

NORFOLK SOUTHERN CORP

Form 425

March 30, 2016

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of The Securities Exchange Act of 1934

March 29, 2016

Date of Report (Date of earliest event reported)

Canadian Pacific Railway Limited

(Exact name of registrant as specified in its charter)

Canada

(State or other jurisdiction
of incorporation)

001-01342

(Commission
File Number)

98-0355078

(IRS Employer
Identification No.)

7550 Ogden Dale Road S.E., Calgary, Alberta,

Canada, T2C 4X9

(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code (403) 319-7000

Not Applicable

(Former name or former address, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

ITEM 8.01 OTHER MATTERS

On March 29, 2016 Canadian Pacific Railway Limited (“Canadian Pacific”) announced that it has filed its definitive proxy statement for its Norfolk Southern Corp. (“NS”) shareholder resolution asking their board of directors to engage in good faith discussions with CP regarding a business combination. CP also filed a letter that will be sent to all NS shareholders about the opportunity to create significant value for NS shareholders.

ITEM 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Exhibit Description
Exhibit 99.1	News Release of Canadian Pacific dated March 29, 2016

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: March 29, 2016

CANADIAN PACIFIC RAILWAY LIMITED

By: /s/ Scott Cedergren
Name: Scott Cedergren
Title: Assistant Corporate Secretary

EXHIBIT INDEX

Exhibit No.	Exhibit Description
99.1	News Release of Canadian Pacific dated March 29, 2016

Release: March 29, 2016

CP files definitive proxy statement regarding shareholder proposal for NS Annual Meeting, welcomes opportunity to meet with NS board

Calgary, AB – Canadian Pacific (TSX:CP) (NYSE:CP) today filed its definitive proxy statement for its Norfolk Southern Corp. (NS) shareholder resolution asking their board of directors to engage in good faith discussions with CP regarding a business combination. CP also filed a letter that will be sent to all NS shareholders about the opportunity to create significant value for NS shareholders.

In filing its own definitive proxy statement on March 28, NS stated: “[The] Shareholder Proposal from Canadian Pacific is Unnecessary Because Norfolk Southern Would Have Discussions with CP if it Obtains a Declaratory Order and States a Willingness to Meaningfully Increase its Offer.”

“CP has consistently stated that we are open to discussing all terms of a potential deal, including price, but we can’t negotiate with ourselves,” said CP CEO, E. Hunter Harrison. “Given we have also asked the Surface Transportation Board for a declaratory order on the voting trust model we were pleased to hear that Norfolk Southern may now be willing to engage in direct face-to-face discussions.”

CP’s proposed business combination with NS would create a true end-to-end transcontinental railroad that would enhance competition, benefit the public and drive economic growth. CP has demonstrated from the beginning that it is flexible on price, having improved its offer twice already, and shown flexibility on the structure of a potential combination, offering a voting trust structure as the quickest way for NS shareholders to receive consideration for their shares. CP has consistently said, however, that the voting trust is not a condition to its offer.

NS shareholders have been telling CP from the beginning that their own board should, at the very least, talk to CP about a potential combination. CP’s shareholder resolution to NS asks shareholders to formally vote in favour of what they have been saying to CP anecdotally for months; it is a vote for a discussion between the two companies, not on the proposal itself. The shareholder resolution will be voted on at the NS annual meeting May 12 in Williamsburg, Virginia.

“The NS board has refused to meet with us in the past, which ultimately led to our shareholder resolution,” said Harrison. “While we remain open to meeting with them anytime and anywhere, we are putting the question to the shareholders of NS so they can finally be heard. We continue to see tremendous opportunity and enormous potential in the proposed business combination.”

CP strongly believes that a combined railroad would offer unparalleled customer service and competitive rates that will support the success of the shippers and industries it serves, create far more shareholder value than NS’ strategic plan and satisfy the U.S. Surface Transportation Board and other regulators.

The definitive proxy statement and related proxy materials, including CP’s letters to shareholders and a “universal” GREEN proxy or voting instruction form, will be mailed to shareholders of NS and are also available via EDGAR at <http://www.SEC.gov>.

For more information on CP’s proposal, visit www.cpconsolidation.com.

Forward Looking Statement

This news release contains certain forward-looking information within the meaning of applicable securities laws relating, but not limited, to CP’s proposal to NS regarding a possible business combination, CP’s shareholder proposal to NS, the anticipated

results and benefits of the proposed transaction and matters relating to regulatory approvals and changes. This forward-looking information also includes, but is not limited to, statements concerning expectations, beliefs, plans, goals, objectives, assumptions and statements about possible future events, conditions, and results of operations or performance. Forward-looking information may contain statements with words or headings such as "financial expectations", "key assumptions", "anticipate", "believe", "expect", "plan", "will", "outlook", "should" or similar words suggesting future outcomes.

Undue reliance should not be placed on forward-looking information as actual results may differ materially from the forward-looking information. Forward-looking information is not a guarantee of future performance. By its nature, CP's forward-looking information involves numerous assumptions, inherent risks and uncertainties that could cause actual results to differ materially from the forward-looking information, including but not limited to the following factors: the ability of the parties to agree to the terms of a proposed transaction; the ability of the parties to obtain the required regulatory approvals; the ability to recognize the financial and operational benefits of the transaction; changes in business strategies; general North American and global economic, credit and business conditions; risks in agricultural production such as weather conditions and insect populations; the availability and price of energy commodities; the effects of competition and pricing pressures; industry capacity; shifts in market demand; changes in commodity prices; uncertainty surrounding timing and volumes of commodities being shipped via CP; inflation; changes in laws and regulations, including regulation of rates; changes in taxes and tax rates; potential increases in maintenance and operating costs; uncertainties of investigations, proceedings or other types of claims and litigation; labour disputes; risks and liabilities arising from derailments; transportation of dangerous goods; timing of completion of capital and maintenance projects; currency and interest rate fluctuations; effects of changes in market conditions and discount rates on the financial position of pension plans and investments; and various events that could disrupt operations, including severe weather, droughts, floods, avalanches and earthquakes as well as security threats and governmental response to them, and technological changes. The foregoing list of factors is not exhaustive.

These and other factors are detailed from time to time in reports filed by CP with securities regulators in Canada and the United States. Reference should be made to "Item 1A – Risk Factors" and "Item 7 – Management's Discussion and Analysis of Financial Condition and Results of Operations – Forward-Looking Information" in CP's annual and interim reports on Form 10-K and 10-Q. Readers are cautioned not to place undue reliance on forward-looking information.

Forward-looking information is based on current expectations, estimates and projections and it is possible that predictions, forecasts, projections, and other forms of forward-looking information will not be achieved by CP. Except as required by law, CP undertakes no obligation to update publicly or otherwise revise any forward-looking information, whether as a result of new information, future events or otherwise.

Rule 425 Disclosure
This announcement is neither an offer to purchase or exchange nor a solicitation of an offer to sell securities. Subject to future developments, additional documents, including one or more proxy statements in connection with the solicitation of proxies for the 2016 annual meeting of NS shareholders, regarding the proposed transaction may be filed with the Securities and Exchange Commission (the "SEC"). On March 29, 2016, CP filed its definitive proxy statement (the "CP Definitive Proxy") with the SEC. Investors and security holders are urged to read such disclosure documents regarding the proposed transaction, including the CP Definitive Proxy statement, if and when they become available, because they will contain important information. Investors and security holders may obtain a free copy of the disclosure documents (when they are available) and other documents filed by CP with the SEC at the SEC's website at www.sec.gov. The disclosure documents and these other documents may also be obtained for free from CP at <http://www.cpr.ca/en/investors> or by directing a request to Canadian Pacific Railway Limited, 7550 Ogden Dale Road S.E., Calgary, Alberta, Canada, T2C 4X9, Attention: Office of the Corporate Secretary.

CP and its directors, executive officers and other employees may be deemed to be participants in any solicitation of CP or NS shareholders in connection with the proposed transaction. Information about CP's executive officers and directors is available in CP's Annual Report on Form 10-K for the year ended December 31, 2015, which was filed with the SEC on February 29, 2016. Additional information about the interests of potential participants will be included in the CP Definitive Proxy.

Additional Information

NS has announced that it will hold its annual meeting of shareholders on Thursday, May 12, 2016 in Williamsburg, Virginia. To keep current with all further developments and for information about how to vote your shares and to obtain a copy of the CP Definitive Proxy and other shareholder communications, please continue to visit <http://www.CPconsolidation.com>; In addition, D.F. King & Co., Inc., CP's proxy solicitor, will provide copies of the proxy statement and accompanying GREEN proxy card without charge upon request by calling (800) 252-8173 (toll-free) or (212) 269-5550 (Collect).

About Canadian Pacific

Canadian Pacific (TSX:CP)(NYSE:CP) is a transcontinental railway in Canada and the United States with direct links to eight major ports, including Vancouver and Montreal, providing North American customers a competitive rail service with access to key markets in every corner of the globe. CP is growing with its customers, offering a suite of freight transportation services, logistics solutions and supply chain expertise. Visit cpr.ca to see the rail advantages of Canadian Pacific.

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