of the Exchange Act.

"KARA SUB" means Kara Sub, Inc., a Delaware corporation and subsidiary of the Corporation.

"MM" means TMM Multimodal, S.A. de C.V., a SOCIEDAD ANONIMA DE CAPITAL VARIABLE, a corporation organized under the laws of the United Mexican States.

"PERMITTED UNDERWRITER" means any underwriter who is in the business of underwriting securities and who, in the ordinary course of its business as an underwriter, acquires Voting Securities in connection with a public offering, with the bona fide intention of reselling all of the Voting Securities so acquired pursuant to such public offering.

"PERSON" means any individual, firm, corporation, partnership (limited or general), limited liability company, joint venture organization or other entity and shall include any group comprised of any Person and any other Person with whom such Person or an Affiliate of such Person has any agreement, arrangement or understanding, directly or indirectly, for the purpose of acquiring, holding, voting or disposing of any shares of Voting Securities.

"PRINCIPAL STOCKHOLDERS" shall mean those principal stockholders of TMM who have executed the Stockholders' Agreement.

"PUBLIC OFFERING" means an underwritten public offering of securities of the Corporation pursuant to an effective registration statement under the Securities Act or such other public offering pursuant to an effective registration statement under the Securities Act effecting a broad distribution of the Voting Securities offered.

"REGISTRATION RIGHTS AGREEMENT" means a certain Registration Rights Agreement dated April _____, 2003, by and among the Corporation, TMM, TMMH, MM and the Principal Stockholders, as amended from time to time.

"RULE 144 TRANSACTIONS" mean sales of Common Stock made in accordance with the provisions of Rule 144 under the Securities Act, as currently in effect, including the brokers' transaction volume and manner of sale provisions thereof.

"SECURITIES ACT" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC thereunder.

"STOCKHOLDERS' AGREEMENT" means a certain Stockholders' Agreement dated ___, 2003, among the Corporation, TMM, TMMH, MM and the Principal Stockholders, as amended from time to time.

"TMM" means Grupo TMM, S.A., a SOCIEDAD ANONIMA organized under the laws of the United Mexican States.

"TMMH" means TMM Holdings, S.A. de C.V., a SOCIEDAD ANONIMA DE CAPITAL VARIABLE organized under the laws of the United Mexican States.

"TMM HOLDERS" means, at any date, each of TMM, MM, the Principal Stockholders, and any of their respective Affiliates who are then holders of Common Stock or Class A Convertible Common Stock.

"TRANSFER" or "TRANSFERRED" means a transfer, sale, assignment, pledge, gift or other disposition.

"TRANSFER RESTRICTIONS" mean those certain restrictions on transfer set forth herein and in Article III of the Stockholders' Agreement.

"TOTAL VOTING POWER" means, at any date, the total number of votes that may be cast in the election of directors of the Corporation (including all outstanding shares of Common Stock and Class A Convertible Common Stock) at any meeting of stockholders of the Corporation held on such date assuming all Voting Securities then entitled to vote at such meeting were present and voted at such meeting, other than votes that may be cast only upon the happening of a contingency.

"VOTING SECURITIES" means any securities of the Corporation (unless the context specifically contemplates another issuer) which are entitled to vote generally in the election of directors without regard to any event or occurrence (including, without limitation, the Common Stock and Class A Convertible Common Stock), and any other securities by their terms convertible into or exercisable or exchangeable for such securities (whether or not any event or occurrence required to occur prior to such conversion, exercise or exchange shall have occurred).

FIFTH. The minimum amount of capital with which the Corporation shall commence business is One Thousand Dollars ($1,000).

SIXTH. The existence of this Corporation is to be perpetual.

SEVENTH. The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

EIGHTH. In addition to and in furtherance of, and not in limitation of, the powers conferred by law, the board of directors is expressly authorized:

a. To make, alter or repeal the by-laws of the Corporation.

b. To fix the amount to be reserved as working capital.

c. To authorize and cause to be executed mortgages and liens without limit as to the amount upon the real and personal property and franchises of the Corporation.

d. To set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and to abolish any such reserve in the manner in which it was created.

e. By resolution passed by a majority of the whole board, to designate one or more committees, each committee to consist of two or more of the directors of the Corporation, which, to the extent provided in the resolution or in the by-laws of the Corporation, shall have and may exercise the powers of the board of directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it. Such committee or committees shall have such name or names as may be stated in the by-laws of the Corporation or as may be determined from time to time by resolution adopted by the board of directors.

NINTH. The number of directors shall not be less than three nor more than eighteen, the exact number of directors to be determined from time to time by resolution adopted by a majority of the entire Board, and such exact number shall be eleven until otherwise determined by resolution adopted by a majority of the entire Board. As used in this paragraph "entire Board" means the total number of directors which the Corporation would have if there were no vacancies. In the event that the Board is increased by such a resolution, the vacancy or vacancies so resulting shall be filled by a vote of the majority of the directors then in office. No decrease in the Board shall shorten the term of any incumbent directors.

The Board of Directors shall be divided into three classes as nearly equal in number as may be, with the term of office of one (the first) class expiring at the annual meeting of stockholders in 2004, of the second class expiring at the annual meeting of stockholders in 2005, and of the third class expiring at the annual meeting of stockholders in 2006. Any vacancies on the Board existing at or immediately after the time this Paragraph NINTH becomes effective shall be allocated first to the third class, then to the second class and, if any remain, then to the first class. The stockholders shall elect directors to fill such vacancies, at any meeting called for such purpose whether or not in session at the time this Paragraph NINTH becomes effective, but the stockholders shall have the power to elect directors to fill vacancies only with respect to those vacancies existing at or immediately after the time this Paragraph NINTH becomes effective. The Board of Directors shall have power to fill all subsequent vacancies and newly created directorships pursuant to Section 223 of the Delaware Corporation Law.

At each annual meeting of stockholders, successors to directors of the class whose terms then expire shall be elected to hold office for a term expiring at the third succeeding annual meeting of stockholders. When the number of directors is changed, any newly created directorships or any decrease in directorships shall be so apportioned among the classes as to make all classes as nearly equal in number as possible

Notwithstanding the foregoing, whenever the holders of the preferred stock shall have the right, voting as a class, to elect two directors at the next annual meeting of stockholders, the terms of all directors shall expire at the next annual meeting of stockholders, and then and thereafter all directors shall be elected for a term of one year expiring at the succeeding annual meeting.

TENTH. The stockholders of this Corporation shall have such rights to examine and inspect the books, records and accounts of this Corporation as are conferred upon them by law.

ELEVENTH. The stockholders and directors shall have power to hold their meetings and keep the books, documents and papers of the Corporation within or without the State of Delaware, at such places as may be from time to time designated by the by-laws or by resolution of the directors, except as otherwise required by the laws of Delaware.

TWELFTH. The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation; PROVIDED, however, that if any such amendment, alteration, change or repeal shall amend, alter, change or repeal any of the powers, preferences or rights vested in the holders of preferred stock by Paragraph FOURTH of this Amended and Restated Certificate of Incorporation then the holders of preferred stock shall be entitled to vote as a class upon such amendment, alteration, change or repeal and the affirmative vote of the holders of not less than two-thirds (2/3) of the issued and outstanding preferred stock shall be necessary for the adoption thereof, in addition to any other vote or approval required by statute; AND PROVIDED FURTHER, that the vote of the holders of 70% of the outstanding shares of stock of the Corporation entitled to vote in elections of directors (considered for this purpose as one class) shall be required to amend this Certificate of Incorporation to:

a. increase the number of directors to more than eighteen, if this Amended and Restated Certificate of Incorporation provides therefor.

b. abolish cumulative voting in elections for directors, if this Amended and Restated Certificate of Incorporation provides therefor.

c. abolish the division of the Board of Directors into three classes, if this Amended and Restated Certificate of Incorporation provides therefor.

THIRTEENTH. Except as set forth below, the affirmative vote of the holders of 70% of all classes of stock of the Corporation, entitled to vote in elections of directors, considered for the purposes of this Paragraph THIRTEENTH as one class, shall be required (a) for the adoption of any agreement for the merger or consolidation of the Corporation with or into any other corporation, or (b) to authorize any sale or lease of all or any substantial part of the assets of the Corporation to, or any sale or lease to the Corporation or any subsidiary thereof in exchange for securities of the Corporation of any assets (except assets having an aggregate fair market value of less than $2,000,000) of, any other corporation, person or other entity, if, in either case, as of the record date for the determination of stockholders entitled to notice thereof and to vote thereon or consent thereto such other corporation, person or entity is the beneficial owner, directly or indirectly, of more than 5% of the outstanding shares of stock of the Corporation entitled to vote in elections of directors considered for the purposes of this Paragraph THIRTEENTH as one class. Such affirmative vote shall be in addition to the vote of the holders of the stock of the Corporation otherwise required by law or any agreement between the Corporation and any national securities exchange.

For the purposes of this Paragraph THIRTEENTH, (x) any corporation, person or other entity shall be deemed to be the beneficial owner of any shares of stock of the Corporation (i) which it has the right to acquire pursuant to any agreement, or upon exercise of conversion rights, warrants or options, or otherwise, or (ii) which are beneficially owned, directly or indirectly (including shares deemed owned through application of clause (i), above), by any other corporation, person or entity with which it or its `affiliate' or `associate' (as defined below in this Paragraph THIRTEENTH) has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting or disposing of stock of the Corporation, or which is its `affiliate' or `associate' as those terms are defined in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934 as in effect on January 1, 2003, and (y) the outstanding shares of any class of stock of the Corporation shall include shares deemed owned through application of clauses (i) and (ii) above but shall not include any other shares which may be issuable pursuant to any agreement, or upon exercise of conversion rights, warrants or options, or otherwise.

The Board of Directors shall have the power and duty to determine for the purposes of this Paragraph THIRTEENTH, on the basis of information known to the Corporation, whether (i) such other corporation person or other entity beneficially owns more than 5% of the outstanding shares of stock of the Corporation entitled to vote in elections of directors, (ii) a corporation, person or entity is an `affiliate' or `associate' (as defined above in this Paragraph THIRTEENTH) of another, (iii) the assets being acquired by the corporation, or any subsidiary thereof, have an aggregate fair market value of less than $2,000,000 and (iv) the memorandum of understanding referred to below is substantially consistent with the transaction covered thereby. Any such determination shall be conclusive and binding for all purposes of this Paragraph THIRTEENTH.

The provisions of this paragraph THIRTEENTH shall not be applicable to (i) any merger or consolidation of the Corporation with or into any other corporation, or any sale or lease of all or any substantial part of the assets of the Corporation to, or any sale or lease to the Corporation or any subsidiary thereof in exchange for securities of the Corporation of any assets of, any corporation if the Board of Directors of the Corporation shall by resolution have approved a memorandum of understanding with such other corporation with respect to and substantially consistent with such transaction, prior to the time that such other corporation shall have become a holder of more than 5% of the outstanding shares of stock of the Corporation entitled to vote in elections of directors; or (ii) any merger or consolidation of the Corporation with, or any sale or lease to the Corporation or any subsidiary thereof of any of the assets of, any corporation of which a majority of the outstanding shares of all classes of stock entitled to vote in elections of directors is owned of record or beneficially by the Corporation and its subsidiaries.

No amendment to this Amended and Restated Certificate of Incorporation of the Corporation shall amend, alter, change or repeal any of the provisions of this Paragraph THIRTEENTH, unless the amendment effecting such amendment, alteration, change or repeal shall receive the affirmative vote of the holders of 70% of all classes of stock of the Corporation entitled to vote in elections of directors, considered for the purposes of this Paragraph THIRTEENTH as one class.

FOURTEENTH. Annual and special meetings of stockholders shall be held as provided in the By-Laws of the Corporation. No meetings of stockholders shall be held without prior written notice as provided in the By-Laws and no actions may be taken by waiver of written notice and consent by stockholders in lieu of meeting.

FIFTEENTH. No director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. Notwithstanding the foregoing sentence, a director shall be so liable to the extent provided by applicable law (a) for breach of the director's duty of loyalty to the Corporation or its stockholders, (b) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (c) under Section 174 of the Delaware Corporation Law or (d) for any transaction from which the director derived an improper personal benefit. In the event that the Delaware Corporation Law or any successor statute is amended with respect to the permissible limits of directors' liability, this Paragraph FIFTEENTH shall be deemed to provide the fullest limitations on liability permitted under such amended statute. No amendment, modification or repeal of this Paragraph FIFTEENTH shall adversely affect any right or protection of a director of the Corporation existing hereunder in respect of any act or omission occurring prior to such amendment, modification or repeal and any amendment, modification or repeal of this Paragraph FIFTEENTH shall be applied prospectively only to the extent that such amendment, modification or repeal would, if applied retrospectively, adversely affect any right or protection of a director for or with respect to any act or omission of such director occurring prior to such amendment, modification or repeal. All references in this Paragraph FIFTEENTH to a director shall also be deemed to refer to and include any other person who, pursuant to a provision of this Amended and Restated Certificate of Incorporation and in accordance with Section 141(a) of the Delaware Corporation Law, exercises or performs any of the powers or duties otherwise conferred or imposed upon the Board of Directors by the Delaware Corporation Law.

SIXTEENTH. The Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Corporation (and any other persons to which the Delaware Corporation Law permits the Corporation to provide indemnification) through provisions of the By-laws, agreements with such persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the Delaware Corporation Law, subject only to limits created by applicable provisions of the Delaware Corporation Law with respect to actions for breach of duty to the Corporation, its stockholders and others. Any amendment, modification or repeal of this Paragraph SIXTEENTH shall be applied prospectively only to the extent that such amendment, modification or repeal would, if applied retrospectively, adversely affect any right or protection of a director for or with respect to any act or omission of such director occurring prior to such amendment, modification or repeal.

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation has been executed on behalf of the Corporation by its President and attested by its Secretary as of _____________, 2003, and each of them does hereby affirm and acknowledge that this Amended and Restated Certificate of Incorporation is the act and deed of the Corporation and that the facts stated herein are true and correct.

KANSAS CITY SOUTHERN

By: Michael R. Haverty
Its: Chairman, President and Chief Executive Officer

(Corporate Seal)

ATTEST:

By: Jay M. Nadlman
Its: Secretary

EXHIBIT A

FORM OF 4.25% REDEEMABLE CUMULATIVE CONVERTIBLE PERPETUAL PREFERRED STOCK, SERIES C

Number: ___ ____________ Shares

CUSIP NO.: ______________

4.25% Redeemable Cumulative Convertible Perpetual Preferred Stock, Series C
(par value $1.00 per share)
(liquidation preference $500.00 per share)
OF
KANSAS CITY SOUTHERN

FACE OF SECURITY

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL IN AS MUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO. HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE CERTIFICATE OF DESIGNATIONS REFERRED TO BELOW.

IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH REGISTRAR AND TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.

THIS SECURITY AND THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY, THE SHARES OF COMMON STOCK ISSUABLE UPON CONVERSION OF THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN OR THEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION.

THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF, AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") WHICH IS TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH KANSAS CITY SOUTHERN (THE "COMPANY") OR ANY AFFILIATE OF THE COMPANY WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY) ONLY (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHICH NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT OR (D) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE RIGHTS OF THE COMPANY AND THE WITHIN

MENTIONED TRANSFER AGENT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (D) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM, AND IN EACH OF THE FOREGOING CASES, A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS SECURITY COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE TRANSFER AGENT. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE.

KANSAS CITY SOUTHERN, a Delaware corporation (the "Corporation"), hereby certifies that Cede & Co. or registered assigns (the "Holder") is the registered owner of fully paid and non-assessable shares of preferred stock of the Corporation designated the 4.25% Redeemable Cumulative Convertible Perpetual Preferred Stock, Series C, par value $1.00 per share and liquidation preference $500.00 per share (the "Series C Convertible Preferred Stock"). The shares of Series C Convertible Preferred Stock are transferable on the books and records of the Registrar, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer. The designation, rights, privileges, restrictions, preferences and other terms and provisions of the Series C Convertible Preferred Stock represented hereby are issued and shall in all respects be subject to the provisions of the Certificate of Designations of the Corporation dated May 5, 2003, as the same may be amended from time to time in accordance with its terms (the "Certificate of Designations"). Capitalized terms used herein but not defined shall have the respective meanings given them in the Certificate of Designations. The Corporation will provide a copy of the Certificate of Designations to a Holder without charge upon written request to the Corporation at its principal place of business.

Reference is hereby made to select provisions of the Series C Convertible Preferred Stock set forth on the reverse hereof, and to the Certificate of Designations, which select provisions and the Certificate of Designations shall for all purposes have the same effect as if set forth at this place.

Upon receipt of this certificate, the Holder is bound by the Certificate of Designations and is entitled to the benefits thereunder.

Unless the Transfer Agent's Certificate of Authentication hereon has been properly executed, the shares of Series C Convertible Preferred Stock evidenced hereby shall not be entitled to any benefit under the Certificate of Designations or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, Kansas City Southern has executed this certificate as of the date set forth below.

KANSAS CITY SOUTHERN
By:
---------------------------------------
Name:
Title:

Dated:
----------------------

TRANSFER AGENT'S CERTIFICATE OF AUTHENTICATION

This is one of the certificates representing shares of Preferred Stock referred to in the within mentioned Certificate of Designations.

UMB Bank, N.A.,
as Transfer Agent
By:
_______________________________________
Name:
Title: Authorized Signatory

Dated: ______________________

REVERSE OF SECURITY

KANSAS CITY SOUTHERN

4.25% Redeemable Cumulative Convertible Perpetual Preferred Stock, Series C

Dividends on each share of Series C Convertible Preferred Stock shall be payable in cash at a rate per annum set forth on the face hereof or as provided in the Certificate of Designations.

The shares of Series C Convertible Preferred Stock shall be redeemable as provided in the Certificate of Designations. The shares of Series C Convertible Preferred Stock shall be convertible into the Corporation's Common Stock in the manner and according to the terms set forth in the Certificate of Designations. Upon a Fundamental Change, holders of shares of Series C Convertible Preferred Stock will have the right to require the Corporation to purchase such shares in the manner and according to the terms set forth in the Certificate of Designations.

As required under Delaware law, the Corporation shall furnish to any Holder upon request and without charge, a full summary statement of the designations, voting rights preferences, limitations and special rights of the shares of each class or series authorized to be issued by the Corporation so far as they have been fixed and determined.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers the shares of Series C Convertible Preferred Stock evidenced hereby to:

_______________________________________________________________________________

_______________________________________________________________________________

(Insert assignee's social security or tax identification number)

_______________________________________________________________________________

(Insert address and zip code of assignee)

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and irrevocably appoints:

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agent to transfer the shares of Series C Convertible Preferred Stock evidenced hereby on the books of the Transfer Agent and Registrar. The agent may substitute another to act for him or her.

Date: ___________________

Signature: _______________________

(Sign exactly as your name appears on the other side of this Series C Convertible Preferred Stock Certificate)

Signature Guarantee: __________________________ (1)

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(1) Signature must be guaranteed by an "eligible guarantor institution" (i.e., a bank, stockbroker, savings and loan association or credit union) meeting the requirements of the Registrar, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.

NOTICE OF CONVERSION

(To be Executed by the Registered Holder
in order to Convert the Series C Convertible Preferred Stock)

The undersigned hereby irrevocably elects to convert (the "Conversion") ________ shares of 4.25% Redeemable Cumulative Convertible Perpetual Preferred Stock, Series C (the "Series C Convertible Preferred Stock"), represented by stock certificate No(s). __ (the "Series C Convertible Preferred Stock Certificates") into shares of common stock, par value $0.01 per share ("Common Stock"), of Kansas City Southern (the "Corporation") according to the conditions of the Certificate of Designations establishing the terms of the Series C Convertible Preferred Stock (the "Certificate of Designations"), as of the date written below. If shares are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates. No fee will be charged to the holder for any conversion, except for transfer taxes, if any. A copy of each Series C Convertible Preferred Stock Certificate is attached hereto (or evidence of loss, theft or destruction thereof).

The undersigned represents and warrants that all offers and sales by the undersigned of the shares of Common Stock issuable to the undersigned upon conversion of the Series C Convertible Preferred Stock shall be made pursuant to registration of the Common Stock under the Securities Act of 1933 (the "Act") or pursuant to an exemption from registration under the Act.

Any holder, upon the exercise of its conversion rights in accordance with the terms of the Certificate of Designations and the Series C Convertible Preferred Stock, agrees to be bound by the terms of the Registration Rights Agreement.

The Corporation is not required to issue shares of Common Stock until the original Series C Convertible Preferred Stock Certificate(s) (or evidence of loss, theft or destruction thereof) to be converted are received by the Corporation or its Transfer Agent. The Corporation shall issue and deliver shares of Common Stock to an overnight courier not later than two business days following receipt of the original Series C Convertible Preferred Stock Certificate(s) to be converted.

Capitalized terms used but not defined herein shall have the meanings ascribed thereto in or pursuant to the Certificate of Designations.

Date of Conversion: ____________________________________________

Applicable Conversion Rate: ____________________________________________

Number of shares of Convertible
Series C Convertible Preferred Stock to be Converted: ____________

Number of shares of Common
Stock to be Issued: ____________________________________________

Signature: ____________________________________________

Name: ____________________________________________

Address:(2)____________________________________________

Fax No.: ____________________________________________

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(2) Address where shares of Common Stock and any other payments or certificates shall be sent by the Corporation.

SCHEDULE A

SCHEDULE OF EXCHANGES FOR GLOBAL SECURITY

The initial number of shares of Series C Convertible Preferred Stock represented by this Global Preferred Share shall be __________. The following exchanges of a part of this Global Preferred Share have been made:

| | | | | |
|---|---|---|---|---|
| | | Amount of | Number of shares | |

| Date Of Exchange | Amount of decrease in number of shares represented by this Global Preferred Share | increase in number of shares represented by this Global Preferred Share | represented by this Global Preferred Share following such decrease or increase | Signature of authorized officer of Registrar |
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EXHIBIT B

## FORM OF CERTIFICATE OF TRANSFER

(Transfers pursuant to subparagraph (e)(xvi)(C)(2) or (e)(xvi)(D) of Paragraph FIRST of the Amended and Restated Certificate of Incorporation)

UMB Bank, N.A., as Transfer Agent
928 Grand Boulevard
Kansas City, MO 64106
Attn: Nancy Hoffman

Re: Kansas City Southern
4.25% Redeemable Cumulative Convertible Perpetual Preferred Stock,
Series C (the "Series C Convertible Preferred Stock")

Reference is hereby made to the Certificate of Designations relating to the Series C Convertible Preferred Stock dated May 5, 2003, as such may be amended from time to time (the "Certificate of Designations"). Capitalized terms used but not defined herein shall have the respective meanings given them in the Certificate of Designations.

This Letter relates to _____ shares of the Series C Convertible Preferred Stock (the "Securities") which are held in the form of a Global Preferred Share bearing the Restricted Shares Legend (CUSIP NO. ) with the Depository in the name of [name of transferor] (the "Transferor") to effect the transfer of the Securities.

In connection with such request, and in respect of the Series C Convertible Preferred Stock, the Transferor does hereby certify that shares of the Series C Convertible Preferred Stock are being transferred (i) in accordance with applicable securities laws of any state of the United States or any other jurisdiction and (ii) in accordance with their terms:

CHECK ONE BOX BELOW, AS APPLICABLE:

(1) [ ] to a transferee that the Transferor reasonably believes is a qualified institutional buyer, within the meaning of Rule 144A under the Securities Act, purchasing for its own account or for the account of a qualified institutional buyer in a transaction meeting the requirements of Rule 144A;

(2) [ ] pursuant to an exemption from registration under the Securities Act provided by Rule 144 thereunder (if available);

(3) [ ] in accordance with another exemption from the registration requirements of the Securities Act (based upon an opinion of counsel if the Corporation so requests);

(4) [ ] to the Corporation or a subsidiary thereof; or

(5) [ ] pursuant to a registration statement that has been declared effective under the Securities Act.

Unless one of the boxes is checked, the Transfer Agent will refuse to register any of the Securities evidenced by this certificate in the name of any person other than the registered holder thereof; provided, however, that if box (2) or (3) is checked, the Transfer Agent shall be entitled to require, prior to registering any such transfer of the Securities, such legal opinions, certifications and other information as the Corporation has reasonably requested to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act of 1933, such as the exemption provided by Rule 144 under such Act.

[Name of Transferor]

By:____________________________
Name:
Title:

Dated:

cc: Kansas City Southern
P.O. Box 219335
Kansas City, Missouri 64121-9335
Attn: Corporate Secretary

EXHIBIT C

Form of Common Share Legend

"THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD,

ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, REGISTRATION. THE HOLDER OF THIS SECURITY, BY ITS ACCEPTANCE HEREOF, AGREES TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY, PRIOR TO THE DATE (THE "RESALE RESTRICTION TERMINATION DATE") WHICH IS TWO YEARS AFTER THE LATER OF THE ORIGINAL ISSUE DATE HEREOF AND THE LAST DATE ON WHICH KANSAS CITY SOUTHERN (THE "COMPANY") OR ANY AFFILIATE OF THE COMPANY WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF SUCH SECURITY) ONLY (A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, (B) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHICH NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A, (C) PURSUANT TO A REGISTRATION STATEMENT THAT HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT OR (D) PURSUANT TO ANOTHER AVAILABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, SUBJECT TO THE RIGHTS OF THE COMPANY AND THE WITHIN MENTIONED TRANSFER AGENT PRIOR TO ANY SUCH OFFER, SALE OR TRANSFER PURSUANT TO CLAUSE (D) TO REQUIRE THE DELIVERY OF AN OPINION OF COUNSEL, CERTIFICATION AND/OR OTHER INFORMATION SATISFACTORY TO EACH OF THEM, AND IN EACH OF THE FOREGOING CASES, A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS SECURITY COMPLETED AND DELIVERED BY THE TRANSFEROR TO THE TRANSFER AGENT. THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE."

EXHIBIT D

FORM OF CERTIFICATE OF TRANSFER
FOR COMMON STOCK

(Transfers pursuant to Section 16(f) of the
Certificate of Designations)

[Transfer Agent]

Attn:

Re: Kansas City Southern
4.25% Redeemable Cumulative Convertible Perpetual Series C Convertible Preferred Stock (the "Series C Convertible Preferred Stock")

Reference is hereby made to the Certificate of Designations relating to the Series C Convertible Preferred Stock dated May 5, 2003, as such may be amended from time to time (the "Certificate of Designations"). Capitalized terms used but not defined herein shall have the respective meanings given them in the Certificate of Designations.

This letter relates to ____ shares of Common Stock represented by the accompanying certificate(s) that were issued upon conversion of the Series C Convertible Preferred Stock and which are held in the name of [name of transferor] (the "Transferor") to effect the transfer of such Common Stock.

In connection with such request and in respect of the shares of Common Stock, the Transferor does hereby certify that the shares of Common Stock are being transferred (i) in accordance with applicable securities laws of any state of the United States or any other jurisdiction and (ii) in accordance with their terms:

CHECK ONE BOX BELOW

(1) [ ] pursuant to an exemption from registration under the Securities Act provided by Rule 144 thereunder (if available);

(2) [ ] in accordance with another exemption from the registration requirements of the Securities Act (based upon an opinion of counsel if the Corporation so requests);

(3) [ ] to the Corporation or a subsidiary thereof; or

(4) [ ] pursuant to a registration statement that has been declared effective under the Securities Act.

Unless one of the boxes is checked, the Transfer Agent will refuse to register any of the Securities evidenced by this certificate in the name of any person other than the registered holder thereof; provided, however, that if box (1) or (2) is checked, the Transfer Agent shall be entitled to require, prior to registering any such transfer of the Securities, such legal opinions, certifications and other information as the Corporation has reasonably requested to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act of 1933, such as the exemption provided by Rule 144 under such Act.

[Name of Transferor]

By: ____________________
Name:
Title:

Dated:
cc: Kansas City Southern
P.O. Box 219335
Kansas City, Missouri 64121-9335
Attn: Corporate Secretary

EXHIBIT E

FORM OF NOTICE OF ELECTION OF REDEMPTION
UPON A FUNDAMENTAL CHANGE

TO: KANSAS CITY SOUTHERN

The undersigned hereby irrevocably acknowledges receipt of a notice from Kansas City Southern (the "Corporation") as to the occurrence of a Fundamental Change with respect to the Corporation and requests and instructs the Corporation to purchase _____ shares of Series C Convertible Preferred Stock in accordance with the terms of the Certificate at the Purchase Price.

Capitalized terms used but not defined herein shall have the meanings ascribed thereto pursuant to the Certificate of Designations.

Dated: _____________

____________________

____________________
Signature(s)

NOTICE: The above signatures of the holder(s) hereof must correspond with the name as written upon the face of the Security in every particular without alteration or enlargement or any change whatever.

Aggregate Accreted Liquidation Preference to be redeemed (if less than all):

_______________________________________

_______________________________________
Social Security or Other Taxpayer Identification Number

APPENDIX B

ACQUISITION AGREEMENT

BY AND AMONG

KANSAS CITY SOUTHERN,
A DELAWARE CORPORATION,

KARA SUB, INC.,
A DELAWARE CORPORATION,

GRUPO TMM, S.A.,
A SOCIEDAD ANONIMA ORGANIZED UNDER
THE LAWS OF THE UNITED MEXICAN STATES,

TMM HOLDINGS, S.A. DE C.V.,
A SOCIEDAD ANONIMA DE CAPITAL VARIABLE
ORGANIZED UNDER THE LAWS OF THE UNITED MEXICAN STATES,

AND

TMM MULTIMODAL, S.A. DE C.V.,
A SOCIEDAD ANONIMA DE CAPITAL VARIABLE
ORGANIZED UNDER THE LAWS OF THE UNITED MEXICAN STATES

DATED AS OF APRIL ____, 2003

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TABLE OF DEFINED TERMS

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| Exhibit 1 | KARA Sub Note |
| Exhibit A | Amended and Restated Certificate of Incorporation of the Surviving Company |
| Exhibit B | Bylaws of the Surviving Company |
| Exhibit C | Agreement of Assignment and Assumption of Put Obligations |
| Exhibit D | Boards of Directors, Committees and Officers of Surviving Company, GTFM and GTFM Subsidiaries and Merger Integration Committee |
| Exhibit E | Seller Disclosure Schedule |
| Exhibit F | KCS Disclosure Schedule |

| | |
|---|---|
| Exhibit G-1 | Form of Opinion Letter of Milbank, Tweed, Hadley & McCloy LLP |
| Exhibit G-2 | Form of Opinion Letter of Haynes & Boone, L.C. |
| Exhibit H-1 | Form of Opinion Letter of Sonnenschein Nath & Rosenthal |
| Exhibit H-2 | Form of Opinion Letter of Jay Nadlman, Esq. |

ACQUISITION AGREEMENT, dated as of April 20, 2003 (this "Agreement"), by and among KANSAS CITY SOUTHERN, a Delaware corporation ("KCS"), KARA Sub, Inc., a Delaware corporation ("KARA Sub"), GRUPO TMM, S.A., a SOCIEDAD ANONIMA organized under the laws of the United Mexican States ("UMS") ("TMM"), TMM HOLDINGS, S.A. de C.V., a SOCIEDAD ANONIMA DE CAPITAL VARIABLE organized under the laws of the UMS and a subsidiary of TMM ("TMMH") and TMM MULTIMODAL, S.A. de C.V., a SOCIEDAD ANONIMA DE CAPITAL VARIABLE organized under the laws of the UMS ("MM") and a subsidiary of TMMH (collectively, the "Parties").

WHEREAS, each of the Boards of Directors of KCS, TMM, TMMH and MM has approved and declared advisable the acquisition by KCS of all of MM's interest in GRUPO TRANSPORTACION FERROVIARIA MEXICANA, S.A. de C.V., a SOCIEDAD ANONIMA DE CAPITAL VARIABLE organized under the laws of the UMS ("GTFM") through (i) the purchase by KARA Sub from MM of all of the capital stock of GTFM held by MM (the "Stock Purchase"), (ii) the investment by MM in KARA Sub (the "Subsidiary Investment") and (iii) the merger of KARA Sub with and into KCS (the "Merger") upon the terms and subject to the conditions of this Agreement (collectively, the Stock Purchase, Subsidiary Investment and the Merger comprise the "Acquisition"); and

WHEREAS, certain of the Parties and other parties are entering into ancillary agreements (the "Ancillary Agreements," identified hereinafter) to carry out certain of the objectives of this Agreement and of the Acquisition.

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth in this Agreement and intending to be legally bound hereby, the Parties agree as follows:

## ARTICLE 1
## STOCK PURCHASE

SECTION 1.1 STOCK PURCHASE. Upon the terms and subject to satisfaction or waiver of the conditions set forth in Article 8, at the Closing, KARA Sub shall purchase, acquire and receive from MM, and MM shall sell, assign, transfer, convey and deliver to KARA Sub, all GTFM Shares held by MM, consisting of 25,500 shares of Series "A" fixed capital stock of GTFM and 3,842,901 shares of Series "A" variable capital stock of GTFM (collectively the "GTFM Shares"), for the consideration described in Section 1.2 (the "Stock Purchase Price").

SECTION 1.2 STOCK PURCHASE PRICE. The Stock Purchase Price to be paid by KARA Sub to MM at the Closing for the purchase of the GTFM Shares shall be paid by the delivery of: (i) $200 million, in immediately available funds, by wire transfer to the account designated by TMM to KCS at least three business days prior to the Closing Date (the "TMM Account"), provided, that KCS may, at its option, elect to pay up to $80 million of such amount by delivering to MM a number of shares of KCS Common Stock, or of KCS Class A Common Stock determined by dividing the amount that KCS so elects to pay other than in cash by $12.50 (such election to be made by written notice to the Sellers not less than 30 days prior to the Closing specifying the amount which KCS elects to pay through the delivery of Common Stock or Class A Common Stock and the class of such stock, which notice shall be irrevocable once given); and (ii) a subordinated promissory note evidencing an indebtedness of KARA Sub in the principal amount of $25,000,000, having the terms and conditions set forth in the form of note attached hereto as Exhibit 1 (the "KARA Sub Note"). KCS covenants and agrees to provide KARA Sub with sufficient funds to make all payments required to be made by it under this Agreement.

ARTICLE 2
SUBSIDIARY INVESTMENT

SECTION 2.1 SUBSIDIARY INVESTMENT. At the Closing, immediately following the Stock Purchase, MM shall subscribe for and purchase from KARA Sub 100 shares of KARA Sub common stock, $.01 par value ("KARA Sub Common Stock"), representing 10% of the issued and outstanding shares of KARA Sub Common Stock, and KARA Sub shall issue, sell and transfer to MM the KARA Sub Common Stock in consideration for delivery by MM to KARA Sub of the KARA Sub Note.

ARTICLE 3
THE MERGER

SECTION 3.1 THE MERGER. Immediately following the Subsidiary Investment, KARA Sub shall be merged with and into KCS in accordance with the General Corporation Law of the State of Delaware ("Del. G.C.L."). KCS and KARA Sub shall cause the Merger to be consummated by filing a certificate of merger (the "Certificate of Merger") with the Secretary of State of the State of Delaware, in such form as required by, and executed in accordance with the relevant provisions of, the Del. G.C.L. (the date and time of the filing of the Certificate of Merger being the "Effective Time"). At the Effective Time, the effects of the Merger shall be as provided in the Certificate of Merger and the applicable provisions of the Del. G.C.L. As a result of the Merger, the separate corporate existence of KARA Sub shall cease and KCS shall continue as the surviving corporation of the Merger (the "Surviving Company").

SECTION 3.2 NAME CHANGE, CERTIFICATE OF INCORPORATION AND BYLAWS. At the Effective Time, KCS shall change its name to "NAFTA Rail Corporation" or such other name as shall be determined by KCS and its Restated Certificate of Incorporation and Bylaws shall be amended in their entirety to contain the provisions set forth, respectively, in Exhibits A and B to this Agreement, which shall become, respectively, the Amended and Restated Certificate of Incorporation and Bylaws of the Surviving Company. At the Effective Time, the Charter and Bylaws, or other organizational documents of GTFM and each GTFM Subsidiary shall be amended as determined by KCS.

SECTION 3.3 BOARD AND OFFICERS. At the Effective Time, the Board of Directors of the Surviving Company (the "Board of Directors") shall be comprised of eleven members (provided, that KCS may add a representative of a Strategic Investor in KCS as a twelfth director) divided into three classes, each class to be as equal in number as practicable, to serve staggered three-year terms. At or promptly following the Effective Time, the Board of Directors shall establish, and appoint the members of, such committees as the Board of Directors deems appropriate, which shall include the committees set forth in Exhibit D to this Agreement. Included in Exhibit D are the names of the members of the respective initial Board of Directors (including those persons designated to be members of the committees of the Board of Directors), and the initial executive officers, of the Surviving Company, and of GTFM and the GTFM Subsidiaries, each to hold office at the Effective Time. Each person identified in Exhibit D to this Agreement shall hold office in accordance with the applicable charter documents and Ancillary Agreements and until the earlier of their resignations or removal as permitted under such charter documents and Ancillary Agreements, or until their respective successors are duly elected and qualified, as the case may be.

SECTION 3.4 MERGER INTEGRATION COMMITTEE. The Board of Directors shall appoint, effective as of the Effective Time, a merger integration committee ("Merger Integration Committee"), comprised initially of the persons identified as such in Exhibit D. The Merger Integration Committee shall assist the Board of Directors for a period of one year in managing the transition of ownership and operation of GTFM contemplated by this Agreement and shall have such other duties and responsibilities as may be assigned by the Board of Directors, consistent with the Ancillary Agreements.

ARTICLE 4
CLOSING

SECTION 4.1 CLOSING. Unless this Agreement shall have been earlier terminated in accordance with the terms hereof, the consummation of the transactions contemplated by this Agreement (the "Closing") shall, subject to the satisfaction or waiver of the conditions set forth in Article 8, take place at the offices of Sonnenschein Nath & Rosenthal, 1221 Avenue of the America, 24th Floor, New York, New York, on the second (2nd) Business Day after all of the conditions set forth in Article 8 have been satisfied or waived (other than the conditions that relate to actions to be taken at the Closing) or at such other date, time and place as KCS and MM shall mutually agree in writing (the date on which the Closing takes place, the "Closing Date"). The closing of the Acquisition is dependent upon the closing of each of the Stock Purchase, the Subsidiary Investment and the Merger and if any one of the Stock Purchase, the Subsidiary Investment or the Merger shall not close, then the Acquisition shall not close and all consideration theretofore paid or exchanged shall be promptly returned.

SECTION 4.2 ACTIONS AT CLOSING. At the Closing:

(a) KCS shall cause KARA Sub to deliver to MM the Stock Purchase Price, including the KARA Sub Note, duly executed and in proper form to evidence the indebtedness of KCS Sub represented thereby and MM shall, and TMM shall cause MM to, deliver to KARA Sub the stock certificates for the GTFM Shares duly endorsed in favor of KARA Sub in proper form to transfer ownership to KARA Sub of such shares free and clear of any and all Encumbrances.

(b) MM shall, and TMM shall cause MM to, deliver to KARA Sub the KARA Sub Note, duly endorsed for transfer to KARA Sub free and clear of any and all Encumbrances, other than Encumbrances arising solely by operation of law, and KCS shall cause KARA Sub to issue and deliver to MM the KARA Sub Common Stock.

(c) KCS and KARA Sub shall file the Certificate of Merger with the Secretary of State of Delaware to effect the Merger.

(d) The Parties shall deliver and receive, respectively, the opinions of counsel referred to in Section 8.2(f) and 8.3(e) and the officers' certificates referred to in Section 8.2(c) and 8.3(c).

(e) KCS and Consultant shall execute and deliver the Consulting Agreement, which shall become effective on the first business day following the Closing Date.

(f) KCS and TMM shall execute and deliver the Marketing and Services Agreement. KCS, TMM and the other parties thereto shall execute and deliver the Stockholders' Agreement and the Registration Rights Agreement.

(g) TMM and KCS shall execute and deliver an agreement by which TMM assigns its rights, and KCS assumes TMM's obligations, to purchase TFM stock pursuant to the Put Agreement and indemnifying TMM from KCS's non-performance of such obligations, such agreement to be substantially in the form of Exhibit C hereto.

(h) To the extent in the possession of TMM or MM, TMM and MM shall, and TMM shall cause MM to, deliver to GTFM all files and books of account, including business, financial and tax records, of GTFM, including, without limitation, minute books, stock record books, the Concession Agreement and supporting exhibits and records relating thereto and work papers. In addition, TMM and MM shall, and TMM shall cause MM to, deliver to GTFM or KCS such other documents, resolutions, appointments, powers of attorney and instruments of transfer necessary or appropriate to implement this Agreement and effect the transactions contemplated hereby and by the Ancillary Agreements, in each case as KCS may reasonably request and in form and substance reasonably acceptable to KCS.

(i) MM shall cause the Secretary of GTFM to make the corresponding notation in the Stock Registry Book of GTFM evidencing KARA Sub as the record, legal and beneficial owner of the GTFM Shares as of the Closing Date.

(j) The written resignations of all directors and officers (or, as to officers, evidence reasonably acceptable to KCS of corporate action sufficient to effect their removal and replacement) of GTFM and GTFM Subsidiaries effective as of the Closing Date, except for those persons identified on Exhibit D as to continue in office, shall be delivered to KCS, accompanied by evidence reasonably satisfactory to KCS that prior to such resignation, the election of the successors to directors resigning was approved by at least two-thirds of the entire Board of Directors of such corporations.

(k) All actions taken at the Closing pursuant to this Agreement shall be deemed to have been taken simultaneously and no actions or transactions will be deemed to have taken place, or documents delivered, or payments made, unless all actions and transactions have been completed and all documents have been executed and delivered.

SECTION 4.3 CONVERSION OF SECURITIES. At the Effective Time, by virtue of the Merger and without any other action on the part of any Party:

(a) each share of KARA Sub Common Stock issued and outstanding immediately prior to the Effective Time and held of record and beneficially by MM shall be converted into and exchanged for 180,000 shares of Class A Common Stock of the Surviving Company, representing in the aggregate 18,000,000 shares of Class A Common Stock of the Surviving Company and having the par value and the rights and limitations described in Article Fourth of Exhibit A to this Agreement;

(b) each share of KARA Sub Common Stock issued and outstanding immediately prior to the Effective Time and held of record and beneficially by KCS shall be cancelled;

(c) each share of KCS Common Stock, and each share of KCS Preferred Stock, issued and outstanding immediately prior to the Effective Time shall remain issued and outstanding as one share of Common Stock, and one share of Preferred Stock, respectively, of the Surviving Company, having the par value and the rights and limitations described in Article Fourth of Exhibit A to this Agreement;

(d) each share of KCS Common Stock and each share of KCS Preferred Stock that is owned by KCS immediately prior to the Effective Time as treasury stock shall remain as one share of treasury stock of the Surviving Company having the par value and the rights and limitations described in Article Fourth of Exhibit A to this Agreement; and

(e) each option to acquire KCS Common Stock issued and outstanding immediately prior to the Effective Time shall be adjusted as necessary to provide that, at the Effective Time, such option shall be deemed an option to acquire, on the same terms and conditions as were applicable under such option, the number of shares of Common Stock of the Surviving Company equal to the number of shares of KCS Common Stock subject to such option.

## ARTICLE 5

## REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as set forth in the disclosure schedule attached as Exhibit E to this Agreement (the "Seller Disclosure Schedule"), TMM, TMMH and MM ("Sellers"), jointly and severally, represent and warrant to KCS as follows:

SECTION 5.1 ORGANIZATION AND RELATED MATTERS.

(a) TMM is a SOCIEDAD ANONIMA, duly formed, validly existing and in good standing under the laws of the UMS. TMM has the corporate power and authority necessary to carry on its business in the manner as it is now being conducted and to own, lease and operate all of its properties and assets. The copy of TMM's Corporate Charter and Bylaws previously provided to KCS is a complete and correct copy of such instrument as in effect on the date hereof. Sellers have provided KCS with an English translation of such documents.

(b) TMMH is a S.A. de C.V., duly formed, validly existing and in good standing under the laws of the UMS. TMMH has the corporate power and authority necessary to carry on its business in the manner it is now being conducted and to own, lease and operate all of its properties and assets. TMMH is a subsidiary of TMM, which owns all of the issued and outstanding capital stock of TMMH, except as set forth in Section 5.1 of the Seller Disclosure Schedule.

(c) MM is a S.A. de C.V., duly formed, validly existing and in good standing under the laws of the UMS. MM has the corporate power and authority necessary to carry on its respective business in the manner it is now being conducted and to own, lease and operate all of its properties and assets. MM is a subsidiary of TMMH, which owns all of the issued and outstanding capital stock of MM, except as set forth in Section 5.1 of the Seller Disclosure Schedule.

(d) GTFM is a S.A. de C.V., duly formed, validly existing and in good standing under the laws of the UMS, and each of the GTFM Subsidiaries is a S.A. de C.V. or other business entity duly formed, validly existing and in good standing under the laws of the UMS. GTFM has the corporate power and authority necessary to carry on its business in the manner it is now being conducted and to own, lease and operate all of its properties and assets.

(e) Each of TMM, TMMH, MM, GTFM and the Subsidiaries of GTFM is duly licensed or qualified to do business in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned, leased or operated by it makes such qualification or licensing necessary, except in jurisdictions where the failure of such license or qualification would not individually or in the aggregate have a GTFM Material Adverse Effect.

(f) The copies of the Corporate Charter and Bylaws of each of TMMH, MM, GTFM, and of each of the GTFM Subsidiaries, delivered to KCS by TMM prior to the execution of this Agreement are complete and correct copies of such instruments as in effect on the date hereof and Sellers have provided KCS with English translations of such documents.

SECTION 5.2 AUTHORIZED CAPITALIZATION. The authorized capital stock of GTFM consists of (i) 25,500 shares of Series "A" fixed capital, of which 25,500 shares are held by MM, (ii) 3,842,901 shares of Series "A" variable capital, of which 3,842,901 shares are held by MM, (iii) 24,500 shares of Series "B" fixed capital, of which 24,500 shares are held by NAFTA Rail, S.A. de C.V., (iv) 3,692,199 shares of Series "B" variable capital, of which 3,692,199 shares are held by NAFTA Rail, S.A. de C.V., and (v) 2,478,470 shares of Series "LII" variable capital, of which 2,478,470 are held by TFM. Except as set forth in Section 5.2 of the Seller Disclosure Schedule, there are no other shares of capital stock of GTFM or other ownership interests in GTFM issued, reserved for issuance or outstanding. All of the shares of capital stock of GTFM outstanding are duly authorized, validly issued, fully paid and nonassessable and free of any preemptive rights and are not subject to any voting trust agreement (or similar agreement), or other Contract restricting or otherwise relating to the voting, dividend rights or disposition of such shares to which GTFM or any of the Sellers is a party or by which GTFM or any of the Sellers is bound. Except as set forth in this Section 5.2, there is no outstanding option, warrant, convertible or exchangeable security, right, subscription, call, right of first refusal, legally binding commitment, preemptive right or other agreement or right of any kind to which GTFM or the Sellers are a party or are otherwise bound entitling any Person to purchase or otherwise acquire (including by exchange or conversion) from GTFM or any GTFM Subsidiary any shares of capital stock of GTFM. Except as set forth in the Put Agreement, there are no outstanding obligations of GTFM or any of its Subsidiaries to redeem, repurchase or otherwise acquire any of the shares of capital stock of GTFM or any shares of capital stock (or other ownership interests) of any of its Subsidiaries. Neither GTFM nor any GTFM Subsidiary has outstanding any bonds, debentures, notes or other indebtedness generally having the right to vote (or convertible into, or exchangeable for, Securities having the right to vote) on any matters on which holders of shares of capital stock of GTFM may consent or vote ("GTFM Voting Debt"). There are no options, warrants, rights, convertible or exchangeable Securities, "phantom" interests or other ownership interest appreciation rights, commitments, Contracts, arrangements or undertakings of any kind to which GTFM or any of its Subsidiaries is a party or by which any of them is bound (i) obligating GTFM or any of its Subsidiaries or any other Person to issue, deliver or sell, or cause to be issued, delivered or sold, existing or additional shares of capital stock of GTFM or capital stock (or other ownership interests) of any GTFM Subsidiary, or any security convertible into or exercisable or exchangeable for any of the foregoing or for GTFM Voting Debt, (ii) obligating GTFM or any GTFM Subsidiary or any other Person to issue, grant, extend or enter into any such option, warrant, call, right, security commitment, Contract, arrangement or undertaking, (iii) that give any Person the right to receive any economic benefit or right similar to or derived from the economic benefits and rights accruing to holders of the shares of capital stock of GTFM or capital stock (or other ownership interests) of any GTFM Subsidiary or (iv) that give rise to a right to receive any payment from GTFM or any GTFM Subsidiary upon the execution of this Agreement or the consummation of the Merger or any of the other transactions contemplated hereby, except as set forth in this Section 5.2. Notwithstanding the disclosures set forth in Section 5.2 of the Seller Disclosure Schedule or otherwise, the shares of GTFM to be purchased by KARA Sub from MM pursuant to this Agreement shall be acquired by KARA Sub free and clear of any and all Encumbrances, except for any Encumbrances created by KARA Sub or its Affiliates or by operation of law.

SECTION 5.3 GTFM AND GTFM SUBSIDIARIES.

(a) Section 5.3 of the Seller Disclosure Schedule lists each Subsidiary of GTFM (the "GTFM Subsidiaries") and their respective jurisdictions of incorporation or organizatio