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with respect to the 2009-1 EETC and 2011-2 EETC Transactions*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In Re:	:	Chapter 11
	:	
AMR CORPORATION, et al.,	:	Case No. 11-15463 (SHL)
	:	Jointly Administered
Debtors.	:	
	:	

**RESERVATION OF RIGHTS OF U.S. BANK TRUST NATIONAL ASSOCIATION, AS TRUSTEE, TO
DEBTORS' MOTION FOR AN ORDER (I) APPROVING NOTICE OF DISCLOSURE STATEMENT
HEARING; (II) APPROVING DISCLOSURE STATEMENT; (III) ESTABLISHING A RECORD DATE;
(IV) ESTABLISHING NOTICE AND OBJECTION PROCEDURES FOR CONFIRMATION OF THE PLAN;
(V) APPROVING SOLICITATION PACKAGES AND PROCEDURES FOR DISTRIBUTION THEREOF;
(VI) APPROVING THE FORMS OF BALLOTS AND ESTABLISHING PROCEDURES FOR VOTING ON
THE PLAN; AND (VII) APPROVING THE FORM OF NOTICE TO NON-VOTING CLASSES UNDER
THE PLAN**

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NOW COMES U.S. Bank Trust National Association, as Trustee (the “*Trustee*”) with respect to the 2009-1 EETC and 2011-2 EETC Transactions (the “*EETC Transactions*”), by and through its undersigned counsel, and for its Reservation of Rights (the “*Reservation of Rights*”) to the Motion of Debtors for an Order (I) Approving Notice of Disclosure Statement Hearing; (II) Approving Disclosure Statement; (III) Establishing a Record Date; (IV) Establishing Notice and Objection Procedures for Confirmation of the Plan; (V) Approving Solicitation Packages and Procedures for Distribution thereof; (VI) Approving the Forms of Ballots and Establishing Procedures for Voting on the Plan; and (VII) Approving the Form of Notice to Non-Voting Classes Under the Plan (the “*Motion to Approve*”), respectfully states as follows:¹

I. SUMMARY OF RESERVATIONS

The Trustee asserts that Debtors’ Disclosure Statement and proposed Plan should be clarified to specifically detail the treatment of these transactions. Specifically, the Disclosure Statement and proposed Plan:

- Fail to provide sufficient information as to how Debtors intend to proceed with respect to the EETC Transactions, which are subject to an appeal before the Second Circuit, should the Second Circuit reverse the Bankruptcy Court’s Memorandum Decision that is the subject of the Appeal and whether such claims will be paid in Cash, the aircraft collateral will be returned, such secured financing will be reinstated or whether the relevant transactions will be treated in a different manner and how any make-whole payment will be made;
- Fail to set forth the basis for the determination that the Claims are unimpaired either through the payment of all amounts due in Cash (including any make-whole), or through reinstatement (with details about how all of the components of the transaction will be reinstated);

¹ Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion to Approve, the Disclosure Statement or the proposed Plan.

- Fail to provide any financial information to show how Debtors will pay the EETC Transactions and other Secured Aircraft Claims should Debtors determine to pay all such claims in full with Cash;
- Raise issues with respect to the ability of Debtors to cancel securities and indentures to which there are obligations between non-related third parties; and
- Should exculpate all indenture trustees rather than providing exculpation to only certain indenture trustees while excluding others.

II. PRELIMINARY STATEMENT

Debtors have sought to refinance the 2011-2 EETCs and the 2009-1 EETCs without payment of a make-whole, and the issue with respect to the make-whole is currently before the Second Circuit Court of Appeals. In the event, however, that Debtors do not prevail on the appeal, Debtors do not provide adequate information as to how they intend to satisfy the 2011-2 EETC and 2009-1 EETC claims. Rather, Debtors merely discuss in the Disclosure Statement and proposed Plan a panoply of potential methods to satisfy the Secured Aircraft Claims, including — (1) payment in Cash, (2) return of the aircraft collateral, (3) a sale of the aircraft collateral followed by a payment of Cash, (4) reinstatement of the debt or (5) some other unknown treatment. The result is that after reviewing the Disclosure Statement, the Trustee has little idea as to how its EETC Transactions will be satisfied under the proposed Plan. Debtors' failure to provide any concrete information with respect to Trustee's various Secured Aircraft Claims does not conform to the fundamental purpose of section 1125 — to provide adequate information to creditors regarding the payment of claims under a plan. Further, should Debtors choose the first option identified above and decide to pay the Trustee's claims in Cash, Debtors fail to disclose if they have sufficient Cash on hand to pay the Secured Aircraft Claims in full. Debtors should be required to inform their creditor constituents about their plans for the payment of their claims at this time.

The Trustee has reached out to counsel for Debtors as to how the Secured Aircraft Claims will be treated in the event that the Trustee prevails on appeal. The Trustee will continue to work with Debtors to obtain greater clarity as to how its claims will be treated, and how to implement such treatment given the complexity of the EETC Transactions in the event these transactions are not refinanced. It is important to note, however, that parts of these transactions are implemented through agreements with third parties. Because of the multiple parties involved and the uncertainty of treatment of the Secured Aircraft Claims, until the Trustee is given specific information as to how the Secured Aircraft Claims are to be treated and how such treatment is to be implemented, Debtors' currently proposed Disclosure Statement should be amended to account for these issues.

Second, as this Court is aware, an appeal is currently pending in the Second Circuit with respect to the 2009-1 EETC and 2011-2 EETC Transactions concerning whether certain make-whole amounts are required to be paid to the Trustee upon the proposed refinancing of such transactions. While the Appeal (as defined below) is described briefly in the Disclosure Statement, Debtors do not disclose the potential liability associated with payment of the make-whole amounts and provide no other information with respect to how they intend to proceed with these transactions should the Trustee prevail in its Appeal. The Trustee estimates that any make-whole payment due may exceed approximately \$500 million and would be a secured and/or administrative claim, and thus required to be paid in Cash, not stock. The Disclosure Statement does not disclose how such a large amount would be paid, and reveals no reserve for such amounts in the event the Trustee prevails in the Appeal and Debtors decide to proceed with the refinancing. Debtors should be required to outline what actions they intend to take with respect to the Appeal.

Third, Debtors should describe why the Trustee's secured claims are unimpaired. Pursuant to the various Indentures and applicable bankruptcy law, Debtors are entitled to satisfy the Secured Aircraft Claims by either voluntarily paying all amounts outstanding in Cash or reinstating the debt. The Trustee acknowledges that to the extent the proposed treatment leaves the Trustee's legal, equitable and contractual rights unaltered by either paying the amounts outstanding in full with Cash or reinstating the debt, the Trustee's claims will be unimpaired and the Trustee will not be entitled to vote on the proposed Plan. However, certain other proposed payment methods described in the Disclosure Statement and set forth in the proposed Plan, including a return of the aircraft collateral or some other unknown treatment, completely fail to comport with the underlying financing documents and, therefore, significantly alter the Trustee's legal and contractual rights, including rights provided under section 1110 of the Bankruptcy Code. While the Trustee has the right to repossess its aircraft collateral following an event of default, the related financing agreements do not grant Debtors the right to voluntarily turn-over the aircraft collateral to the Trustee to satisfy its obligations and treat this claim as unimpaired.

In addition, applicable bankruptcy law similarly holds that any return of collateral impairs a secured lender's claims. In fact, any other treatment — outside of payment in full in Cash of all amounts outstanding or reinstatement of the debt — would similarly violate the underlying terms of the secured financings and impair the Trustee's claims. To the extent the Trustee's claims are impaired, the Bankruptcy Code requires that Debtors provide the controlling party with the opportunity to vote on the proposed Plan. Further, any alteration of the Trustee's contractual rights would likewise result in a violation of the section 1110(a) elections previously entered into by Debtors. Simply stated, Debtors should make a concrete determination regarding

the treatment of the Trustee's secured claims and provide the Trustee assurances that its secured claims will not be impaired within the meaning of section 1124 of the Bankruptcy Code.

Fourth, pursuant to Section 6.14 of the proposed Plan, Debtors attempt to cancel certain "Aircraft Securities" without disclosing which securities are to be canceled. Not only does the Disclosure Statement lack adequate information with regard to which securities are to be canceled, but Debtors may also be seeking to cancel securities as to which there are obligations between non-related third parties. Debtors must not be allowed to, nor can they, cancel such securities. Debtors should clarify this issue because it would be improper for them to cancel such securities, and any such securities should not be canceled until all distributions from the relevant trusts have been made.

Lastly, the proposed Plan appears unfair and inequitable because it appears to exculpate certain indenture trustees while not including all of the various trustees. The Disclosure Statement does not disclose any reason for releasing certain trustees while not releasing others, including the Trustee. If the Secured Aircraft Claims are discharged in Cash, reinstated or otherwise, the various trustees are entitled to know that their entire claims against Debtors' estates, particularly indemnity and related claims for any claim brought by investors or third parties, have been defeased in full and any claim of Debtors' estates or derivative claims are satisfied and released in order to appropriately discharge all claims, either in any refinancing or as part of "resetting" the transaction in a reinstatement.

As a result, based upon each of the various issues outlined above and discussed further herein, prior to any approval of the Disclosure Statement, Debtors should be required to amend the Disclosure Statement to provide further information and disclosure with respect to such issues identified herein.

III. BACKGROUND

A. THE EETC TRANSACTIONS

As is standard in the airline industry, substantially all of the aircraft operated by Debtors are financed through “operating leases, capital leases, private bank mortgages, and publicly-issued secured debt instruments.” (*Affidavit of Isabella Goren*, ¶ 12, ECF No. 4). Included among these financing instruments are the EETC Transactions, which collectively involved the issuance of approximately \$1.25 billion of debt to finance the purchase and lease to American of approximately 63 commercial aircraft. The EETC Transactions were issued pursuant to certain indentures (the “*Indentures*”), under which the Trustee serves as Loan Trustee with respect to the Notes issued thereunder by American, and as Pass-Through Trustee, whereby the Trustee issued Certificates, based upon the Notes, to Certificateholders, who are the ultimate investors in the EETC Transactions. AMR also unconditionally guaranteed the EETC Transactions. As of the Petition Date, Debtors were indebted in the principal amount of \$445,618,425 for the 2009-1 EETC Transaction and \$703,645,330 for the 2011-2 EETC Financing, not including any potential make-whole payments, plus all unpaid interest, fees, costs and expenses under the applicable Indentures.²

Pursuant to the Indentures, American granted the Trustee a first priority security interest in and mortgage lien on, among other things, American’s right, title and interest in and to the applicable collateral. Each security interest secures, without limitation and among other things, all amounts due with respect to the Notes, including principal, interest and any make-whole

² The Trustee filed timely proofs of claim with respect to the EETC Transactions — Claim Number 12557 with respect to the 2009-1 EETC Financing; Claim Number 12560 with respect to the 2011-2 EETC Financing; and Claim Number 12620 with respect to Debtor AMR’s unconditional guaranty of the 2011-2 EETC Financing. To date, Debtors have not objected to the Trustee’s claims and they remain pending before this Court.

amounts. As a further matter, Debtors and the Trustee entered into a Notice of Election pursuant to section 1110(a) related to the EETC Transactions on December 23, 2011, with respect to 2009-1 EETC (ECF No. 462), and January 11, 2012, with respect to 2011-2 EETC (ECF No. 608).

It is the Trustee's understanding, based on its interpretation of the Disclosure Statement, that unless Debtors refinance the transactions as part of their prior motion (with or without the payment of a make-whole which is subject of the appeal noted below) that Debtors intend to treat the Trustee's secured claims against American with respect to the EETC Transactions as "unimpaired" and as American Class 1 — Secured Aircraft Claims. The total amount of Secured Aircraft Claims set forth in the Disclosure Statement is \$6,775,557,000. Of this amount, over \$1.1 billion constitutes claims of the Trustee with respect to the EETC Transactions. Further, it is unclear to the Trustee how Debtors propose to treat its guarantee claims in the event Debtors fail to provide the Trustee with a full recovery on the claims against American underlying the AMR guarantee claims.

B. THE PROPOSED REFINANCING

In relation to the EETC Transactions, on October 9, 2012, Debtors filed a refinancing motion seeking, among other things, to refinance both of the EETC transactions. (ECF No. 4959.) Because Debtors sought to avoid paying the make-whole amounts, as defined in the underlying indentures, the Trustee objected to the refinancing motion on October 23, 2012. (ECF No. 5085.) Debtors filed a reply to the objection on October 25, 2012, and Trustee filed a sur-reply on November 2, 2012. (ECF Nos. 5107, 5217.) Subsequently, on November 16, 2012, Trustee initiated an adversary proceeding to cure certain procedural infirmities of the refinancing motion that Trustee identified in Trustee's objections. (Adv. Pro. No. 12-1946.)

On January 17, 2013, this Court issued its Memorandum of Decision, concluding, among other things, that Debtors could proceed with the refinancing, and force the release of the liens on the collateral and that certificateholders were not entitled to payment of the make-whole amounts. The Court's decision was appealed directly to the U.S. Court of Appeals for the Second Circuit, which accepted the Appeal and designated it as Case Nos. 13-1204 and 13-1208 (the "*Appeal*"). Because, for the most part, the Appeal addresses questions of law, the Second Circuit conducts a *de novo* review of all legal determinations made in a bankruptcy court decision. *See, e.g., Super Nova 330 LLC v. Gazes*, 693 F.3d 138, 141 (2d Cir. 2012). Oral arguments with respect to the appeal are scheduled for June 20, 2013.

C. THE DISCLOSURE STATEMENT

Debtors filed the Disclosure Statement on April 15, 2013. (ECF No. 7632.) Pursuant to the Disclosure Statement, Debtors propose to treat the Trustee's Secured Aircraft Claims as follows:

Except to the extent that a holder of an Allowed Secured Aircraft Claim against any of the American Debtors agrees to a different treatment of such Claim (including, without limitation, pursuant to a Postpetition Aircraft Agreement), each holder of an Allowed Secured Aircraft Claim against any of the American Debtors shall receive, at the option of the American Debtors, and in full satisfaction of such Claim, either (i) Cash in an amount equal to 100% of the unpaid amount such Allowed Secured Aircraft Claim, (ii) the proceeds of the sale or disposition of the Collateral securing such Allowed Secured Aircraft Claim, net of the costs of disposition of such Collateral, (iii) the Collateral securing such Allowed Secured Aircraft Claim, (iv) such treatment that leaves unaltered the legal, equitable, and contractual rights to which the holder of such Allowed Secured Aircraft Claim is entitled, or (v) such other distribution as is necessary to satisfy the requirements of section 1124 of the Bankruptcy Code.

(Disclosure Statement at 72.) Debtors have classified the Trustee's secured claims as "unimpaired" under the proposed Plan. (*Id.* at 14 (identifying American Class 1 claims as

unimpaired).) In addition, while it includes a brief overview of the Appeal (Disclosure Statement at 44-45), the Disclosure Statement does not detail how Debtors intend to treat these transactions or the potential size of the liability (possibly in excess of \$500 million) in the event that the Trustee prevails on the appeal and Debtors proceed with the refinancing.

IV. RESERVATION OF RIGHTS

A. THE DISCLOSURE STATEMENT SHOULD PROVIDE ADEQUATE INFORMATION REGARDING TRUSTEE'S SECURED AIRCRAFT CLAIMS AND SHOULD BE AMENDED

Pursuant to section 1125(b) of the Bankruptcy Code, a disclosure statement must contain "adequate information." *In re Forrest Hills Assocs., Ltd.*, 18 B.R. 104 (Bankr. D. Del. 1982).

"Adequate information" is defined in section 1125(a)(1) of the Bankruptcy Code as:

information of a kind, and in sufficient detail, as far as is reasonably practical in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant classes to make an informed judgment about the plan, but adequate information need not include such information about any other possible or proposed plan.

11 U.S.C. § 1125(a)(1); *see also In re Metrocraft Pub. Servs., Inc.*, 39 B.R. 567, 568 (Bankr. N.D. Ga. 1984) (citing nineteen nonexclusive factors that courts may use to evaluate the adequacy of a disclosure statement); *In re Ferretti*, 128 B.R. 16, 18-19 (Bankr. D.N.H. 1991) (citing eighteen of the *Metrocraft* factors).

The "adequate information" requirement merely establishes a floor, and not a ceiling for disclosure to voting creditors. *In re Adelpia Commc'ns Corp.*, 352 B.R. 592, 596 (Bankr. S.D.N.Y. 2006) (citing *Century Glove, Inc. v. First Am. Bank of New York*, 860 F.2d 94, 100 (3d Cir. 1988)). Once the "adequate disclosure" floor is satisfied, additional information can go into a disclosure statement as well, at least so long as the additional information is accurate and its

inclusion is not misleading. *Adelphia*, 352 B.R. at 596. The purpose of the disclosure statement is to provide creditors with enough information to make an informed choice of whether to approve or reject a debtor's plan. *In re Duratech Indus. Inc.*, 241 B.R. 291, 298 (Bankr. E.D.N.Y. 1999), *aff'd*, 241 B.R. 283 (E.D.N.Y. 1999). For the reasons set forth below, Debtors' Disclosure Statement does not provide sufficient disclosures appropriate to the circumstances of these cases and, prior to any approval of the Motion to Approve, Debtors should be required to amend the Disclosure Statement to provide additional information with respect to the EETC Transactions.

1. Trustee Has No Ability to Determine How Its Secured Claims Are to be Satisfied

The Disclosure Statement contains no meaningful information with respect to how Debtors intend to treat the EETC Transactions in the event that Debtors elect not to refinance the EETC Transactions pursuant to the refinancing motion. While the Disclosure Statement states that the holders of Secured Aircraft Claims, such as the Trustee, will receive payment in full and that such claims are unimpaired under the proposed Plan, such statement is misleading. Debtors propose five different payment options, ranging from payment in full with Cash, to a return of the aircraft collateral, to other unspecified treatment, some which change the substantive rights of the Trustee and the holders. The Trustee appreciates that while Debtors' cases are complex, these cases have been pending for more than 18 months, and Debtors will be seeking confirmation of the proposed Plan and merging with U.S. Airways in a short period of time. Debtors have had ample opportunity to determine which aircraft they intend to retain and which aircraft they will not, and also have had ample time to determine which secured financings they will refinance and which they will reinstate. After almost nearing the completion of these cases, Debtors should not be able to propose a Plan and provide a Disclosure Statement that includes

almost no concrete determination as to how the Trustee's EETC Transactions and other Secured Aircraft Claims are to be satisfied, which aircraft they intend to retain and which financings they intend to reinstate. The Trustee has reached out to Debtors to determine how its claims will be treated in the event the Trustee is successful on its Appeal, and has been provided with some preliminary information with respect to how such claims are intended to be treated, but more detail is still required. Simply put, it is impossible for the Trustee to understand its rights without knowing how the transactions will be treated.

Due to opaque statements contained in the Disclosure Statement and notwithstanding any preliminary comments of Debtors, the Trustee cannot be sure whether it will receive Cash, the return of its aircraft, whether its secured obligations will be reinstated or some other unknown method for paying such amounts will be implemented with respect to its secured claims. Based upon the amount of Cash on hand identified in Debtors' liquidation analysis of American, it is certain that Debtors cannot satisfy the almost seven billion dollars of Secured Aircraft Claims all in Cash. Trustee should not be required to wait until the very last minute to know how its secured claims will be satisfied. As a result, the Disclosure Statement lacks adequate information and should only be approved to the extent that Debtors provide additional information with respect to the EETC Transactions and other Secured Aircraft Claims.

2. Disclosure Statement Fails to Include Adequate Information Regarding the Appeal

As a further matter, Debtors fail to provide adequate information as to the Trustee's Appeal. Specifically, the Disclosure Statement fails to include treatment of the make-whole payment related to the EETC Transactions should the Trustee succeed in its Appeal and Debtors still choose to proceed with the refinancing. In this instance, Debtors would owe the Trustee an amount that could reach \$500 million, and because such amount would be secured or an

administrative expense that must be paid in Cash, this should be accounted for in the proposed Plan. As discussed in the Disclosure Statement, neither the Disputed Claims Reserve nor the Allowed Administrative Expenses contain sufficient funds to pay such amount.

3. Depending on the Option Chosen by Debtors, the Trustee's Claims Could be Impaired

In this instance, the Trustee's claims are secured by the aircraft collateral and are oversecured, in that the value of the underlying aircraft collateral exceeds the amounts outstanding to the Trustee. Despite this fact, and contrary to the treatment set forth in the Disclosure Statement and proposed Plan, certain of the payment methods described in the Disclosure Statement would render the Trustee's secured claims impaired. Specifically, the Indentures do not permit Debtors to simply return the aircraft collateral to the Trustee to satisfy its secured claims. Rather, the Indentures only provide that Debtors may pay all of the amounts outstanding in Cash or, pursuant to section 1124, Debtors may reinstate the debt. In all other cases, Trustee's Secured Aircraft Claims would be impaired. Without further information on treatment of these claims, it is impossible to determine impairment.

Whether or not a claim is impaired is governed by section 1124 of the Bankruptcy Code, which provides, in relevant part, that a claim is impaired unless the underlying plan "leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest." 11 U.S.C. § 1124(1) & (2)(E); *see also In re GSC, Inc.*, 453 B.R. 132, 176 (Bankr. S.D.N.Y. 2011). A secured creditor's claim is impaired if that creditor receives property and *not cash* for its claim. *Id.* at 177 (citing *In re Union Meeting Partners*, 160 B.R. 757, 771 (Bankr. E.D. Pa. 1993)). In fact, Congress, in approving section 1124 provided as follows:

Section 1124 does not include payment “in property” other than cash. Except for a rare case, claims or interests are not by their terms payable in property, but a plan may so provide and those affected thereby may accept or reject the proposed plan. They may not be forced to accept a plan declaring the holders’ claims or interest to be “unimpaired.”

S. REP. NO. 95-989, at 120 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5906.

As noted above, among the possible payment methods set forth in the proposed Plan is a return of the aircraft collateral to the Trustee. Under the Indentures, only the Trustee, not Debtors, has the right to repossess the aircraft collateral. Any return of the collateral would therefore serve to alter the terms of the underlying contract and render the Trustee’s claims related to the EETC Transactions impaired, entitling the Trustee to vote on the proposed Plan. In addition, as noted above, case law and the legislative history of 11 U.S.C. § 1124 indicate that a proposal offering a secured creditor anything except payment in full with Cash or the reinstatement of the underlying debt would render the secured creditor’s claim impaired. Because Debtors’ proposed Plan could impair the Trustee’s claims, but the Disclosure Statement as drafted identifies the Trustee’s secured claims as unimpaired, the Disclosure Statement, as drafted, is misleading, and fails to provide adequate information. The Disclosure Statement therefore should be amended to provide the basis for the reason that the claims are in fact unimpaired.

Further, even if the EETC Transactions and other Secured Aircraft Claims are to be reinstated, many of these transactions are complex, involve third parties and include other agreements to which Debtors are not a party. To the extent Debtors determine to reinstate the EETC Transactions and/or other secured obligations, the Disclosure Statement needs to provide clarity as to what Debtors mean by reinstatement, and how Debtors intend to accomplish any reinstatement.

In addition, in the Order seeking approval of the proposed Plan, Debtors seek to enjoin parties from taking actions against Debtors and seek to release and discharge claims. Given that such claims will possibly forever be barred and cut-off, understanding the treatment of these claims at this time is therefore vital to the Trustee.

Finally, the proposed Order contains a finding that American Class 1 Claims are unimpaired and conclusively presumed to have accepted the proposed Plan. (Proposed Order, ¶¶ C, 29.) Given that Debtors are asking the Court to make such a finding, adequate information must be presented now.

For these reasons, Debtors should be required to provide adequate information to allow the Trustee to fully assess the treatment of its claims.

B. THE DISCLOSURE STATEMENT SHOULD NOT BE APPROVED UNLESS THE PROPOSED PLAN MEETS THE REQUIREMENTS OF SECTION 1129 OF THE BANKRUPTCY CODE

1. Because the Secured Aircraft Claims May be Impaired, the Trustee is Entitled to Vote on the Proposed Plan

As an additional matter, courts have held that the first level of analysis in deciding whether to approve a disclosure statement under section 1125 of the Bankruptcy Code is whether the underlying plan of reorganization may itself be confirmed. Approval of a disclosure statement where the related plan cannot possibly be confirmed under the requirements of the Bankruptcy Code would necessitate a needless waste of time and estate assets in a fruitless solicitation and confirmation attempt. *See In re Unichem Corp.*, 72 B.R. 95, 98 (Bankr. N.D. Ill. 1987); *In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 979-80 (Bankr. N.D.N.Y. 1988).

In this instance, the proposed Plan, as drafted, may not be confirmable because the Trustee is treated as unimpaired and unable to vote on the proposed Plan, when in fact, certain proposed payment methods would render the Trustee's claims impaired. As noted above, as

currently drafted, if Debtors choose to return to the Trustee the aircraft collateral, the Trustee's legal and contractual rights under the Indentures will have been altered, the Trustee's secured claims will be impaired and, pursuant to sections 1126 and 1129 of the Bankruptcy Code, the Trustee would be entitled to vote on the proposed Plan. *See In re 2712 Mission Partners, L.P.*, 2010 Bankr. LEXIS 333 (Bankr. N.D. Cal. 2010) (denying approval of disclosure statement where plan was unconfirmable because creditors' claims were improperly classified as unimpaired); *In re Coastal Broad. Sys., Inc.*, 2012 Bankr. LEXIS 3098, at *17-18 (Bankr. D.N.J. July 6, 2012) (finding that alteration of unsecured creditors' rights left them impaired which required such parties to vote on plan of reorganization).

Failure to provide for such a vote, even in the alternative or as an advisory vote, would violate section 1129(a) of the Bankruptcy Code, because the proposed Plan could not comply with the Bankruptcy Code. This is because the Trustee should be entitled to vote on the proposed Plan pursuant to section 1126, which allows a holder of an impaired claim to vote to accept or reject a plan. 11 U.S.C. § 1126. Rather than force the Trustee to vote, or by failing to provide for such a vote, raising questions as to whether the proposed Plan is confirmable, Debtors should simply make a determination with respect to the treatment of the EETC Transactions at this time. By either paying all amounts outstanding in Cash, or reinstating the debt, Debtors would leave such secured claims unimpaired and no vote would be required and the proposed Plan could be confirmed as scheduled.

In addition, it is important to note that any treatment that impairs the Trustee's claims would also violate the terms of Debtors' section 1110 elections, which require Debtors to comply in full with the terms of the various Indentures. To the extent the proposed Plan violates section 1110, it cannot be confirmed. *See* 11 U.S.C. § 1129(a)(1) ("The court shall confirm a plan only

if . . . [t]he plan complies with the applicable provisions of this title.”). This provides further cause to determine the treatment of the EETC Transactions at this time.

2. Debtors May be Inadvertently Seeking to Cancel All “Aircraft Securities” that are Required to Remain Outstanding for Purposes of Making Payments

Debtors also may be inadvertently seeking to cancel all “Aircraft Securities,” including possibly those as to which there are obligations between non-related parties that remain outstanding and are required for distribution purposes. This is, however, impermissible as such securities simply may not be canceled by Debtors. As part of their prior aircraft financing, Debtors entered into various indentures, pass through trust agreements, intercreditor agreements, leases, contracts and other related agreements. Pursuant to certain of these financings, various trusts and other parties issued securities to the public. Certain of these securities need to remain in place to enable the relevant trustee to make distributions to investors. Despite this fact, pursuant to Section 6.14 of the proposed Plan, Debtors now attempt to cancel all securities related to such aircraft financing:

On the Effective Date, all notes, instruments, certificates, and other documents evidencing . . . the Aircraft Securities shall be cancelled, and the obligations of the Debtors thereunder and in any way related thereto shall be deemed fully satisfied, released and discharged

(Proposed Plan, § 6.14.)

While the term “Aircraft Securities” is defined to include those securities listed on Schedule 4 (which, in the current draft of the proposed Plan, is blank and to be supplied at a later time), it is possible that such schedule will include all, or some, of the securities covered by the Indentures with the Trustee. Section 1123(a)(5)(F) permits Debtors to “provide adequate means for the plan’s implementation, such as . . . cancellation or modification of any indenture or similar instrument.” *See* 11 U.S.C. § 1123(a)(5)(F). Moreover, section 365 of the Bankruptcy

Code makes it clear that Debtors can reject certain contracts to which they are a party. 11 U.S.C. § 365. However, while Debtors may cancel indentures (pursuant to section 1123(a)(5)(F)) and reject contracts (pursuant to section 365) to which they are the obligated party, Debtors may not cancel indentures or reject contracts as to which there are obligations between non-related parties. Pursuant to certain of the secured financings for which the Trustee serves as trustee or some similar other role, securities, such as Pass Through Certificates were issued to the public. Debtors may not cancel these types of securities. As a result, the Disclosure Statement should be revised to make such facts clear, or when issued, Schedule 4 should make such facts clear.

3. Debtors' Exculpation Clause to be Fair and Just Should be Applicable to all Trustees

As a further matter, if not applicable to all trustees, the exculpation clause contained in Debtors' proposed Plan may not be fair and just because it only applies to some, but not all, of the indenture trustees that are serving in relation to Debtors' underlying debt. Section 10.7 of the proposed Plan states that:

Notwithstanding anything herein to the contrary, and to the maximum extent permitted by applicable law, neither the Debtors, US Airways, the Creditors' Committee, the Retiree Committee, the Indenture Trustees, . . . nor any of their respective members (current and former), including counsel and other professionals employed by such members in connection with the Chapter 11 Cases, officers, directors, employees, counsel, advisors, professionals, or agents (collectively, the "Exculpated Parties"), shall have or incur any liability to any holder of a Claim or Equity Interest for any act or omission in connection with, related to, or arising out of the Chapter 11 Cases

(Proposed Plan, § 10.7.)

Upon further examination, the term "Indenture Trustee" within the exculpation provision is defined to apply only to the indenture trustees of "Indentures." (Proposed Plan, § 1.128.) The definition of "Indentures" in the proposed Plan is limited and includes a select set of indentures

but inexplicitly does not include all of the various indentures to which Debtors are a party, including, among others, any of the Indentures with the Trustee with respect to the EETC Transactions. (Proposed Plan, § 1.127.) The Disclosure Statement includes no explanation as to why the Trustee and other trustees are excluded from this provision and/or why certain trustees are being provided with exculpation under the proposed Plan. It is important for the Trustee to know that when Debtors pay Cash for a transaction, that the transaction is entirely defeased — that there is no possibility of claims against the Trustee which might be payable by Debtors under various indemnification provisions or at law and equity. Further, if a transaction is to be reinstated, the entire transaction should be “reset” by providing appropriate relief and exculpation for the Trustee. Finally, if other alternatives are selected with respect to secured claims, the Trustee ought to be assured that Debtors’ decision does not have an adverse effect upon or raise claims against the Trustee. At a minimum, to provide adequate information, Debtors must explain why they have singled out only certain trustees and not provided such a right to all similar parties.

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V. CONCLUSION

WHEREFORE, for all the reasons sets forth herein, the Trustee respectfully requests that the Court (i) direct Debtors to amend the Disclosure Statement and proposed Plan to cure the inadequacies and address the issues identified in this Reservation of Rights and (ii) grant such other relief as is just.

Dated: May 24, 2013
New York, New York

Respectfully submitted,

*U.S. BANK TRUST NATIONAL ASSOCIATION, AS
TRUSTEE*

By Its Attorneys,

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In Re:	:	Chapter 11
	:	
AMR CORPORATION, et al.,	:	Case No. 11-15463 (SHL)
	:	Jointly Administered
Debtors.	:	
	:	

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of May 2013, a true and correct copy of the foregoing **Reservation of Rights of U.S. Bank Trust National Association, as Trustee, to Debtors’ Motion for an Order (i) Approving Notice of Disclosure Statement Hearing; (ii) Approving Disclosure Statement; (iii) Establishing a Record Date; (iv) Establishing Notice and Objection Procedures for Confirmation of the Plan; (v) Approving Solicitation Packages and Procedures for Distribution Thereof; (vi) Approving the Forms of Ballots and Establishing Procedures for Voting on the Plan; and (vii) Approving the Form of Notice to Non-Voting Classes Under the Plan**, was served electronically through the Court’s ECF System on parties requesting electronic service and on the 24th day of May 2013 by U.S. Mail, First Class, Postage Prepaid, on the parties shown below.

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