Con-way Inc.
Form SC TO-T/A
October 09, 2015

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

SCHEDULE TO

(RULE 14d 100)

Tender Offer Statement Pursuant to Section 14(d)(1) or 13(e)(1)

of the Securities Exchange Act of 1934

(Amendment No. 3)

CON-WAY INC.

(Name of Subject Company)

CANADA MERGER CORP.

(Offeror)

XPO LOGISTICS, INC.

(Parent of Offeror)

(Names of Filing Persons)

COMMON STOCK, $0.625 PAR VALUE

(Title of Class of Securities)

205944101

(CUSIP Number of Class of Securities)

Gordon E. Devens

Senior Vice President, General Counsel and Secretary

XPO Logistics, Inc.

Five Greenwich Office Park

Greenwich, CT 06831

(855) 976-4636

(Name, address and telephone number of person authorized to receive notices and communications on behalf of filing persons)

With a copy to:

Adam O. Emmerich, Esq.

Wachtell, Lipton, Rosen & Katz

51 West 52nd Street

New York, NY 10019

(212) 403-1000

CALCULATION OF FILING FEE

Transaction valuation*	**Amount of filing fee****
$2,765,579,896.80	$321,360.38

* Estimated for purposes of calculating the filing fee only. The transaction valuation was calculated by adding the sum of (i) 56,866,820 shares of common stock, par value $0.625 per share (the Shares), of Con-way Corporation (Con-way) outstanding multiplied by the offer price of $47.60 per share, (ii) 1,233,598 Shares subject to outstanding restricted stock unit award and performance share plan units, which reflects the maximum number of restricted stock unit awards and performance share plan units that may be outstanding at the time the offer is completed, multiplied by the offer price of $47.60 per share. The calculation of the filing fee is based on information provided by Con-way as of September 3, 2015.

** The filing fee was calculated in accordance with Rule 0-11 under the Securities Exchange Act of 1934, as amended, and Fee Rate Advisory No. 1 for Fiscal Year 2015, issued August 29, 2014, by multiplying the Transaction Valuation by 0.0001162.

x Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: $321,360.38	Filing Party: XPO Logistics, Inc. and Canada Merger Corp.
Form or Registration No.: Schedule TO (File No. 005-14440)	Date Filed: September 15, 2015

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

Check the appropriate boxes below to designate any transactions to which the statement relates:

- x third-party tender offer subject to Rule 14d-1.
- ¨ issuer tender offer subject to Rule 13e-4.
- ¨ going-private transaction subject to Rule 13e-3.
- ¨ amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer. ¨

This Amendment No. 3 (this Amendment) amends and supplements the Tender Offer Statement on Schedule TO filed with the U.S. Securities and Exchange Commission on September 15, 2015 (together with any subsequent amendments and supplements thereto, the Schedule TO). The Schedule TO relates to the tender offer by Canada Merger Corp., a Delaware corporation (Purchaser) and a wholly owned subsidiary of XPO Logistics, Inc., a Delaware corporation (XPO or Parent), for all of the outstanding shares of common stock, par value $0.625 per share (Shares), of Con-way Inc., a Delaware corporation (Con-way), at a price of $47.60 per share, net to the seller in cash, without interest thereon and less any applicable withholding taxes, upon the terms and conditions set forth in the offer to purchase dated September 15, 2015 (the Offer to Purchase), a copy of which is attached as Exhibit (a)(1)(A), and in the related letter of transmittal (the Letter of Transmittal), a copy of which is attached as Exhibit (a)(1)(B), which, as each may be amended or supplemented from time to time, collectively constitute the Offer.

All the information set forth in the Offer to Purchase, including Schedule I thereto, is incorporated by reference herein in response to Items 1 through 9 and Item 11 of this Schedule TO, and is supplemented by the information specifically provided in this Schedule TO.

This Amendment is being filed to amend and supplement Items 11 and 12 as reflected below.

Item 11. ***Additional Information.***

Item 11 of the Schedule TO is hereby amended and supplemented as follows:

The information set forth in Section 16 Certain Legal Matters; Regulatory Approvals of the Offer to Purchase is hereby amended and supplemented to add the paragraph set forth below.

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

Item 12. ***Exhibits.***

Item 12 of the Schedule TO is hereby amended and supplemented as follows:

Exhibit No.	Description
(a)(5)(A)	Complaint filed by Robert Abrams on behalf of himself and all others similarly situated, on October 7, 2015, in the Court of Chancery, State of Delaware.

SIGNATURES

After due inquiry and to the best of their knowledge and belief, each of the undersigned certifies that the information set forth in this statement is true, complete and correct.

Dated: October 9, 2015

CANADA MERGER CORP.

By: /s/ Gordon E. Devens
Name: Gordon E. Devens
Title: Vice President, Secretary and Treasurer

XPO LOGISTICS, INC.

By: /s/ Gordon E. Devens
Name: Gordon E. Devens
Title: Senior Vice President; General Counsel and Secretary

EXHIBIT INDEX

Exhibit No.	Description
(a)(1)(A)	Offer to Purchase, dated September 15, 2015.*
(a)(1)(B)	Letter of Transmittal.*
(a)(1)(C)	Notice of Guaranteed Delivery.*
(a)(1)(D)	Letter to Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.*
(a)(1)(E)	Letter to Clients for Use by Brokers, Dealers, Commercial Banks, Trust Companies and Other Nominees.*
(a)(1)(F)	Joint Press Release issued by XPO Logistics, Inc. and Con-way Inc. on September 9, 2015 (incorporated by reference to Exhibit 99.1 to the Current Report on Form 8-K filed by XPO Logistics, Inc. with the Securities and Exchange Commission on September 9, 2015).*
(a)(1)(G)	Investor Presentation dated September 9, 2015 (incorporated by reference to Exhibit 99.2 to the Current Report on Form 8-K filed by XPO Logistics, Inc. with the Securities and Exchange Commission on September 9, 2015).*
(a)(1)(H)	Investor Presentation Script dated September 9, 2015 (incorporated by reference to Exhibit 99.3 to the Current Report on Form 8-K filed by XPO Logistics, Inc. with the Securities and Exchange Commission on September 9, 2015).*
(a)(1)(I)	Transcript of September 10, 2015, (incorporated by reference to Schedule TO-C filed by XPO Logistics, Inc. with the Securities and Exchange Commission on September 11, 2015).*
(a)(1)(J)	Summary Advertisement as published in the *Wall Street Journal* on September 15, 2015.*
(a)(1)(K)	Form of Notice to Participant and Beneficiaries in the Con-way Plans.*
(a)(1)(L)	Trustee Instruction Form for Conway Plans.*
(a)(1)(M)	Form of Notice Follow-up Notice to Participant and Beneficiaries in the Con-way Plans.*
(a)(5)(A)	Complaint filed by Robert Abrams on behalf of himself and all others similarly situated, on October 7, 2015, in the Court of Chancery, State of Delaware.
(b)(1)	Amended and Restated Debt Commitment Letter, dated as of September 25, 2015, among Morgan Stanley Senior Funding, Inc. and the other Commitment Parties named therein and XPO Logistics, Inc.*

Exhibit No.	Description
(d)(1)	Agreement and Plan of Merger, dated as of September 9, 2015, by and among XPO Logistics, Inc., Canada Merger Corp. and Con-way Inc. (incorporated by reference to Exhibit 2.1 to the Current Report on Form 8-K filed by XPO Logistics, Inc. with the Securities and Exchange Commission on September 10, 2015).*
(d)(2)	Confidentiality Agreement and Plan of Merger, dated as of July 28, 2015, by and between XPO Logistics, Inc. and Con-way Inc.*
(g)	None.
(h)	None.

* Previously filed.