

WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORP
Form 8-K
July 31, 2015

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

Date of Report (Date of Earliest Event Reported): July 30, 2015 (July 27, 2015)

WESTINGHOUSE AIR BRAKE TECHNOLOGIES CORPORATION

(Exact Name of Registrant as Specified in Its Charter)

Delaware

(State or other Jurisdiction
of Incorporation)

033-90866
(Commission

25-1615902
(I.R.S. Employer

File No.)

Identification No.)

1001 Air Brake Avenue

Wilmerding, Pennsylvania
(Address of Principal Executive Offices)

15148
(Zip Code)

(412) 825-1000

(Registrant's Telephone Number, Including Area Code)

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 (see General Instruction A.2. below):

- .. 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 1.01 Entry into a Material Definitive Agreement

On July 27, 2015, Wabtec Corporation (Wabtec) and FW Acquisition, LLC (FW), a wholly owned subsidiary of Wabtec, made a binding offer (the Offer) to Financière Faiveley S.A., Famille Faiveley Participations, a *société par actions simplifiée*, Mr. Francois Faiveley and Mr. Erwan Faiveley (collectively, the Sellers) to purchase all the outstanding shares of Faiveley Transport S.A. (Faiveley) owned by the Sellers (the Share Purchase). The Seller s shares represent approximately 51% of the share capital of Faiveley. In consideration of the Offer, the Sellers, Wabtec and FW entered into an Exclusivity Agreement on July 27, 2015 (the Exclusivity Agreement).

In the Offer, Wabtec and FW undertake and offer on the terms and subject to the conditions therein (1) to purchase all of the Seller s shares, (2) to execute the Stock Purchase Agreement (the SPA) in the form attached to the Offer upon receipt of a signed copy of the SPA from the Sellers, (3) to execute the Shareholders Agreement (the SHA) in the form attached to the Offer upon receipt of a signed copy of the SHA from the Sellers, (4) to execute the Tender Offer Agreement (the TOA) in the form attached to the Offer upon receipt of a signed TOA from the Sellers, and (v) as promptly as practicable after completion of the Share Purchase file with the *Autorité des Marchés Financiers* (the AMF) a mandatory tender for all of the remaining shares of Faiveley. The Offer will remain open (the Offer Period) for acceptance by the Sellers until the earlier of the two following dates: (1) five business days after the Sellers receive a definitive opinion from each of the *delegation unique du personnel* and the European works council of Faiveley and (2) November 1, 2015, unless a judicial proceeding initiated by any third party extends the consultations with each of the *delegation unique du personnel* and the European works council, in which event the Offer Period expires on February 28, 2016 unless extended by Wabtec.

In the Exclusivity Agreement, the Sellers and Faiveley represent and warrant that (1) as of the date of the Exclusivity Agreement neither the Sellers nor Faiveley are in discussions relating to certain alternative transactions, (2) prior to the date of the Exclusivity Agreement, neither the Sellers nor Faiveley have entered into agreements or binding commitments to effect any alternative transaction, and (3) during the exclusivity period, if either the Sellers or Faiveley receive an alternate offer for certain alternative transactions, the Sellers and Faiveley will not negotiate, provide information in respect of, or accept the alternate offer and promptly notify Wabtec of the material terms of the alternate offer. The Exclusivity Agreement will cease upon the earliest of: (1) the date of signing of the SPA, SHA and TOA following the acceptance of the Offer, or (2) the date on which a payment is due to be made by Wabtec in accordance with the Offer, or (3) 15 months after the date the Exclusivity Agreement is signed, and (4) the end of the Offer Period if the closing conditions, set forth in the SPA are incapable of being satisfied.

Wabtec, FW, and the Seller s obligations to complete the Share Purchase are subject to various customary conditions, including the expiration or termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 Act, as amended and laws of the European Commission. Wabtec s obligations to complete the Share Purchase and any subsequent tender offer are not subject to any condition related to the availability of financing or further approval of Wabtec s Board of Directors.

The foregoing description of the Offer and the Exclusivity Agreement does not purport to be complete and is qualified in its entirety by reference to the actual terms of the Offer and the Exclusivity Agreement, copies of which are attached hereto as Exhibit 2.1 and Exhibit 2.2 respectively and which are incorporated herein by reference. The Offer and the Exclusivity Agreement have been included to provide investors with information regarding their terms and are not intended to provide any financial or other factual information about Wabtec or Faiveley. In particular, the representations, warranties and covenants contained in the Offer and the Exclusivity Agreement (1) were made only for the purposes of

those agreements and as of specific dates indicated therein, (2) were solely for the benefit of the parties to those agreements, (3) may be subject to limitations agreed upon by the parties, including being qualified by confidential disclosures made for the purposes of allocating contractual risk between the parties instead of establishing those matters as facts, and (4) may be subject to standards of materiality applicable to the contracting parties that differ from those applicable investors. Moreover, information concerning the subject matter of the representations, warranties and covenants may change after the date of the Offer and the Exclusivity Agreement, which subsequent information may not be fully reflected in public disclosures by Wabtec and Faiveley. Accordingly, investors should read the Offer and the Exclusivity Agreement not in isolation but only in conjunction with the other information about Wabtec or Faiveley and their respective subsidiaries that the respective companies include in reports, statements and other filings they make with the U.S. Securities and Exchange Commission (the SEC) and the AMF, respectively.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

The following exhibits are filed with this report on Form 8-K:

| Exhibit No. | Description |
|----------------|--|
| 2.1 | Offer relating to Faiveley Transport S.A. among Financiere Faiveley S.A., Famille Faiveley Participations, Francois Faiveley, Erwan Faiveley, FW Acquisition, LLC and Wabtec Corporation dated as of July 27, 2015 (including the SPA, TOA, SHA, and other schedules attached thereto) |
| 2.2 | Exclusivity Agreement among Financiere Faiveley S.A., Famille Faiveley Participations, Francois Faiveley, Erwan Faiveley, FW Acquisition, LLC and Wabtec Corporation dated as of July 27, 2015 |

Forward-Looking Statements

Statements contained in this report which are not historical facts are forward-looking statements as defined in the Private Securities Litigation Reform Act of 1995. These forward-looking statements and certain information contained in this report involve risks and uncertainties that could result in actual results differing materially from expected results, including Wabtec's proposed purchase of the Sellers shares and subsequent tender offer, which is subject to regulatory and other conditions, the timing of the transaction and benefits expected to be derived therefrom. Forward-looking statements represent Wabtec's expectations and beliefs concerning future events, based on information available to Wabtec as of the date of this report. Wabtec undertakes no obligation to publicly update and revise any forward-looking statements to reflect events or circumstances that may arise after the date of this report. Additional information regarding these and other factors is contained in Wabtec's SEC filings, including without limitation Wabtec's Form 10-K and Form 10-Q filings.

Certain Legal Matters

This communication is not intended to, and does not, constitute, represent or form part of any offer, invitation or solicitation of an offer to purchase, otherwise acquire, subscribe for, sell or otherwise dispose of, any securities whether pursuant to this press release or otherwise.

The distribution of this communication in jurisdictions outside the U.S. or France may be restricted by law or regulation and therefore any person who comes into possession of this

communication should inform themselves about, and comply with, such restrictions. Any failure to comply with such restrictions may constitute a violation of the securities laws or regulations of any such relevant jurisdiction.

Faiveley Transport is incorporated in France and listed on Euronext Paris and any offer for its securities will be subject to French disclosure and procedural requirements, which differ from those that are applicable to offers conducted solely in the U.S., including with respect to withdrawal rights, offer timetable, settlement procedures and timing of payments. The transactions described above will be structured to comply with French and U.S. securities laws and regulations applicable to transactions of this type.

In connection with the proposed transaction, Wabtec intends (if required by law) to file a registration statement with the SEC registering preferred shares. Faiveley Transport shareholders are urged to read the prospectus and/or information statement that will be included in the registration statements and any other relevant documents when they become available, and Wabtec shareholders are urged to read the information statement and any other relevant documents when they become available, because they will contain important information about Wabtec, Faiveley Transport and the proposed transaction. The documents relating to the proposed transaction (when they become available) can also be obtained free of charge from the SEC's website at www.sec.gov. The documents (when they are available) can also be obtained free of charge from Wabtec upon written request to Wabtec, 1001 Air Brake Avenue, Wilmerding, PA 15148 or by calling 412-825-1543.

No offer of securities shall be made except by means of a prospectus meeting the requirements of Section 10 of the Securities Act of 1933, as amended.

SIGNATURE

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

WESTINGHOUSE AIR BRAKE
TECHNOLOGIES CORPORATION

By: /s/ David L. DeNinno

David L. DeNinno
Senior Vice President, General Counsel
and Secretary

Date: July 30, 2015

EXHIBIT INDEX

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