Hearing Date: June 4, 2013 at 11:00 am
Objection Deadline: May 24, 2013 at 12:00 pm

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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.	:	
	:	

RESERVATION OF RIGHTS OF U.S. BANK NATIONAL ASSOCIATION, AS LOAN TRUSTEE FOR INDENTURES ISSUED IN THE 2001-1 EETC TRANSACTION, 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

TABLE OF CONTENTS

PAGE

I. SUMMARY OF RESERVATIONS 1

II. PRELIMINARY STATEMENT 2

III. BACKGROUND 4

A. DESCRIPTION OF A TYPICAL ENHANCED EQUIPMENT TRUST CERTIFICATE 4

B. PROVISIONS OF THE 2001-1 EETC TRANSACTIONS 5

1. The Equipment Notes 5

2. The Owner Trustee Leased the Aircraft to American 6

C. THE DISCLOSURE STATEMENT 7

IV. RESERVATION OF RIGHTS 9

A. THE DISCLOSURE STATEMENT LACKS ADEQUATE INFORMATION REGARDING TREATMENT OF THE LEASES IN THE 2001-1 EETC TRANSACTION 9

1. Trustee Has No Ability to Determine Whether It Will Have a Significant Claim in a Material Transaction 11

2. The Disclosure Statement Ought to Provide More Clarity on the Analysis of the Proposed Plan Relative to the Absolute Priority Rule 11

3. Debtors May Be Inadvertently Seeking to Cancel All “Aircraft Securities” that are Required to Remain Outstanding for Purposes of Making Payments 14

4. Debtors’ Exculpation Clause to be Fair and Just Should Apply to All Trustees 15

V. CONCLUSION 17

TABLE OF AUTHORITIES

PAGE

Cases

Century Glove, Inc. v. First Am. Bank of New York, 860 F.2d 94 (3d Cir. 1988) 10

In re DBSD N. Am., Inc., 634 F.3d 79 (2d Cir. 2011)... 12

In re Forrest Hills Assocs., Ltd., 18 B.R. 104 (Bankr. D. Del. 1982) 9

In re Metrocraft Pub. Servs., Inc., 39 B.R. 567 (Bankr. N.D. Ga. 1984) 10

N. Pac. Ry. Co. v. Boyd, 228 U.S. 482 (1913) 12

Statutes

11 U.S.C. § 1123 .... 14, 15

11 U.S.C. § 1125 10

11 U.S.C. § 1129 12

NOW COMES U.S. Bank National Association, as Trustee (the *"Trustee"*), by and through its undersigned counsel, and for its Reservation of Rights (the "*Reservation*") 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

In the aggregate, the Trustee is Pass Through Trustee, Subordination Agent and Loan Trustee under thirty-two different Indentures issued in connection with the American Airlines 2001-1 Enhanced Equipment Trust Certificates (the "*2001-1 EETCs*"). The Trustee believes that Debtors' Disclosure Statement and proposed Plan should be clarified in a number of respects. Specifically, the Disclosure Statement and proposed Plan:

- Fail to provide whether they intend to assume or reject the underlying Leases (as defined below) in the 2001-1 EETC Transactions (as defined below) and other documents to which they are a party with respect to such transactions;
- Fail to disclose their intentions with respect to the Indentures and other agreements to which they are not a party under the 2001-1 EETC Transactions;
- Raise issues with respect to the ability of Debtors to cancel securities and Indentures to which there are obligations between non-related third parties;
- Should exculpate all indenture trustees rather than providing exculpation to only certain indenture trustees while excluding others; and

[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.

- To the extent the treatment of the 2001-1 EETC Transactions results in an unsecured claim (i.e. if the Leases are rejected and collateral is returned), raise issues whether the Disclosure Statement should provide additional information and analysis to enable creditors to determine whether the absolute priority rule is violated if, and to the extent that, the proposed Plan improperly distributes amounts to equity before paying unsecured creditors in full.

II. PRELIMINARY STATEMENT

Rather than providing specific information regarding how Debtors intend to treat the 2001-1 EETC Transactions, Debtors merely provide that those aircraft leases that Debtors intend to assume will appear at some time on a Schedule of Executory Contracts and Unexpired Leases and that such Schedule may be amended up to 4:00 PM on the Business Day prior to commencement of the Confirmation Hearing. The 2001-1 EETC Transactions include thirty-two aircraft in American's fleet, and therefore constitute a material amount of Debtors' fleet. Should Debtors elect to reject any of these aircraft, the Trustee would have a sizable termination value claim against Debtors' estates and should be afforded the ability to vote on the proposed Plan as a potential unsecured creditor at least on a contingent basis.

The Trustee has reached out to counsel for Debtors as to how the 2001-1 EETCs will be treated. The Disclosure Statement and the proposed Plan ought to clarify the treatment of the Leases and other issues relative to the 2001-1 EETCs, and the Trustee will continue to work with Debtors in an effort to obtain greater clarity as to how these claims will be treated and how to implement such treatment given the complexity of the transactions. It is important to note that parts of these transactions are implemented through agreements with parties other than Debtors, including the underlying Indentures and the Equipment Notes (as defined below) that are in default.

In addition, without further clarification and/or analysis, to the extent that Debtors reject any or all of the Leases in the 2001-1 EETC Transactions, Debtors' proposed Plan may raise

issues with respect to the absolute priority rule. Upon rejection, the Trustee would hold a sizable unsecured termination value claim. An integral part of the proposed Plan is the 9019 Settlement of certain inter-creditor issues that provides a distribution on the Effective Date to holders of AMR Equity Interests. However, to the extent that Debtors' former shareholders receive a distribution before the Trustee's unsecured claims are compensated in full, the proposed Plan may violate the absolute priority rule of section 1129(b)(2) of the Bankruptcy Code. The Disclosure Statement does not provide any information and/or financial analysis of the inter-creditor claims and the effect of those claims on potential distributions, nor does it provide sufficient detail on substantive consolidation. While the Trustee is by no means taking a position on whether or not the absolute priority rule is violated, it believes Debtors should provide more disclosure to permit creditors to properly evaluate the 9019 Settlement to determine for themselves the fairness of the resolutions and that this claim is truly unimpaired.

Further, pursuant to Section 6.14 of the proposed Plan, Debtors are attempting to cancel certain "Aircraft Securities" without disclosing which securities are to be canceled. Not only does the Disclosure Statement lack adequate information regarding which securities are to be canceled, but Debtors may also be seeking to cancel securities as to which there are obligations between non-related parties and that are necessary for the Trustee to make future distributions. Debtors should not be allowed to, nor can they, cancel securities, such as the 2001-1 EETCs, that have been made by the pass through trusts, or the Equipment Notes that have been made by the various owner trusts.

Lastly, the proposed Plan should be fair and equitable with respect to the exculpation of all Trustees. The Disclosure Statement does not disclose any reason for releasing certain trustees while not releasing others, including the Trustee. To the extent that a trustee's claims are

discharged, it is entitled to know that its entire claim against Debtors' estates, particularly indemnity and related claims for any claim brought by investors or third parties, have been defeased in full.

As a result, 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 the issues identified herein.

III. BACKGROUND

A. DESCRIPTION OF A TYPICAL ENHANCED EQUIPMENT TRUST CERTIFICATE

The trusts at issue here were established pursuant to the public issuance of enhanced equipment trust certificates ("*EETCs*") to finance the purchase of several commercial aircraft to be leased by American. Such EETCs are a complex form of financing commonly used by commercial airlines to finance the acquisition of their fleets. In EETC transactions, trusts are established under pass-through trust agreements. Each pass-through trust issues certificates that are purchased by investors. Proceeds from the sale of such certificates are used by the pass-through trusts to purchase equipment notes issued under the terms of one or more underlying indentures between an owner trustee and an indenture trustee (sometimes referred to as a "loan trustee"). The proceeds from the sale of the equipment notes are thereafter used by the owner trustee to purchase the aircraft, which are then leased by the owner trustee to the airline.

Each owner trustee assigns its rights to the rent payment to the indenture trustee, and also grants a lien on the aircraft and leases to the indenture trustee to secure the obligations under the indenture and the repayment of the equipment notes. The airline is not an obligor on the equipment notes issued for the leased aircraft. The equipment notes are issued by the owner trustee in series under each indenture to pass through trusts: the class A equipment notes are

issued to the class A pass through trust, class B equipment notes are issued to the class B pass through trust, and so on. Each series of equipment notes is secured by specific aircraft and rights under the related aircraft lease.

B. PROVISIONS OF THE 2001-1 EETC TRANSACTIONS

The trusts and agreements underlying the certificates at issue in this case are consistent with the preceding general description. Here, the Trustee acts as Loan Trustee (as defined below), Pass Through Trustee (as defined below) and Subordination Agent (as defined below) in connection with the 2001-1A-1 EETC, 2001-1B EETC and 2001-1C EETC transactions (collectively, "*2001-1 EETC Transactions*"), pursuant to which at least thirty-two (32) aircraft[2] were financed and leased to American and the various American Airlines Pass Through Certificates (the "*Certificates*") were issued.

1. The Equipment Notes

The Trustee acts as successor loan trustee (the "*Loan Trustee*") pursuant to at least thirty-two (32) separate Indenture and Security Agreements (as, and as may be, supplemented and amended, the "*Indentures*" one for each aircraft and lease that serve as collateral for the Equipment Notes) between the Loan Trustee and Wells Fargo Bank Northwest, National Association as Owner Trustee (the "*Owner Trustee*"), each relating to the financing of one McDonnell Douglas airframe and two Pratt & Whitney aircraft engines, and as noted below, each of such airframes and engines were thereafter leased to American.

[2] Initially more than thirty-two (32) aircraft were involved in the transactions, but certain of those aircraft are no longer involved in the transactions described herein.

To facilitate the financing of each Aircraft, the Owner Trustee issued equipment notes (the "*Equipment Notes*") pursuant to the terms of the related Indenture. Payments on the Equipment Notes and all other amounts due under the Indentures were secured by, among other property, the related Aircraft and Leases. Each series of Equipment Notes issued under the Indentures was purchased by the American Airlines Pass Through Trust 2001-1A-1, the American Airlines Pass Through Trust 2001-1B, or the American Airlines Pass Through Trust 2001-1C, as appropriate, (individually or collectively, as appropriate, the "*Pass Through Trust*") formed by American and each administered by the Trustee as successor pass through trustee (in such capacity, the "*Pass Through Trustee*") under a basic pass through trust agreement, dated as of May 24, 2001 (as supplemented and amended). Each such purchase of Equipment Notes by a Pass Through Trust was made using the proceeds from one or more public offerings of a corresponding series of Certificates issued by the Pass Through Trust to investors evidencing a beneficial ownership interest in the property of the Pass Through Trust. The Owner Trustee used the funds it received from the sale of the Equipment Notes to the Pass Through Trusts to acquire title to and finance the purchase of the Aircraft.

2. The Owner Trustee Leased the Aircraft to American

Concurrently with the financing described above, the Owner Trustee leased each Aircraft to American, as Lessee, pursuant to at least thirty-two (32) separate Lease Agreements (each, as supplemented and amended, a "*Lease*," and collectively, the "*Leases*").

Payment of Basic Rent (as defined in the Leases) and Excess Rent (as defined in the Leases) made under the Leases, as well as the payment of any Termination Value (as defined in the Leases) or Stipulated Loss Value (as defined in the Leases), are made directly to the Loan Trustee, pursuant to an assignment from the Owner Trustee in the Indentures, for application to,

inter alia, payments due on the Equipment Notes, and then paid over to the Subordination Agent for distribution pursuant to the Intercreditor Agreement. After payment of certain fees, expenses and other amounts, the Subordination Agent uses the amounts received to make distributions to the Pass Through Trustees, which, in turn, make distributions to holders of the Certificates (the "*Certificateholders*").

The Trustee filed the following timely proof of claim against Debtors with respect to the 2001-1 EETC Transactions (and due to the nature of the financing would be entitled to file a Claim upon any rejection of the Leases):

- ***Claim Number 12556*** against American, by U.S. Bank National Association, as Loan Trustee, Pass Through Trustee, Subordination Agent, and, to the limited extent as described in the addendum to the proof of claim, in its individual capacity, with respect to the 2001-1A-1 EETCs; 2001-1B EETCs; and the 2001-1C EETCs. The Trustee filed a claim with respect to the Leases thereunder. The Owner Trustee granted the Trustee a first priority security interest in and mortgage lien on the applicable aircraft collateral, related engines and equipment, documents, insurance, requisition proceeds and records.

C. THE DISCLOSURE STATEMENT

Debtors filed the Disclosure Statement on April 15, 2013. [ECF No. 7632.] Pursuant to the Disclosure Statement, Debtors propose the following treatment of unsecured claims:

> All executory contracts and unexpired leases to which any of the Debtors are parties automatically shall be deemed rejected as of the Effective Date, except for executory contracts or unexpired leases (i) that have been assumed or rejected pursuant to an order of the Bankruptcy Court entered prior to the Effective Date, (ii) that are the subject of a separate motion to assume or reject pending on the Confirmation Date, (iii) that are assumed, rejected, or otherwise treated pursuant to Sections 8.3, 8.4, or 8.5 of the Plan, (iv) that are listed on Schedule 8.1 of the Plan Supplement (which will consist of various sub-Schedules), or (v) as to which a Treatment Objection has been filed and served by the Treatment Objection Deadline.

(Disclosure Statement at 107-108.) If assumed, the Leases would appear on Schedule 8.1. Debtors have reserved the right to amend Schedule 8.1 to up to 4:00 PM on the eve of the Confirmation Hearing.

With respect to any unsecured claim that may arise as a result of the rejection of any Lease, Debtors propose to treat these single-dip unsecured claims in the following manner:

> (a) Each holder of an Allowed American Other General Unsecured Claim as of the Effective Date shall receive (i) on or as soon as reasonably practicable after the Initial Distribution Date, its Initial Pro Rata Share of a number of shares of New Mandatorily Convertible Preferred Stock . . . (ii) as soon as reasonably practicable after the Final Mandatory Conversion Date its Initial Pro Rata Share of a number of shares of New Common Stock . . .. In connection with each Interim True-Up Distribution, each holder of an Allowed American Other General Unsecured Claim shall receive its Interim Pro Rata Share of the distribution allocated to Allowed Single-Dip General Unsecured Claims pursuant to Section 7.4(a) hereof. In connection with the Final True-Up Distribution, each holder of an Allowed American Other General Unsecured Claim shall receive its Final Pro Rata Share of the distribution allocated to Allowed Single-Dip General Unsecured Claims . . . .

(Proposed Plan, § 4.11.) Thus, under the proposed Plan, the holder of an Allowed Single-Dip General Unsecured Claim will receive two distributions from Debtors' estates — one on the Initial Distribution Date (which is the same as the Effective Date) and one on the Mandatory Conversion Date. (*See* Disclosure Statement at 84-85.)

In addition, under the proposed Plan, equity will also receive a distribution:

> Each holder of an Allowed AMR Equity Interest shall receive its pro rata share (i) on the Effective Date, or as soon as thereafter as reasonably practicable, of the Initial Old Equity Allocation and (ii) on each Mandatory Conversion Date, or as soon thereafter as reasonably practicable, of the Market-Based Old Equity Allocation. In connection with each Interim True-Up Distribution, each holder of an Allowed AMR Equity Interest shall receive its pro rata share of the Market-Based Old Equity Allocation pursuant to Section 7.4(a) of the Plan. In connection with the Final True-Up

> Distribution, each holder of an Allowed AMR Equity Interest shall receive its pro rata share of the Market-Based Old Equity Allocation pursuant to Section 7.4(b) of the Plan. The right of a holder of an Allowed AMR Equity Interest to receive any distribution on a Mandatory Conversion Date, an Interim Distribution Date, or a Final Distribution Date shall not be Transferable.

(Disclosure Statement at 13, 71-72.) Thus, a holder of an Allowed AMR Equity Interest would also receive distributions on the Effective Date. The reservation of a portion of Debtors' estate for the holders of Allowed AMR Equity Interests is the result of a settlement agreement between Debtors and the Unsecured Creditors' Committee, among others, with respect to the Support and Settlement Agreement related to Debtors' plan to merge with US Airways. (Disclosure Statement at 54-56.) Pursuant to the 9019 Settlement, Debtors, the Unsecured Creditors' Committee and others are attempting to resolve, among other things, certain inter-creditor issues. The Disclosure Statement, however, does not provide meaningful information and/or financial or other analysis with respect to such inter-creditor claims of AMR and its subsidiaries, making it difficult to determine whether such agreements with respect to payments on the equity (prior to payments on single dip claims) is fair and equitable. The Disclosure Statement similarly does not provide analysis as to the issues relating to substantive consolidation.

IV. RESERVATION OF RIGHTS

A. THE DISCLOSURE STATEMENT LACKS ADEQUATE INFORMATION REGARDING TREATMENT OF THE LEASES IN THE 2001-1 EETC TRANSACTION

Pursuant to section 1125(b) of the Bankruptcy Code, a Bankruptcy Court may only approve a disclosure statement if it contains "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 Adelphia 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*., 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 2001-1 EETC Transactions.

1. Trustee Has No Ability to Determine Whether It Will Have a Significant Claim in a Material Transaction

The Disclosure Statement contains no information as to whether Debtors intend to assume or reject all or some of the Leases in the 2001-1 EETC Transactions. The Trustee appreciates that Debtors' cases are complex, but 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 stated that they intend to reinstate these transactions and assume the Leases thereunder. After almost nearing the completion of these cases, however, Debtors should propose a Plan and provide a Disclosure Statement that makes concrete determinations as to how the 2001-1 EETC Transactions will specifically be treated. This includes not only the assumption of the relevant Leases, and the relevant Participation Agreements or other agreements in the transactions, but what, if any, treatment it proposes with respect to the Equipment Notes and Indentures (to which Debtors are not a party) which are in default. The Trustee has reached out to Debtors to determine how these claims will be treated and have been provided with some preliminary information with respect to how such claims are intended to be treated and have been advised that the Leases will be assumed, but more detail is required especially as to the Equipment Notes and Indentures that are in default and to which the Debtors are not a party. It is impossible to determine whether the Trustee has a significant unsecured claim without definitively knowing how these Leases will be definitively treated.

2. The Disclosure Statement Ought to Provide More Clarity on the Analysis of the Proposed Plan Relative to the Absolute Priority Rule

In the event that Debtors do not assume the Leases, the Trustee may ultimately hold unsecured claims against Debtors. Such claims are classified in the proposed Plan as American Other General Unsecured Claims. Because no Debtors guaranteed these claims in addition to the

primary debt, the Trustee's claims are so-called single-dip claims. As set forth in the proposed Plan, these single-dip unsecured claims are deemed "unimpaired" and will receive two distributions from Debtors — one on the Initial Distribution Date and a second on the Final Mandatory Conversion Date. (*See* Disclosure Statement at 15, 75-77; proposed Plan at 4.11.)

Pursuant to the proposed 9019 Settlement with respect to Debtors' merger with US Airways, the proposed Plan also provides holders of AMR Equity Interests with distributions on the Effective Date (which is the same date as the Initial Distribution Date) and on each Mandatory Conversion Date. (Disclosure Statement at 13, 48, 54-56; Proposed Plan, § 4.5.) Payment to equityholders is typically not allowed under the Bankruptcy Code, unless and until a debtor's unsecured creditors are paid in full. *See In re DBSD N. Am., Inc.*, 634 F.3d 79, 94 (2d Cir. 2011). Indeed, the U.S. Supreme Court has "developed a 'fixed principle' for reorganizations: that all 'creditors [are] entitled to be paid before the stockholders [can] retain [shares] for any purpose whatever.'" *Id.* (quoting *N. Pac. Ry. Co. v. Boyd*, 228 U.S. 482, 507-08 (1913)). The Bankruptcy Code incorporates this provision by requiring "[f]or a district court to confirm a plan over the vote of a dissenting class of claims, the [Bankruptcy] Code demands that the plan be 'fair and equitable, with respect to each class of claims . . . that is impaired under, and has not accepted, the plan.'" *Id.* (citing 11 U.S.C. § 1129(b)(1)).

In this instance, however, it may be possible that because the equityholders are holders of claims against AMR, and not American, that there was sufficient value at the parent level to distribute amounts to such holders without violating the absolute priority rule or that any "gift" to the holders of equity is sufficiently small. Without better disclosure regarding the inter-creditor claims, and the finances of Debtors' various subsidiaries, including American, however, there is no way to evaluate whether the 9019 Settlement is fair reasonable and/or acceptable to

creditors. Similarly, other Allowed unsecured creditors of American, whose claims were guaranteed by AMR (American Class 4 — American General Unsecured Guaranteed Claims and AMR Class 3 — AMR General Unsecured Guaranteed Claims (both double-dip unsecured claims)), are to receive their full distributions on the Effective Date. Without better understanding the inter-creditor issues, it is also uncertain why certain unsecured creditors are being paid in full immediately while others are not being paid in full on the Effective Date.

The Trustee currently is not taking a position as to whether the 9019 Settlement reflected in the proposed Plan is or is not reasonable or whether or not it violates the absolute priority rule. Rather, it simply believes Debtors should be required to provide additional financial information and analysis with regard to the various inter-creditor issues and Debtors' estates so that all creditors can determine whether the proposed 9019 Settlement is fair and equitable. The Trustee has been in contact with Debtors and Debtors believe that the 9019 Settlement is fair and reasonable to all parties. While the proposed payments to the equity may be legitimate and appropriate, the Disclosure Statement does not provide sufficient information to holders of American Other General Unsecured Claims to allow them to be able to determine the justification for such treatment. In order to properly evaluate such a settlement, the Disclosure Statement should require additional information and analysis on the nature and extent of the inter-creditor claims and an assessment as to what that might mean from a distribution perspective, i.e. would it be possible for holders of equity to receive a distribution while certain of the creditors of other Debtors are not paid in full if the settlements reached as part of the 9019 Settlement were not made. In addition, disclosure with respect to the effects of substantive consolidation ought to be made to enable creditors to determine the merits of the 9019 Settlement and whether the absolute priority rule is being violated. Thus, the Court should

require additional substantive analysis with respect to the merits of the 9019 Settlement. At present the Trustee does not have adequate information to determine whether or not there are legitimate objections to the payment to the AMR Equity Interests.

3. Debtors May Be Inadvertently Seeking to Cancel All "Aircraft Securities" that are Required to Remain Outstanding for Purposes of Making Payments

Debtors may be inadvertently seeking to cancel all "Aircraft Securities," including possibly those between non-related third parties or that are required for distribution purposes. This is, however, impermissible as securities as to which there are obligations between non-related third parties simply may not be canceled by Debtors. As part of their prior aircraft financing, Debtors entered into various indentures, 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 Equipment Notes and Certificates in the 2001-1 EETC Transactions. 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. 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. This would include contracts such as the individual indentures and the pass through trust agreements. Debtors may not cancel these types of securities which were made by third parties independent of the Debtors. As a result, the Disclosure Statement should be revised to make such facts clear, or when issued, Schedule 4 should make such facts clear.

4. Debtors' Exculpation Clause to be Fair and Just Should Apply to All Trustees

As a further matter, if not applicable to all indenture 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 Trustees" 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 or other relevant agreements with the Trustee. (Proposed Plan, § 1.127.) The Disclosure Statement includes no explanation as to why Trustee and other trustees are excluded from this provision and/or why only certain trustees are being exculpated 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 Lease is assumed or a transaction is to be reinstated, the entire lease or 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 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 NATIONAL ASSOCIATION, AS TRUSTEE

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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 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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/s/ Jeremy Schreiber
Jeremy Schreiber