

NORFOLK SOUTHERN CORP
 Form 424B5
 August 23, 2010
 Filed Pursuant to Rule 424(b)(5)
 Registration Statement No. 333-158240

The information in this preliminary prospectus supplement is not complete and may be changed. This preliminary prospectus supplement and the accompanying prospectus are not an offer to sell these securities and are not soliciting an offer to buy these securities in any jurisdiction where such offer or sale is not permitted.

SUBJECT TO COMPLETION
 PRELIMINARY PROSPECTUS SUPPLEMENT DATED AUGUST 23, 2010

PROSPECTUS SUPPLEMENT
 (To Prospectus Dated March 27, 2009)

\$

6% Senior Notes due 2105

We are offering \$ million aggregate principal amount of our 6% senior notes due 2105 (the “Notes”). The Notes will bear interest at a rate of 6% per year. We will pay Interest on the Notes on March 15 and September 15 of each year. The Notes will mature on March 15, 2105. Interest on the Notes will accrue from March 15, 2010, and the first interest payment on the Notes will be due on September 15, 2010. The Notes are being offered as additional notes under the Indenture (as defined herein) pursuant to which we issued \$300,000,000 principal amount of our 6% senior notes due 2105 on March 11, 2005 (the “Prior Notes”). The Notes offered hereby and the Prior Notes will be treated as a single series of debt securities under the Indenture. We may redeem the Notes prior to maturity, in whole or in part, as described in this prospectus supplement.

The Notes will be unsecured obligations and rank equally with our other unsecured senior indebtedness. The Notes will be issued only in registered form in denominations of \$1,000 and integral multiples of \$1,000.

The Notes will not be listed on any securities exchange.

	Price to Public (1)	Underwriting Discount	Proceeds to us (before expenses) (1)
Per Note	%	%	%
Total	\$	\$	\$

(1) Plus accrued interest from March 15, 2010, the last date on which interest was paid on the Prior Notes, to the date of issuance of the Notes.

The Securities and Exchange Commission and state securities regulators have not approved or disapproved these securities or determined if this prospectus supplement or the accompanying prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

Edgar Filing: NORFOLK SOUTHERN CORP - Form 424B5

The Notes will be ready for delivery in book-entry form through the facilities of The Depository Trust Company and its participants, including Euroclear Bank, S.A./N.V., and Clearstream Banking, société anonyme, on or about August , 2010.

Sole Book Running Manager

Goldman, Sachs & Co.

Co-Manager

Barclays Capital

The date of this prospectus supplement is August , 2010

TABLE OF CONTENTS

Prospectus Supplement

	Page
ABOUT THE PROSPECTUS SUPPLEMENT	S-2
INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE	S-2
WHERE YOU CAN FIND MORE INFORMATION	S-3
FORWARD-LOOKING STATEMENTS	S-4
SUMMARY	S-5
USE OF PROCEEDS	S-8
RATIO OF EARNINGS TO FIXED CHARGES	S-9
DESCRIPTION OF THE NOTES	S-10
CERTAIN U.S. FEDERAL INCOME TAX CONSEQUENCES TO NON-U.S. HOLDERS	S-19
UNDERWRITING	S-21
LEGAL MATTERS	S-24
EXPERTS	S-24

Prospectus

ABOUT THIS PROSPECTUS	1
WHERE YOU CAN FIND MORE INFORMATION	2
FORWARD-LOOKING STATEMENTS	4
NORFOLK SOUTHERN CORPORATION	5
RISK FACTORS	5
USE OF PROCEEDS	5
RATIO OF EARNINGS TO FIXED CHARGES	5
DESCRIPTION OF SECURITIES	6
DESCRIPTION OF DEBT SECURITIES	6
DESCRIPTION OF CAPITAL STOCK	16
DESCRIPTION OF WARRANTS	18
DESCRIPTION OF DEPOSITARY SHARES	20
DESCRIPTION OF STOCK PURCHASE CONTRACTS AND STOCK PURCHASE UNITS	23
PLAN OF DISTRIBUTION	24
LEGAL MATTERS	25
EXPERTS	25

ABOUT THE PROSPECTUS SUPPLEMENT

You should rely only upon the information contained in this prospectus supplement, the accompanying prospectus and the documents they incorporate by reference. We have not authorized any other person to provide you with different or additional information. If anyone provides you with different or additional information, you should not rely on it. Neither we nor the underwriters are making an offer to sell the Notes in any jurisdiction where the offer or sale is not permitted. You should assume the information appearing or incorporated by reference in this prospectus supplement and the accompanying prospectus is accurate only as of the date of the document in which such information appears. Our business, financial condition, results of operations and prospects may have changed since those dates.

This prospectus supplement contains the terms of this offering of Notes. The Description of the Notes in this prospectus supplement supersedes in its entirety the description of debt securities contained in the accompanying prospectus under "Description of Debt Securities." This prospectus supplement may add, update or change other information contained or incorporated by reference in the accompanying prospectus. In addition, the information incorporated by reference in the accompanying prospectus may have added, updated or changed information in the accompanying prospectus. If information in this prospectus supplement is inconsistent with any information in the accompanying prospectus (or any information incorporated therein by reference), this prospectus supplement will apply and will supersede such information in the accompanying prospectus.

It is important for you to read and consider all information contained in this prospectus supplement, the accompanying prospectus and the documents they incorporate by reference in making your investment decision. You should also read and consider the additional information under the captions "Incorporation of Certain Documents by Reference" and "Where You Can Find More Information."

In this prospectus supplement, except as otherwise indicated, "Norfolk Southern," "we," "our," "us" or the "company" refer to Norfolk Southern Corporation and its consolidated subsidiaries. References herein to a fiscal year shall mean the fiscal year ended December 31.

INCORPORATION OF CERTAIN DOCUMENTS BY REFERENCE

The SEC allows certain issuers, including our company, to "incorporate by reference" information into a prospectus such as this one, which means that we can disclose important information about us by referring you to those documents and that such incorporated documents are considered part of this prospectus supplement. Any statement contained in this prospectus supplement or a document incorporated by reference into this prospectus supplement will be deemed to be modified or superseded for purposes of this prospectus supplement to the extent that a statement contained herein or therein, or in any other subsequently filed document that also is deemed to be incorporated herein or therein by reference, modifies or supersedes such statement. A statement so modified or superseded will not be deemed, except as so modified or superseded, to constitute a part of this prospectus supplement. We incorporate by reference into this prospectus supplement the documents set forth below that have been previously filed with the SEC, provided, however, that we are not incorporating any information furnished rather than filed on any Current Report on Form 8-K or Form 8-K/A:

- Our Annual Report on Form 10-K for the fiscal year ended December 31, 2009 (the "Fiscal 2009 Form 10-K");
- Our Definitive Proxy Statement on Schedule 14A, as filed with the SEC on March 22, 2010;

Edgar Filing: NORFOLK SOUTHERN CORP - Form 424B5

- Our Quarterly Reports on Form 10-Q for the quarter ended March 31, 2010 and June 30, 2010 (the “Quarterly Reports on Form 10-Q”); and
- Our Current Reports on Form 8-K dated January 29, 2010, April 5, 2010 and May 18, 2010 and Form 8-K/A dated January 29, 2010.

S-2

We also incorporate by reference any future filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Exchange Act, provided, however, that we are not incorporating any information we furnish rather than file with the SEC.

WHERE YOU CAN FIND MORE INFORMATION

We file annual, quarterly and special reports, prospectus and other information with the SEC. You may read and copy any document we file at the SEC's Public Reference Room at 100 F Street, N.E., Washington, D.C. 20549. You may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC maintains an Internet site that contains our reports, proxy and other information regarding us at <http://www.sec.gov>. You may read and copy reports and other information we file at the office of the New York Stock Exchange, Inc., 20 Broad Street, New York, New York 10005. Information about our company is also available to the public from our website at <http://www.nscorp.com>. The information on our website is not incorporated by reference into this prospectus supplement, and you should not consider it a part of this prospectus.

This prospectus supplement contains summaries of the material terms of certain documents and refers you to certain documents that we have filed with the SEC. Copies of these documents, except for certain exhibits and schedules, will be made available to you without charge upon written or oral request to:

Investor Relations
Norfolk Southern Corporation
Three Commercial Place
Norfolk, Virginia 23510-2191
(757) 629-2861

FORWARD-LOOKING STATEMENTS

This prospectus supplement contains forward-looking statements that may be identified by the use of words like "believe," "expect," "anticipate" and "project." Forward-looking statements reflect management's good-faith evaluation of information currently available. However, such statements are dependent on and, therefore, can be influenced by a number of external variables over which management has little or no control, including: legislative and regulatory developments; transportation of hazardous materials as a common carrier by rail; acts of terrorism or war; general economic conditions; impacts of environmental regulations on utility coal customers and/or the value of certain company assets; competition and consolidation within the transportation industry; the operations of carriers with which the company interchanges; disruptions to the company's technology infrastructure, including computer systems; labor difficulties, including strikes and work stoppages; results of litigation; natural events such as severe weather, hurricanes, and floods; unavailability of qualified personnel due to unpredictability of demand for rail services; fluctuation in supplies and prices of key materials, in particular diesel fuel; and changes in securities and capital markets. For a discussion of significant risk factors applicable to the company, see our Annual Report on Form 10-K for the fiscal year ended December 31, 2009, as well as other risks identified in our public filings. Forward-looking statements are not, and should not be relied upon as, a guarantee of future performance or results, nor will they necessarily prove to be accurate indications of the times at or by which any such performance or results will be achieved. As a result, actual outcomes and results may differ materially from those expressed in forward-looking statements. The company undertakes no obligation to update or revise forward-looking statements.

SUMMARY

This summary highlights the information contained elsewhere, or incorporated by reference, in this prospectus supplement. Because this is only a summary, it does not contain all of the information that may be important to you. For a more complete understanding of this offering, we encourage you to read this entire prospectus supplement, the accompanying prospectus and the documents to which we refer you. You should read the following summary together with the more detailed information and consolidated financial statements and the notes to those statements included elsewhere in this prospectus supplement and the accompanying prospectus and incorporated by reference herein.

Our Company

Norfolk Southern Corporation is a Norfolk, Virginia based company that controls a major freight railroad, Norfolk Southern Railway Company. Norfolk Southern Railway Company is primarily engaged in the rail transportation of raw materials, intermediate products and finished goods primarily in the Southeast, East and Midwest and, via interchange with other rail carriers, to and from the rest of the United States. Norfolk Southern also transports overseas freight through several Atlantic and Gulf Coast ports. Norfolk Southern provides comprehensive logistics services and offers the most extensive intermodal network in the eastern half of the United States. The common stock of Norfolk Southern is listed on the New York Stock Exchange (NYSE) under the symbol “NSC.”

Norfolk Southern was incorporated on July 23, 1980, under the laws of the Commonwealth of Virginia. On June 1, 1982, Norfolk Southern acquired control of two major operating railroads, Norfolk and Western Railway Company (“NW”) and Southern Railway Company (“Southern”) in accordance with an Agreement of Merger and Reorganization dated as of July 31, 1980, and with the approval of the transaction by the Interstate Commerce Commission (now the Surface Transportation Board). Effective December 31, 1990, Norfolk Southern transferred all the common stock of NW to Southern, and Southern’s name was changed to Norfolk Southern Railway Company (“Norfolk Southern Railway” or “NSR”). Effective September 1, 1998, NW was merged with and into Norfolk Southern Railway. As of June 30, 2010, all the common stock of Norfolk Southern Railway was owned directly by Norfolk Southern.

Through a limited liability company, Norfolk Southern and CSX Corporation (“CSX”) jointly own Conrail Inc., whose primary subsidiary is Consolidated Rail Corporation (“CRC”). Norfolk Southern has a 58% economic and 50% voting interest in the jointly owned entity, and CSX has the remainder of the economic and voting interests. CRC owns and operates certain properties for the joint and exclusive benefit of NSR and CSX Transportation Inc. (see Note 5 to the consolidated financial statements included in our Annual Report on Form 10-K for the fiscal year ended December 31, 2009, incorporated herein by reference).

Our executive offices are located at Three Commercial Place, Norfolk, Virginia 23510-2191, and our telephone number is (757) 629-2600.

The Offering

The following is a brief summary of some of the terms of this offering. For a more complete description of the terms of the Notes, see “Description of the Notes” herein.

Issuer	Norfolk Southern Corporation.
Notes Offered	\$ million aggregate principal amount of 6 % senior notes due 2105 (the “Notes”). The Notes are being offered as additional notes under the Indenture, pursuant to which we issued \$300,000,000 principal amount of 6% senior notes due 2105 on March 11, 2005 (the “Prior Notes”). The Notes offered hereby and the Prior Notes will be treated as a single series of debt securities under the Indenture.
Maturity	March 15, 2105.
Interest	Interest will accrue on the Notes from March 15, 2010 at the rate of 6% per year, and will be payable in cash semi-annually in arrears on March 15 and September 15 of each year, commencing September 15, 2010. Interest on the Notes will be computed on the basis of a 360-day year comprised of twelve 30-day months.
Ranking	The Notes will be unsecured obligations of Norfolk Southern and will rank equally with each other, with the Prior Notes and with all other unsecured and unsubordinated indebtedness of Norfolk Southern from time to time outstanding.
Optional Redemption	We may redeem some or all of the Notes, in whole or in part, at any time or from time to time, at the redemption price set forth in this prospectus supplement. See “Description of the Notes—Optional Redemption.”
Certain Covenants	The Indenture governing the Notes contains covenants that, among other things, will limit our ability to incur certain additional indebtedness.
Use of Proceeds	The net proceeds from this offering after deducting the underwriters’ discount and our estimated expenses will be approximately \$ million. We intend to use the net proceeds of this offering for general corporate purposes.
Governing Law	State of New York.
Risk Factors	See the risk factors described in our Fiscal 2009 Form 10-K (together with any material changes thereto contained in subsequent filed Quarterly Reports on Form 10-Q) and those contained in our other filings with the SEC during this fiscal year,

which are incorporated by reference in this prospectus supplement. Before deciding to invest in the Notes, you should carefully consider those risks.

Trustee

U.S. Bank Trust National Association (the "Trustee").

S-7

USE OF PROCEEDS

Our net proceeds from this offering will be approximately \$ million, after deducting the underwriters' discount and our estimated offering expenses. We expect to use all the net proceeds of this offering for general corporate purposes.

S-8

RATIO OF EARNINGS TO FIXED CHARGES

The following table sets forth our ratio of earnings to fixed charges for the periods indicated:

	Year Ended December 31,					Six-Months Ended
	2005	2006	2007	2008	2009	June 30, 2010
Ratio of earnings to fixed charges(a)	3.90	x 4.88	x 5.07	x 6.34	x 4.05	x 4.93x

(a) For purposes of computing the ratios of earnings to fixed charges, earnings represents income from continuing operations before income taxes, plus (a) the sum of (i) total interest expenses and (ii) amortization of capitalized interest, less (b) income of partially owned entities. Fixed charges are calculated as the sum of (i) interest expense on debt, (ii) interest expense on unrecognized tax benefit, (iii) other interest expense, (iv) calculated interest portion of rent expense and (v) capitalized interest.

DESCRIPTION OF THE NOTES

The following description of the Notes we are offering supersedes in its entirety the description of the general terms and provisions of our debt securities set forth in the accompanying prospectus under "Description of Debt Securities."

The Notes will be senior debt issued under a supplement to an indenture, dated as of January 15, 1991, as supplemented by the Second Supplemental Indenture, dated April 26, 1999, the Ninth Supplemental Indenture dated March 11, 2005 and as to be further supplemented as of the settlement date of this offering (the "Indenture") between Norfolk Southern and U.S. Bank Trust National Association, formerly known as First Trust of New York National Association, as successor trustee to Morgan Guaranty Trust Company of New York (the "Trustee").

General

On March 11, 2005, we issued \$300,000,000 principal amount of 6% senior notes due 2105 under the Indenture (the "Prior Notes"). The \$ principal amount of the Notes to be issued in this offering are additional notes under the Indenture, and will be fully fungible with the Prior Notes and be treated together with the Prior Notes as a single series of debt securities under the Indenture. The terms of the Notes, other than their issue date, issue price, first date of interest accrual and first interest payment date, will be identical to the Prior Notes. The Notes offered hereby will have the same CUSIP and ISIN numbers as the Prior Notes and will trade interchangeably with the Prior Notes immediately upon settlement. References to the "Notes" in this section of this prospectus supplement include both the Prior Notes and the Notes offered hereby.

The Notes will bear interest at a rate of 6% per year. Interest will be payable semi-annually on March 15 and September 15 of each year, beginning September 15, 2010. Interest on the Notes will accrue from March 15, 2010, which is the most recent date to which interest has been paid on the Prior Notes. Interest on the Notes will be paid to holders of record on the March 1 or September 1 immediately before the interest payment date. If any interest payment date or a maturity date falls on a day that is not a Business Day, the required payment shall be made on the next Business Day as if it were made on the date such payment was due, and no interest shall accrue on the amount so payable for the period from and after such interest payment date or such maturity date, as the case may be. "Business Day" means any day, other than a Saturday or Sunday, on which banking institutions in the City of New York are open for business. Interest and principal will be payable in U.S. dollars at the Trustee's New York corporate trust office, which is located at 100 Wall Street, Suite 1600, New York, New York 10005. The Notes will mature on March 15, 2105. The Notes will be issued only in denominations of \$1,000 and integral multiples of \$1,000. There will be no sinking fund payments for the Notes.

Ranking

The Notes will be senior unsecured obligations of Norfolk Southern and will rank equally with all of our other senior unsecured indebtedness. As of June 30, 2010, prior to giving effect to the offering of the Notes, we had \$3.2 billion of outstanding senior indebtedness (none of which is secured indebtedness) not including the debt of our subsidiaries. Because we are a holding company, the Notes effectively will rank junior to all liabilities of our subsidiaries. As of June 30, 2010, total liabilities (other than intercompany liabilities) of our railroad subsidiaries were approximately \$11.3 billion and debt of our railroad subsidiaries was approximately \$848 million.

Optional Redemption

The Notes may be redeemed in whole at any time or in part from time to time, at our option, at a redemption price equal to the greater of (1) 100% of their principal amount or (2) the sum of the present

S-10

values of the remaining scheduled payments of principal and interest on the Notes to be redeemed, discounted to the date of redemption on a semi-annual basis (assuming a 360-day year consisting of twelve 30-day months) at the applicable Treasury Yield plus 20 basis points for the Notes, plus accrued and unpaid interest on the principal amount being redeemed to the redemption date.

“Treasury Yield” means, with respect to any redemption date, (1) the yield, under the heading which represents the average for the immediately preceding week, appearing in the most recently published statistical release designated “H.15(519)” or any successor publication which is published weekly by the Board of Governors of the Federal Reserve System and which establishes yields on actively traded United States Treasury securities adjusted to constant maturity under the caption “Treasury Constant Maturities,” for the maturity corresponding to the Comparable Treasury Issue (if no maturity is within three months before or after the Remaining Life, yields for the two published maturities most closely corresponding to the Comparable Treasury Issue will be determined and the Treasury Yield will be interpolated or extrapolated from such yields on a straight line basis, rounding to the nearest month) or (2) if such release (or any successor release) is not published during the week preceding the calculation date or does not contain such yields, the rate per annum equal to the semi-annual equivalent yield-to-maturity of the Comparable Treasury Issue, calculated using a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price of such redemption date. The Treasury Yield will be calculated on the third Business Day preceding the redemption date.

“Comparable Treasury Issue” means the United States Treasury security selected by the Independent Investment Banker as having a maturity most comparable to the remaining term of the applicable series of Notes, that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of maturity comparable to the remaining term of such Notes.

“Independent Investment Banker” means Merrill Lynch, Pierce, Fenner & Smith Incorporated or, if such firm is unwilling or unable to select the Comparable Treasury Issue, an independent investment banking institution of national standing in the United States appointed by the Trustee after consultation with us.

“Comparable Treasury Price” means, (1) the average of five Reference Treasury Dealer Quotations for such redemption date, after excluding the highest and lowest Reference Treasury Dealer Quotations, or (2) if the Independent Investment Banker obtains fewer than five such Reference Treasury Dealer Quotations, the average of all such quotations.

“Reference Treasury Dealer” means Merrill Lynch Government Securities, Inc. and its successors; provided, however, that if the foregoing ceases to be a primary U.S. Government securities dealer in New York, New York (a “Primary Treasury Dealer”) or otherwise fails to provide a Reference Treasury Dealer Quotation, the Company will substitute therefor another Primary Treasury Dealer.

“Reference Treasury Dealer Quotation” means a quotation for a Comparable Treasury Issue provided by a Reference Treasury Dealer.

Covenants

The Indenture contains the covenants summarized below, which will be applicable (unless waived or amended) so long as any of the Notes is outstanding.

Limitation on Liens on Stock or Indebtedness of Principal Subsidiaries. The Company will not, and will not permit any of its Subsidiaries to, create, assume, incur or suffer to exist any mortgage, pledge, lien, encumbrance, charge or security interest of any kind, other than a Purchase Money Lien, upon any stock or indebtedness, now owned or

hereafter acquired, of any Principal Subsidiary, to secure any Obligation (other than the Notes) of the Company, any Subsidiary or any other person, without in any such case making effective provision whereby all of the outstanding Notes are secured on an equal and ratable

S-11

basis with the obligations so secured. This restriction does not apply to any mortgage, pledge, lien, encumbrance, charge or security interest on any stock or indebtedness of a corporation existing at the time such corporation becomes a Subsidiary. This provision does not restrict any other property of the Company or its Subsidiaries. "Obligation" is defined as indebtedness for money borrowed or indebtedness evidenced by a bond, note, debenture or other evidence of indebtedness. "Purchase Money Lien" is defined as any mortgage, pledge, lien, encumbrance, charge or security interest of any kind upon any stock or indebtedness of any Principal Subsidiary acquired after the date any notes are first issued if such Purchase Money Lien is for the purpose of financing, and does not exceed, the cost to the Company or any Subsidiary of acquiring the indebtedness of such Principal Subsidiary and such financing is effected concurrently with, or within 180 days after, the date of such acquisition. "Principal Subsidiary" is defined as NSR. "Subsidiary" is defined as an entity a majority of the outstanding voting stock of which is owned, directly or indirectly, by the Company or one or more Subsidiaries, but does not include Conrail. The Indenture does not prohibit the sale by the Company or any Subsidiary of any stock or indebtedness of any Subsidiary.

Limitations on Funded Debt. The Indenture provides that the Company will not permit any Restricted Subsidiary to incur, issue, guarantee or create any Funded Debt unless, after giving effect thereto, the sum of the aggregate amount of all outstanding Funded Debt of the Restricted Subsidiaries would not exceed an amount equal to 15% of Consolidated Net Tangible Assets.

The limitation on Funded Debt will not apply to, and there will be excluded from Funded Debt in any computation under such restriction, Funded Debt secured by:

- (1) Liens on real or physical property of any corporation existing at the time such corporation becomes a Subsidiary;
- (2) Liens on real or physical property existing at the time of acquisition thereof incurred within 180 days of the time of acquisition thereof (including, without limitation, acquisition through merger or consolidation) by the Company or any Restricted Subsidiary;
- (3) Liens on real or physical property thereafter acquired (or constructed) by the Company or any Restricted Subsidiary and created prior to, at the time of, or within 270 days after such acquisition (including, without limitation, acquisition through merger or consolidation) (or the completion of such construction or commencement of commercial operation of such property, whichever is later) to secure or provide for the payment of all or any part of the purchase price (or the construction price) thereof;
- (4) Liens in favor of the Company or any Restricted Subsidiary;
- (5) Liens in favor of the United States of America, any State thereof or the District of Columbia, or any agency, department or other instrumentality thereof, to secure partial, progress, advance or other payments pursuant to any contract or provisions of any statute;
- (6) Liens incurred or assumed in connection with the issuance of revenue bonds the interest on which is exempt from federal income taxation pursuant to Section 103(b) of the Internal Revenue Code of 1954, as amended;
- (7) Liens securing the performance of any contract or undertaking not directly or indirectly in connection with the borrowing of money, the obtaining of advances or credit or the securing of Funded Debt if made and continuing in the ordinary course of business;
- (8) Liens incurred (no matter when created) in connection with the Company's or a Restricted Subsidiary's engaging in a leveraged or single-investor lease transaction; provided, however, that the instrument creating or

evidencing any borrowings secured by such Lien will provide that such borrowings are payable solely out of the income and proceeds of the property subject to such Lien and are not a general obligation of the Company or such Restricted Subsidiary;

S-12

(9) Liens under workers' compensation laws, unemployment insurance laws or similar legislation, or good faith deposits in connection with bids, tenders, contracts or deposits to secure public or statutory obligations of the Company or any Restricted Subsidiary, or deposits of cash or obligations of the United States of America to secure surety, repletion and appeal bonds to which the Company or any Restricted Subsidiary is a party or in lieu of such bonds, or pledges or deposits for similar purposes in the ordinary course of business, or Liens imposed by law, such as laborers' or other employees', carriers', warehousemen's, mechanics', materialmen's and vendors' Liens and Liens arising out of judgments or awards against the Company or any Restricted Subsidiary with respect to which the Company or such Restricted Subsidiary at the time shall be prosecuting an appeal or proceedings for review and with respect to which it shall have secured a stay of execution pending such appeal or proceedings for review, or Liens for taxes not yet subject to penalties for nonpayment or the amount or validity of which is being in good faith contested by appropriate proceedings by the Company or any Restricted Subsidiary, as the case may be, or minor survey exceptions, minor encumbrances, easement or reservations of, or rights of others for, rights of way, sewers, electric lines, telegraph and telephone lines and other similar purposes, or zoning or other restrictions or Liens on the use of real properties, which Liens, exceptions, encumbrances, easements, reservations, rights and restrictions do not, in the opinion of the Company, in the aggregate materially detract from the value of said properties or materially impair their use in the operation of the business of the Company and its Restricted Subsidiaries;

(10) Liens incurred to finance construction, alteration or repair of any real or physical property and improvements thereto prior to or within 270 days after completion of such construction, alteration or repair;

(11) Liens incurred (no matter when created) in connection with a Securitization Transaction;

(12) Liens on property (or any Receivable arising in connection with the lease thereof) acquired by the Company or a Restricted Subsidiary through repossession, foreclosure or liens proceeding and existing at the time of the repossession, foreclosure, or like proceeding;

(13) Liens on deposits of the Company or a Restricted Subsidiary with banks (in the aggregate, not exceeding \$50 million), in accordance with customary banking practice, in connection with the providing by the Company or a Restricted Subsidiary of financial accommodations to any Person in the ordinary course of business; or

(14) any extension, renewal, refunding or replacement of the foregoing.

The definitions set forth below apply only to the foregoing limitations on Funded Debt.

“Consolidated Net Tangible Assets” means, at any date, the total assets appearing on the most recent consolidated balance sheet of the Company and Restricted Subsidiaries as at the end of the fiscal quarter of the Company ending not more than 135 days prior to such date, prepared in accordance with generally accepted accounting principles, less (1) all current liabilities (due within one year) as shown on such balance sheet, (2) applicable reserves, (3) investments in and advances to Securitization Subsidiaries and Subsidiaries of Securitization Subsidiaries that are consolidated on the consolidated balance sheet of the Company and its Subsidiaries, and (4) Intangible Assets and liabilities relating thereto.

“Funded Debt” means (1) any indebtedness of a Restricted Subsidiary maturing more than 12 months after the time of computation thereof, (2) guarantees by a Restricted Subsidiary of Funded Debt or of dividends of others (except guarantees in connection with the sale or discount of accounts receivable, trade acceptances and other paper arising in the ordinary course of business), (3) all preferred stock of such Restricted Subsidiaries, and (4) all Capital Lease Obligations (as defined in the Indenture) of a Restricted Subsidiary.

“Indebtedness” means, at any date, without duplication, (1) all obligations for borrowed money of a Restricted Subsidiary or any other indebtedness of a Restricted Subsidiary, evidenced by bonds,

S-13

debentures, notes or other similar instruments, and (2) Funded Debt, except such obligations and other indebtedness of a Restricted Subsidiary and Funded Debt, if any, incurred as a part of a Securitization Transaction.

“Intangible Assets” means at any date, the value (net of any applicable reserves) as shown on or reflected in the most recent consolidated balance sheet of the Company and the Restricted Subsidiaries as at the end of the fiscal quarter of the Company ending not more than 135 days prior to such date, prepared in accordance with generally accepted accounting principles, of: (1) all trade names, trademarks, licenses, patents, copyrights, service marks, goodwill and other like intangibles; (2) organizational and development costs; (3) deferred charges (other than prepaid items, such as insurance, taxes, interest, commissions, rents, deferred interest waiver, compensation and similar items and tangible assets being amortized); and (4) unamortized debt discount and expense, less unamortized premium.

“Liens” means such pledges, mortgages, security interests and other liens, including purchase money liens, on property of the Company or any Restricted Subsidiary which secure Funded Debt.

“Receivables” mean any right of payment from or on behalf of any obligor, whether constituting an account, chattel paper, instrument, general intangible or otherwise, arising, either directly or indirectly, from the financing by the Company or any Subsidiary of the Company of property or services, monies due thereunder, security interests in the property and services financed thereby and any and all other related rights.

“Restricted Subsidiary” means each Subsidiary of the Company other than Securitization Subsidiaries and Subsidiaries of Securitization Subsidiaries.

“Securitization Subsidiary” means a Subsidiary of the Company (1) which is formed for the purpose of effecting one or more Securitization Transactions and engaging in other activities reasonably related thereto and (2) as to which no portion of the Indebtedness (as defined in the Indenture) or any other obligations (a) is guaranteed by any Restricted Subsidiary, or (b) subjects any property or assets of any Restricted Subsidiary, directly or indirectly, contingently or otherwise, to any lien, other than pursuant to representations, warranties and covenants (including those related to servicing) entered into in the ordinary course of business in connection with a Securitization Transaction and inter-company notes and other forms of capital or credit support relating to the transfer or sale of Receivables or asset-backed securities to such Securitization Subsidiary and customarily necessary or desirable in connection with such transactions.

“Securitization Transaction” means any transaction or series of transactions that have been or may be entered into by the Company or any of its Subsidiaries in connection with or reasonably related to a transaction or series of transactions in which the Company or any of its Subsidiaries may sell, convey or otherwise transfer to (1) a Securitization Subsidiary or (2) any other Person, or may grant a security interest in, any Receivables or asset-backed securities or interest therein (whether such Receivables or securities are then existing or arising in the future) of the Company or any of its Subsidiaries, and any assets related thereto, including, without limitation, all security interests in the property or services financed thereby, the proceeds of such Receivables or asset-backed securities and any other assets which are sold in respect of which security interests are granted in connection with securitization transactions involving such assets.

Events of Default

Under the Indenture, the following are “events of default”:

- failure to pay any principal or premium, if any, when due;
- failure to pay any interest when due, and this failure continues for 30 days;