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ENTERED
Office of Proceedings
January 6, 2021
Part of
Public Record

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January 6, 2021

VIA E-FILING

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001

Re: The Baupost Group, L.L.C. and US Infravest Managers LP – Control Exemption – Pioneer Railcorp, Et AL, FD 36451; Brookhaven Rail Partners, LLC, Related Infrastructure, LLC, BRX Transportation Holdings, LLC, and BRX Acquisition Sub, Inc. – Control Exemption – Pioneer Railcorp, Et. AL, FD 36306, RFM Holdco LLC – Control Exemption – Pioneer Railcorp, Et. AL, FD 36306 (Sub-No. 1)

Dear Ms. Brown:

On December 2, 2020 in Docket No. FD 36306 (Sub-No. 1), RFM HoldCo LLC (“RFM”) filed a Verified Notice of Exemption (the “RFM Notice”) under 49 C.F.R. § 1180.2(d)(2) to seek after-the-fact authority to acquire control of Pioneer Railcorp (“Pioneer”), a noncarrier holding company that controls 15 Class III railroads (the “Pioneer Railroads”). By a Director’s Order issued on December 28, 2020 (the “Order”), the RFM Notice was held in abeyance and its effective date postponed until further order of the Board.

The Order directed RFM to provide, by January 8, 2021, additional information describing the transaction in which it acquired control of Pioneer and the Pioneer Railroads from The Related Companies, L.P. (“Related Companies”). Specifically, the Order requested that RFM provide the date on which that transaction occurred, and provide copies of the agreement or agreements through which RFM acquired control. RFM hereby provides the requested information.

As discussed in the RFM Notice and the Order, Related Companies, as the ultimate controlling entity at the time the original notice was filed in FD 36306 and as shown in Exhibit 1 to the RFM Notice, should have sought and obtained control authority in FD 36306. It did not. Instead, an indirect subsidiary of Related Companies, Related Infrastructure LLC (“Related Infrastructure”), along with other parties, filed to control Pioneer Railcorp and the Pioneer Railroads.

From July 31, 2019, when the transaction described in FD 36306 was consummated, until December 13, 2019, Related Companies, through its direct subsidiary Related Fund Management, LLC (“Related Fund Management”) and a series of indirect subsidiaries described in the RFM Notice, owned a controlling interest in Pioneer.

On December 13, 2019, the ownership interests in Related Fund Management were distributed to the owners of Related Companies and on the same date, immediately following that distribution, were contributed by those owners to RFM in exchange for equity interests in RFM. The effect of these December 13, 2019 transactions was that (1) Related Companies ceased to have any ownership interest in Related Fund Management or its subsidiaries; and (2) RFM became the parent entity of Related Fund Management and its subsidiaries and, consequently, the ultimate party in control of Pioneer.

As described in the RFM Notice, also on December 13, 2019, the equity interests in Related BRX Transportation Holdings LLC, an indirect RFM subsidiary through which RFM controlled Pioneer, were assigned to a new subsidiary of RFM, Related Infrastructure Holdings LLC. While this transaction moved ownership of Pioneer within the RFM corporate group, RFM continued to be the ultimate parent of Pioneer. The agreement effecting this transaction was attached as Exhibit 4 to the RFM Notice, and the ownership structure following the December 13, 2019 transactions is shown in Exhibit 2 to the RFM Notice.

The agreements between the equity owners of Related Companies implementing the transfer of Related Fund Management to RFM are attached here. These agreements do not specifically reference Pioneer, but as an indirect majority owned subsidiary of Related Fund Management, the transfer of Related Fund Management to RFM automatically resulted in RFM acquiring control of Pioneer. These agreements are Highly Confidential and are being submitted under seal subject to the Protective Order issued on June 21, 2019 in FD 36306.¹ Redacted copies are also being submitted for the public record.

RFM believes that the information set forth in this letter satisfies the Board’s direction in the Order, and RFM respectfully requests that the Board remove the RFM Notice from abeyance and allow the RFM Notice to take effect.

Sincerely,

/s/ William A. Mullins

William A. Mullins

Enclosure

¹ As FD 36306 (Sub-No. 1) is a sub-docket and a ‘related’ proceeding to FD 36306, the Protective Order issued in the main docket should apply to this filing. See FD 36306, Protective Order, Pg.3 ¶ 1(d) (STB served Dec. 21, 2019) (applying protective order to any “related proceedings” before the Board).

FD 36306 (Sub-No. 1)
PUBLIC VERSION

DISTRIBUTION AGREEMENT

This Distribution Agreement (this “Agreement”), effective as of December 13, 2019, is entered into by [REDACTED] a New York limited partnership [REDACTED].

RECITALS

WHEREAS, [REDACTED] owns 82.6% of the membership interests (the “Interests”) in [REDACTED], LLC (“LLC”) pursuant to that certain Amended and Restated Limited Liability Company Agreement of the Company, dated as of January 13, 2011 (the “LLC Agreement”); and

WHEREAS, in connection with and as part of a minority investment to be made in [REDACTED] by [REDACTED] pursuant to that certain Equity Subscription and Investment Agreement, dated as of the date hereof, by and among [REDACTED] and the other parties thereto, [REDACTED] desires to distribute all of the [REDACTED] Interests pro-rata to each of [REDACTED]’s partners (the “Distribution”).

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, [REDACTED], intending to be legally bound, hereby agrees as follows:

1. Distribution. Effective on the date hereof, and subject to the terms and conditions of the [REDACTED] Operating Agreement, [REDACTED] does hereby distribute to the [REDACTED] Partners the [REDACTED] Interests, *pro rata*, in accordance with each [REDACTED] Partner’s ownership interest in [REDACTED] (the “Distribution”).

2. Membership in [REDACTED].

a. Concurrently with the Distribution described in Section 1 above, each [REDACTED] Partner shall be admitted as a member of [REDACTED].

b. Concurrently with the admission of the [REDACTED] Partners, [REDACTED] shall and does hereby cease to be a member of [REDACTED].

3. Representations. [REDACTED] hereby represents and warrants that (a) it is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, (b) it has all requisite corporate power and authority to enter into, execute and deliver this Agreement and to carry out its obligations hereunder and to consummate the transactions contemplated hereby and (c) this Agreement constitutes a legal, valid and binding obligation of [REDACTED], enforceable against such party in accordance with its terms.

4. Further Assurances. From time to time hereafter, [REDACTED] hereby agrees to do all such acts and things and to execute and deliver, or cause to be executed and delivered all such documents, notices, instruments and agreements as may be necessary or desirable to give effect to the provisions and intent of this Agreement.

5. Successors and Assigns. This Agreement will be binding upon, inure to the benefit of and be enforceable by and against, [REDACTED] and its successors and assigns.

6. Governing Law. This Agreement shall be governed by, enforced under and construed in accordance with, the laws of the State of Delaware, without giving effect to any choice or conflicts of law provision or rule thereof.

7. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under applicable law, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision never comprised a part hereof; and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom.

PUBLIC VERSION

Title: Executive Vice President

CONTRIBUTION AND EXCHANGE AGREEMENT

THIS CONTRIBUTION AND EXCHANGE AGREEMENT (this “**Agreement**”), dated as of December 13, 2019 (the “**Effective Date**”), is entered into by and among [REDACTED] Holdco, LLC, a Delaware limited liability company (the “**Company**”), and [REDACTED]

[REDACTED] (collectively, “**Investors**”). The Company and Investors are sometimes referred to collectively herein as the “**Parties**” and individually as a “**Party**”. Capitalized terms used but not defined in this Agreement shall have the meanings given them in certain Limited Liability Company Agreement of the Company dated as of the date hereof (as amended, the “**Operating Agreement**”).

RECITALS

A. Prior to the transactions contemplated by this Agreement, [REDACTED] distributed all of its equity interests in [REDACTED] (“[REDACTED]” and such interests, the “**Interests**”) to its equityholders *pro rata*, which [REDACTED] Interests were subsequently distributed to each Investor (such distributions, the “**Distributions**”);

B. Each Investor desires to contribute to the Company its [REDACTED] Interests received pursuant to the [REDACTED] Distributions (the “**Contributed Interest**”), and in exchange for such contribution, the Company desires to issue to each Investor the respective Class A Interests and Class B Interests in the Company as set forth on Schedule A attached hereto (the “**Exchanged Interest**”), and each Investor desires to accept such exchange; and

C. In accordance with the terms and provisions hereunder, the Company and Investor each desire to enter into this Agreement to memorialize the foregoing contribution and exchange on the terms and subject to the conditions set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Contribution.** Subject to the terms and conditions hereinafter set forth, Investor hereby irrevocably sells, assigns, transfers and conveys to the Company, and the Company hereby irrevocably redeems and accepts, the Contributed Interest, free and clear of any liens (other than restrictions on transferability imposed by federal or state securities laws) in exchange for the Exchanged Interest.

2. **Exchanged Interest.** The Company hereby issues to each Investor its respective Exchanged Interest.

3. **Representations and Warranties.**

(a) Representations and Warranties by All Parties. Each Party hereby represents and warrants to the other Parties, as of the date hereof, as follows:

(i) Such Party is duly organized, validly existing and in good standing under the laws of the state of its formation and has all requisite power and authority to enter into this Agreement and to consummate the transactions contemplated in this Agreement to be performed by such Party.

(ii) Such Party has obtained all approvals, consents and authorizations, and taken all actions, required to authorize the execution, delivery and performance of this Agreement by such Party.

(iii) Neither the execution nor delivery of this Agreement by such Party nor the consummation of the transactions contemplated in this Agreement conflict with or contravene any of its organizational documents or any agreement or document by which such Party or any its affiliates is bound, or any law, court order or other legal requirement to which such Party or any its affiliates is subject.

(iv) Upon the execution and delivery of this Agreement by such Party, this Agreement constitutes the legal, valid and binding obligation of such Party, enforceable against it in accordance with its terms.

(b) Representations and Warranties by Investor. Each Investor represents and warrants to the Company that (i) Investor has good and marketable title to the [REDACTED] Interest, free and clear of all liens, pledges and encumbrances, and (ii) no person or entity has any option or other right to acquire any interest in the [REDACTED] Interest.

4. **Miscellaneous.**

(a) Successor and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. No Party shall assign any of its rights or obligations hereunder without the prior written consent of the other Parties, which consent may be granted or withheld in the sole discretion of the other Parties.

(b) Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

(c) Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(d) Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or

conflict of law provision or rule that would cause the application of laws of any jurisdiction other than those of the State of Delaware.

(e) Entire Agreement. This Agreement constitutes the entire agreement among the Parties relating to the subject matter of this Agreement and supersedes all prior agreements and understandings (written and verbal) relating to such subject matter.

(f) Amendments; Waivers. This Agreement may only be amended, modified, supplemented or otherwise changes by an agreement in writing signed by each Party. No waiver by any Party of any of the terms of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party waiving such term. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights or remedy under this Agreement shall operate or be construed as a waiver of such term and no single or partial exercise of any right or remedy under this Agreement preclude any other or further exercise of any other right or remedy.

(g) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

(h) Further Assurances. After the date of this Agreement, each of the Parties shall execute and deliver such additional documents and take such additional actions as may be reasonably required to carry out the terms of this Agreement and give effect to the transactions contemplated by this Agreement.

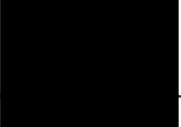
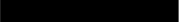
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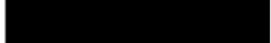
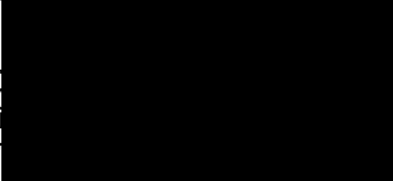
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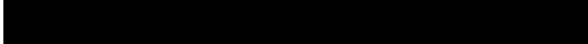
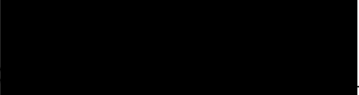
The Parties have executed this Agreement as of the date first written above.

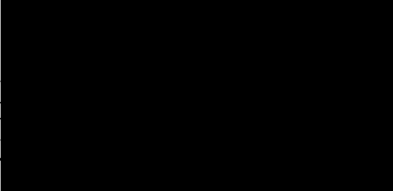
 HOLDCO LLC

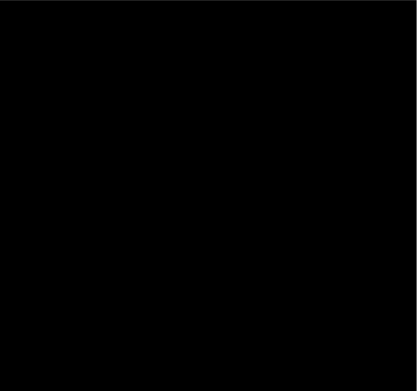
By: 
Name: Richard O'Toole
Title: Executive Vice President


By: 
Name: 
Title:


By: 


By: 
Name: 
Title:





FD 36306 (Sub-No. 1)
PUBLIC VERSION



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Schedule A

Class A Members	Class A Percentage Interest
	1.039%
	34.127%
	6.981%
	12.192%
	6.823%
	21.655%
	17.183%

Class B Members	Class B Percentage Interest
	0.581%
	19.148%
	3.917%
	23.647%
	13.690%
	30.917%