

Con-way Inc.
Form SC 14D9/A
October 13, 2015

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

SCHEDULE 14D-9

(Rule 14d-101)

SOLICITATION/RECOMMENDATION STATEMENT
UNDER SECTION 14(d)(4) OF THE SECURITIES EXCHANGE ACT OF 1934
(Amendment No. 3)

CON-WAY INC.

(Name of Subject Company)

CON-WAY INC.

(Name of Persons Filing Statement)

COMMON STOCK, PAR VALUE \$0.625 PER SHARE

(Title of Class of Securities)

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205944101

(CUSIP Number of Class of Securities)

Stephen K. Krull

Executive Vice President, General Counsel and Secretary

Con-way Inc.

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(Name, Address and Telephone Number of Person Authorized to Receive Notices and Communications

on Behalf of the Person Filing Statement)

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Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

This Amendment No. 3 (this **Amendment**) to Schedule 14D-9 amends and supplements the Solicitation/Recommendation Statement on Schedule 14D-9 (as amended from time to time, the **Schedule 14D-9**) originally filed by Con-way Inc., a Delaware corporation (**Con-way**), with the Securities and Exchange Commission (the **SEC**) on September 22, 2015, relating to the tender offer by Canada Merger Corp., a Delaware corporation (**Purchaser**) and a wholly owned subsidiary of XPO Logistics, Inc., a Delaware corporation (**XPO** or **Parent**), to purchase any and all of the shares of Con-way's common stock, par value \$0.625 per share, net to the seller in cash, without interest, but subject to any required withholding of taxes, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated September 15, 2015, and the related Letter of Transmittal, copies of which are attached as Exhibits (a)(1)(A) and (a)(1)(B), respectively, to the Tender Offer Statement on Schedule TO filed by Parent and Purchaser with the SEC on September 15, 2015.

Except as otherwise set forth below, the information set forth in the Schedule 14D-9 remains unchanged and is incorporated herein by reference as relevant to the items in this Amendment. Capitalized terms used but not defined herein have the meanings ascribed to them in the Schedule 14D-9.

Item 8. Additional Information.

Item 8 of the Schedule 14D-9 is hereby amended and supplemented by adding the section below immediately following the last sentence of the paragraph under the heading Item 8. Additional Information Stockholder Approval Not Required on page 42 of the Schedule 14D-9.

Certain Litigation

On October 7, 2015, a purported stockholder of Con-way filed a putative class action complaint in the Delaware Court of Chancery, captioned *Abrams v. Espe, et al.*, C.A. No. 11585-VCN. The complaint names the members of the Board, XPO, Purchaser, and Citi as defendants. The complaint alleges that the directors breached their fiduciary duties by, among other things, failing to maximize shareholder value in connection with the proposed transaction and failing to disclose certain information in the Schedule 14D-9. The complaint also alleges that XPO, Purchaser, and Citi aided and abetted those alleged breaches of fiduciary duty. The lawsuit seeks, among other relief, injunctive relief (i) enjoining the defendants from closing the tender offer and the proposed transaction, (ii) enjoining the defendants from initiating or continuing any purported defensive measures that would inhibit their ability to conduct a market check, and (iii) enjoining the defendants from closing the tender offer until the defendants make certain additional disclosures. The lawsuit also seeks, among other things, rescissory damages and recovery of the costs of the action, including reasonable attorneys' and experts' fees. The plaintiff in the lawsuit also filed motions on October 7, 2015 (i) seeking a preliminary injunction enjoining the closing of the tender offer until defendants make certain purported disclosures, and (ii) seeking expedited proceedings with respect to the preliminary injunction motion.

SIGNATURE

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

CON-WAY INC.

By: /s/ Stephen K. Krull
Stephen K. Krull
Executive Vice President, General
Counsel and Secretary

Dated: October 13, 2015