

BERKSHIRE HATHAWAY INC  
Form S-4  
November 25, 2009  
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As filed with the Securities and Exchange Commission on November 25, 2009

Registration No. 333-

**UNITED STATES**  
**SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**FORM S-4**  
**REGISTRATION STATEMENT**  
*UNDER*  
*THE SECURITIES ACT OF 1933*

**BERKSHIRE HATHAWAY INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction of incorporation or  
organization)

**6331**  
(Primary Standard Industrial Classification  
Code Number)

**47-0813844**  
(I.R.S. Employer  
Identification No.)

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3555 Farnam Street, Omaha, Nebraska 68131

(402) 346-1400

(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

**Marc D. Hamburg**

**Senior Vice President and Chief Financial Officer**

3555 Farnam Street, Omaha, Nebraska 68131

(402) 346-1400

(Name, address, including zip code, and telephone number, including area code, of agent for service)

*Copies to:*

<b>Robert E. Denham</b>	<b>Roger Nober</b>	<b>Scott A. Barshay</b>
<b>Munger, Tolles &amp; Olson LLP</b>	<b>Burlington Northern Santa Fe</b>	<b>Cravath, Swaine &amp; Moore LLP</b>
<b>355 South Grand Avenue</b>	<b>Corporation</b>	<b>Worldwide Plaza</b>
<b>35<sup>th</sup> Floor</b>	<b>Executive Vice President Law and</b>	<b>825 Eighth Avenue</b>
<b>Los Angeles, California 90071</b>	<b>Secretary</b>	<b>New York, New York 10019</b>
<b>(213) 683-9100</b>	<b>2650 Lou Menk Drive</b>	<b>(212) 474-1000</b>
	<b>Fort Worth, Texas 76131</b>	
	<b>(800) 795-2673</b>	

**Approximate date of commencement of proposed sale of the securities to the public:** As soon as practicable after the effectiveness of this registration statement and the satisfaction or waiver of all other conditions under the merger agreement described herein.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box. "

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

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If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. "

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of large accelerated filer, accelerated filer and smaller reporting company in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company   
 (Do not check if a smaller reporting company)

If applicable, place an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:

Exchange Act Rule 13e-4(i) (Cross-Border Issuer Tender Offer)

Exchange Act Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered(1)	Amount to be Registered(2)	Proposed	Proposed	Amount of
		Maximum		
		Offering Price	Offering Price	Fee(4)
Class A Common Stock		N/A	\$10,575,896,832(3)	\$590,135
Class B Common Stock		N/A	(3)	

(1) This Registration Statement relates to Class A Common Stock and Class B Common Stock of the registrant issuable to holders of Common Stock ( BNSF common stock ) of Burlington Northern Santa Fe Corporation, a Delaware corporation ( BNSF ), pursuant to the Agreement and Plan of Merger, dated as of November 2, 2009, by and among the registrant, R Acquisition Company, LLC, a Delaware limited liability company and an indirect wholly owned subsidiary of the registrant, and BNSF (the Merger Agreement ).

(2) Omitted in reliance on Rule 457(o) of the Securities Act of 1933.

(3) Estimated solely for the purpose of calculating the registration fee required by Section 6(b) of the Securities Act of 1933 and computed pursuant to Rule 457(c) and 457(f) of the Securities Act of 1933. The proposed maximum offering price is equal to the product of (a) \$98.10, the average of the high and low prices per share of the common stock of BNSF as reported on the New York Stock Exchange composite transactions reporting system on November 19, 2009 and (b) the maximum possible number of shares of BNSF common stock which may be converted into shares of the registrant's Class A Common Stock and Class B Common Stock pursuant to the Merger Agreement (calculated as 277,582,594, which includes (i) the 340,522,033 issued and outstanding shares of BNSF common stock as of November 1, 2009, plus (ii) the 13,837,590 shares of BNSF common stock issuable pursuant to outstanding stock options and various restricted stock units, minus (iii) the 76,777,029 shares of BNSF common stock already owned by the registrant and its subsidiaries), less \$16,654,955,640, which is the maximum possible amount of the merger consideration to be paid in cash. The foregoing calculation

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assumes that the average of the daily volume-weighted average trading prices per share of the registrant's Class A Common Stock over the ten trading day period ending on the second full trading day prior to completion of the merger is between \$79,777.34 and \$124,652.09.

- (4) Computed in accordance with Section 6(b) of the Securities Act of 1933 by multiplying 0.0000558 by the proposed maximum aggregate offering price.

**The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.**

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**THE INFORMATION CONTAINED IN THIS PRELIMINARY PROXY STATEMENT/PROSPECTUS IS NOT COMPLETE AND MAY BE CHANGED. THESE SECURITIES MAY NOT BE SOLD UNTIL THE REGISTRATION STATEMENT FILED WITH THE SECURITIES AND EXCHANGE COMMISSION IS EFFECTIVE. THIS PRELIMINARY PROXY STATEMENT/PROSPECTUS IS NOT AN OFFER TO SELL THESE SECURITIES AND IS NOT SOLICITING AN OFFER TO BUY THESE SECURITIES IN ANY JURISDICTION WHERE THE OFFER OR SALE IS NOT PERMITTED.**

**PRELIMINARY PROXY STATEMENT/PROSPECTUS**

**SUBJECT TO COMPLETION, DATED NOVEMBER 25, 2009**

Dear Fellow Stockholder:

You are cordially invited to attend a special meeting of the stockholders of Burlington Northern Santa Fe Corporation ( BNSF ) to be held on [ ], [ ], at [ ], local time, at [ ].

At the special meeting, you will be asked to approve the Agreement and Plan of Merger, dated as of November 2, 2009 (the merger agreement ), by and among Berkshire Hathaway Inc. ( Berkshire ), R Acquisition Company, LLC, an indirect wholly owned subsidiary of Berkshire ( Merger Sub ), and BNSF, pursuant to which BNSF will be merged with and into Merger Sub and Merger Sub will continue as the surviving entity. Following the merger, Merger Sub will change its name to Burlington Northern Santa Fe, LLC and will remain an indirect wholly owned subsidiary of Berkshire.

If the merger is completed, each of your shares of BNSF common stock will be converted into the right to receive, at your election (subject to the proration and reallocation procedures described in this proxy statement/prospectus), either (i) \$100.00 in cash, without interest, or (ii) a portion of a share of Berkshire Class A common stock equal to the exchange ratio, which is calculated by dividing \$100.00 by the average of the daily volume-weighted average trading prices per share of Berkshire Class A common stock over the ten trading day period ending on the second full trading day prior to completion of the merger (the Class A average trading value ); *provided, however*, that if the Class A average trading value is above \$124,652.09 or below \$79,777.34, then the exchange ratio will be fixed at 0.000802233 or 0.001253489, as the case may be. Fractional shares of Berkshire Class A common stock will not be issued in the merger. Instead, shares of Berkshire Class B common stock will be issued in lieu of any fractional shares of Berkshire Class A common stock and cash will be paid in lieu of any fractional shares of Berkshire Class B common stock. To facilitate the merger and related transactions, Berkshire is seeking stockholder approval to effect a 50-for-1 stock split with respect to its Class B common stock. Shares of Berkshire Class A and Class B common stock are listed on the New York Stock Exchange under the stock symbols BRK.A and BRK.B, respectively.

Under the merger agreement, approximately 60% of the total merger consideration payable by Berkshire to BNSF stockholders will be in the form of cash and approximately 40% will be in the form of Berkshire common stock. Accordingly, the cash and stock elections that you make with respect to your shares may be subject to proration and reallocation so as to achieve as closely as practicable this 60/40 cash-stock split.

This proxy statement/prospectus provides a detailed description of the merger agreement and the proposed merger. In addition, it contains important information regarding the special meeting. **We urge you to read this proxy statement/prospectus (and any documents incorporated into this proxy statement/prospectus by reference) carefully. Please pay particular attention to the section titled Risk Factors beginning on page 26.**

**The Board of Directors of BNSF unanimously recommends that you vote FOR the proposal to adopt the merger agreement.**

The merger cannot be completed unless it is approved by (i) the holders of at least 66-<sup>2</sup>/<sub>3</sub>% of the issued and outstanding shares of BNSF common stock not owned by Berkshire or any of its affiliates or associates and (ii) the holders of a majority of the issued and outstanding shares of BNSF common stock.

**Your vote is very important. If you are a registered stockholder, please vote your shares as soon as possible using one of the following methods to ensure that your vote is counted, regardless of whether you expect to attend the special meeting in person: (1) call the toll-free number specified on the enclosed proxy card and follow the instructions when prompted, (2) access the Internet website specified on the enclosed proxy card and follow the instructions provided to you, or (3) complete, sign, date and return the enclosed proxy card in the postage-paid envelope provided. If you hold your shares in street name through a**

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**bank, broker or other nominee, you will need to follow the instructions provided to you by your bank, broker or other nominee to ensure that your shares are represented and voted at the special meeting. A failure to vote your shares is the equivalent of a vote AGAINST the merger.**

If you have any questions about the proposed merger or about how to vote your shares, please call Innisfree M&A Incorporated, the firm assisting BNSF in its solicitation of proxies, toll-free at (877) 456-3463, or call BNSF Investor Relations at (817) 352-6452. For media inquiries, please call BNSF Corporate Relations at (817) 867-6407.

We hope to see you at the special meeting in [ ] on [ ] and look forward to the successful completion of the merger.

Sincerely,

Matthew K. Rose

Chairman, President and Chief Executive Officer

**Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the securities to be issued under this proxy statement/prospectus or determined if this proxy statement/prospectus is accurate or complete. Any representation to the contrary is a criminal offense.**

This proxy statement/prospectus is dated [ ] and is first being mailed to the stockholders of BNSF on or about [ ].

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**ADDITIONAL INFORMATION**

This proxy statement/prospectus incorporates important business and financial information about BNSF and Berkshire from other documents that are not included in or delivered with this proxy statement/prospectus. This information is available for you to review at the public reference room of the Securities and Exchange Commission (the SEC) located at 100 F Street, N.E., Washington, D.C. 20549, and through the SEC's website at www.sec.gov. You can also obtain the documents incorporated by reference into this proxy statement/prospectus free of charge by requesting them in writing or by telephone from the appropriate company at the following addresses and telephone numbers:

**Burlington Northern Santa Fe Corporation**

2650 Lou Menk Drive

Fort Worth, Texas 76131

(817) 352-6452

Attention: Investor Relations

**Berkshire Hathaway Inc.**

3555 Farnam Street

Omaha, Nebraska 68131

(402) 346-1400

Attention: Corporate Secretary

or

**Innisfree M&A Incorporated**

501 Madison Avenue

20<sup>th</sup> Floor

New York, New York 10022

Toll-Free (877) 456-3463

**If you would like to request any documents, please do so by [ ] in order to receive them before the special meeting.**

**You also may obtain additional proxy cards and other information related to the proxy solicitation by contacting the appropriate contact listed above. You will not be charged for any of these documents that you request.**

For more information, please see the section titled "Where To Find More Information" beginning on page 116.

**ABOUT THIS DOCUMENT**

This document, which forms part of a registration statement on Form S-4 filed with the SEC by Berkshire, constitutes a prospectus of Berkshire under Section 5 of the Securities Act of 1933, as amended (the Securities Act), with respect to the shares of Berkshire Class A and Class B common stock to be issued to BNSF stockholders under the merger agreement. This document also constitutes a proxy statement under Section 14(a) of the Securities Exchange Act of 1934, as amended (the Exchange Act). It also constitutes a notice of meeting with respect to the special meeting of BNSF stockholders, at which meeting BNSF stockholders will be asked to vote upon a proposal to adopt the merger agreement.

You should rely only on the information contained or incorporated by reference into this proxy statement/prospectus. No one has been authorized to provide you with information that is different from that contained in, or incorporated by reference into, this proxy statement/prospectus. This proxy statement/prospectus is dated as of [ ]. You should not assume that the information contained in this proxy statement/prospectus is accurate as of any date other than that date. You should not assume that the information incorporated by reference into this proxy statement/prospectus is accurate as of any date other than the date of such incorporated document. Neither our mailing of this proxy statement/prospectus to BNSF stockholders nor the issuance by Berkshire of its common stock in connection with the merger will create any implication to the contrary.

**This proxy statement/prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities, or the solicitation of a proxy, in any jurisdiction to or from any person to whom it is unlawful to make any such offer or solicitation in such jurisdiction. Information contained in this proxy statement/prospectus regarding BNSF has been provided by BNSF and information contained in this proxy statement/prospectus regarding Berkshire has been provided by Berkshire.**

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**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS OF  
BURLINGTON NORTHERN SANTA FE CORPORATION**

A special meeting of stockholders of Burlington Northern Santa Fe Corporation ( BNSF ) will be held on [ ], [ ] at [ ], local time, at [ ], for the following purposes:

to adopt the Agreement and Plan of Merger, dated as of November 2, 2009, by and among Berkshire Hathaway Inc. ( Berkshire ), R Acquisition Company, LLC, an indirect wholly owned subsidiary of Berkshire ( Merger Sub ), and BNSF, pursuant to which BNSF will be merged with and into Merger Sub and Merger Sub will continue as the surviving entity, as further described in the accompanying proxy statement/prospectus; and

to transact any other business that may properly be brought before the special meeting, or any adjournments or postponements thereof, including, without limitation, a motion to adjourn or postpone the special meeting to another time and/or place for the purpose of soliciting additional proxies in favor of the proposal to adopt the merger agreement, if necessary.

**The Board of Directors of BNSF unanimously recommends that you vote FOR the proposal to adopt the merger agreement.**

Adoption of the merger agreement requires the vote of (i) holders of at least 66-<sup>2</sup>/<sub>3</sub>% of the issued and outstanding shares of BNSF common stock not owned by Berkshire or any of its affiliates or associates and (ii) holders of a majority of the issued and outstanding shares of BNSF common stock.

Only stockholders of record at the close of business on [ ] are entitled to notice of, and to vote at, the special meeting and any adjournment or postponement thereof. A complete list of stockholders entitled to vote at the special meeting will be available for a period of ten days prior to the special meeting at the offices of BNSF, located at 2650 Lou Menk Drive, Fort Worth, Texas 76131, for inspection by stockholders during ordinary business hours for any purpose germane to the special meeting. The stockholder list will also be available at the special meeting for examination by any stockholder present at the special meeting.

Only stockholders or their proxy holders may attend the special meeting. If you hold shares in your name, please be prepared to provide proper identification, such as a driver's license. If you hold your shares in street name through a bank, broker or other nominee, you will need to provide proof of ownership, such as a recent account statement or letter from your bank, broker or other nominee, along with proper identification.

**Your vote is very important. If you are a registered stockholder, please vote your shares as soon as possible using one of the following methods to ensure that your vote is counted, regardless of whether you expect to attend the special meeting in person: (1) call the toll-free number specified on the enclosed proxy card and follow the instructions when prompted, (2) access the Internet website specified on the enclosed proxy card and follow the instructions provided to you, or (3) complete, sign, date and return the enclosed proxy card in the postage-paid envelope provided. If you hold your shares in street name through a bank, broker or other nominee, you will need to follow the instructions provided to you by your bank, broker or other nominee to ensure that your shares are represented and voted at the special meeting. A failure to vote your shares is equivalent to a vote AGAINST the merger.**

Your proxy may be revoked at any time before the vote at the special meeting by following the procedures outlined in the accompanying proxy statement/prospectus.

In connection with our solicitation of proxies for the special meeting, we are making available this proxy statement/prospectus and proxy card on or about [ ].

By order of the Board of Directors.

Roger Nober

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Executive Vice President Law and Secretary

2650 Lou Menk Drive

Fort Worth, Texas 76131

[ ], 2009

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**QUESTIONS AND ANSWERS**

*Set forth below are commonly asked questions and answers about the merger and the special meeting of BNSF stockholders called in connection therewith. For a more complete description of the legal and other terms of the merger, please read carefully this entire proxy statement/prospectus, including the merger agreement attached as Annex A to this proxy statement/prospectus, and the documents incorporated by reference herein. You may obtain a list of the documents incorporated by reference into this proxy statement/prospectus in the section titled *Where To Find More Information* beginning on page 116.*

**Questions About the Merger**

**Q: Why am I receiving this document?**

A: Berkshire has agreed to acquire BNSF pursuant to the terms of a merger agreement that is described in this proxy statement/prospectus. A copy of the merger agreement is attached to this proxy statement/prospectus as Annex A. In order to complete the merger, BNSF stockholders must vote to adopt the merger agreement. BNSF is holding a special meeting of stockholders to obtain this stockholder approval.

This proxy statement/prospectus contains important information about the merger and the special meeting of the stockholders of BNSF, and you should read it carefully. The enclosed voting materials allow you to vote your shares without attending the special meeting in person.

**Your vote is extremely important. We encourage you to vote as soon as possible. For more information on how to vote your shares, please see the section titled *Special Meeting of BNSF Stockholders* beginning on page 31.**

**Q: What vote is required to adopt the merger agreement?**

A: Under Delaware law, the merger agreement must be adopted by:

the holders of at least 66-<sup>2</sup>/3% of the issued and outstanding shares of BNSF common stock not owned by Berkshire or any of its affiliates or associates; and

the holders of a majority of the issued and outstanding shares of BNSF common stock.  
If these votes are not obtained, the merger will not be completed.

**Q: What will happen in the merger?**

A: In the merger, BNSF will merge with and into Merger Sub, an indirect wholly owned subsidiary of Berkshire. Following the merger, Merger Sub will continue as the surviving entity and will remain an indirect wholly owned subsidiary of Berkshire. Merger Sub will change its name to Burlington Northern Santa Fe, LLC upon consummation of the merger. For more information, please see the sections titled *The Merger* and *The Merger Agreement* beginning on pages 36 and 75, respectively.

**Q: What will BNSF stockholders receive in the merger?**

- A: In the merger, each share of BNSF common stock (other than certain restricted shares, shares owned by Berkshire, BNSF or any of their respective subsidiaries, or shares in respect of which appraisal rights have been properly exercised and not withdrawn) will be converted into the right to receive, at the election of the stockholder (subject to the proration and reallocation procedures described below), either (i) \$100.00 in cash, without interest, or (ii) a portion of a share of Berkshire Class A common stock equal to the exchange ratio, which is calculated by dividing \$100.00 by the average of the daily volume-weighted average trading prices per share of Berkshire Class A common stock over the ten trading day period ending on the second

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full trading day prior to completion of the merger (the Class A average trading value ); *provided, however*, that if the Class A average trading value is above or below the collar (as described below), then the exchange ratio will be fixed at 0.000802233 or 0.001253489, as the case may be. Fractional shares of Berkshire Class A common stock will not be issued in the merger. Instead, shares of Berkshire Class B common stock will be issued in lieu of any fractional shares of Berkshire Class A common stock, and cash will be paid in lieu of any fractional shares of Berkshire Class B common stock.

**Q: What is the collar and how does it work?**

A: The stock component of the merger consideration is subject to a collar, whereby if the Class A average trading value is equal to or between \$79,777.34 and \$124,652.09 (the collar ), then the exchange ratio will float so as to ensure that the aggregate value of Berkshire common stock received in exchange for each share of BNSF common stock being exchanged for Berkshire shares, as calculated based on the Class A average trading value and the average of the daily volume-weighted average trading prices per share of Berkshire Class B common stock over the ten trading day period ending on the second full trading day prior to completion of the merger (the Class B average trading value ), is fixed at \$100.00 per share of BNSF common stock. If the Class A average trading value is less than \$79,777.34 or more than \$124,652.09, then the exchange ratio will be fixed at 0.001253489 or 0.000802233, as the case may be. Accordingly, if the Class A average trading value is less than the low end of the collar, then the value of the stock payable per share of BNSF common stock, as calculated based on the Class A average trading value and the Class B average trading value, will be less than the cash payable per share of BNSF common stock. Conversely, if the Class A average trading value is greater than the high end of the collar, then the value of the stock payable per share of BNSF common stock, as calculated based on the Class A average trading value and the Class B average trading value, will be greater than the cash payable per share of BNSF common stock.

By way of example, if the Class A average trading value is \$75,000, then the exchange ratio will be fixed at 0.001253489 and stockholders will receive, for each share of BNSF common stock that is exchanged for Berkshire common stock, Berkshire common stock valued, based on the Class A average trading value and the Class B average trading value, at approximately \$94.01 (0.001253489 x \$75,000), which is less than the \$100.00 per share received for shares that are exchanged for cash. Alternatively, if the Class A average trading value is \$130,000, then the exchange ratio will be fixed at 0.000802233 and stockholders will receive, for each share of BNSF common stock that is exchanged for Berkshire common stock, Berkshire common stock valued, based on the Class A average trading value and the Class B average trading value, at approximately \$104.29 (0.000802233 x \$130,000), which is more than the \$100.00 per share received for shares that are exchanged for cash.

For further information, please see the section titled The Merger Agreement Merger Consideration beginning on page 75.

**Q: Am I guaranteed to receive the form of merger consideration that I elect to receive for my shares of BNSF common stock?**

A: No. Under the merger agreement, approximately 60% of the total merger consideration payable by Berkshire to BNSF stockholders will be in the form of cash and approximately 40% will be in the form of Berkshire common stock. The cash and stock elections that BNSF stockholders make with respect to their shares may be subject to proration and reallocation to achieve as closely as practicable this 60/40 cash-stock split. Accordingly, depending on the elections made by other BNSF stockholders, each BNSF stockholder who elects to receive all cash for their shares in the merger may receive a portion of their consideration in Berkshire common stock, and each BNSF stockholder who elects to receive all Berkshire common stock for their shares in the merger may receive a portion of their consideration in cash. A BNSF stockholder who elects to receive a combination of cash and Berkshire common stock for their shares in the merger may receive cash and Berkshire common stock in a proportion different from that which such stockholder elected. For further information, please see the section titled The Merger Agreement Merger Consideration beginning on page 75.

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**Q: How do I make my election?**

A: To elect to receive cash, shares of Berkshire Class A common stock or some combination thereof, you must indicate on the election form, which will be sent to you in a separate mailing, the number of shares of BNSF common stock with respect to which you elect to receive cash and the number of shares of BNSF common stock with respect to which you elect to receive shares of Berkshire Class A common stock. You must return the form in the separate envelope provided so that it is received prior to the election deadline, which will be at 5:00 p.m., New York time, on the second business day prior to the effective time of the merger (which will be announced at least five business days in advance of the effective time by Berkshire). For further information, please see the section titled "The Merger Agreement - Stockholder Elections" beginning on page 77.

**Q: Can I revoke or change my election after I mail my election form?**

A: Yes. You may revoke or change your election by sending written notice thereof to the exchange agent, which notice must be received by the exchange agent prior to the election deadline noted above. In the event an election form is revoked, under the merger agreement the shares of BNSF common stock represented by such election form will be treated as shares in respect of which no election has been made, except to the extent a subsequent election is properly made by the stockholder during the election period. For more information, please see the section titled "The Merger Agreement - Stockholder Elections" beginning on page 77.

**Q: What happens if I do not make an election or my election form is not received before the election deadline?**

A: Any shares of BNSF common stock with respect to which the exchange agent does not receive a properly completed and timely election form will be deemed not to have made an election. In exchange for such shares of BNSF common stock, you will receive cash or shares of Berkshire common stock as necessary to achieve as closely as practicable the 60/40 cash-stock split (as described above) with respect to all BNSF shares eligible for merger consideration, taking into account cash and stock elections by all BNSF stockholders who make such elections, unless shares of Berkshire Class A common stock are trading outside the collar (as described above), in which case you will be deemed to have elected whichever form of merger consideration has the higher value, subject to any proration or reallocation necessary to achieve as closely as practicable the 60/40 cash-stock split.

**Q: How will I receive the merger consideration to which I am entitled?**

A: After receiving the proper documentation from you and determining the proper allocations of cash and shares of Berkshire common stock to be paid or issued to BNSF stockholders, the exchange agent will forward to you the cash and/or Berkshire common stock to which you are entitled. More information on the documentation you are required to deliver to the exchange agent may be found under the caption "The Merger Agreement - Payment of the Merger Consideration" beginning on page 77. BNSF stockholders will not receive any fractional shares of Berkshire Class A common stock in the merger. Instead, they will receive shares of Berkshire Class B common stock in lieu of any fractional shares of Berkshire Class A common stock, and cash in lieu of any fractional shares of Berkshire Class B common stock.

**Q: Where will shares of Berkshire common stock and BNSF common stock be listed following the merger?**

A: Following the merger, the shares of Berkshire Class A and Class B common stock will remain listed on the New York Stock Exchange (the NYSE) under the stock symbols BRK.A and BRK.B, respectively. All shares of BNSF common stock will cease to be publicly-traded and will be delisted from the NYSE upon completion of the merger.

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**Q: Am I entitled to appraisal rights in connection with the merger?**

A: Under Delaware law, appraisal rights are only available if, among other things, stockholders are required to accept cash for their shares (other than cash in lieu of fractional shares). Therefore, with respect to any shares of BNSF common stock for which you did not elect to receive cash merger consideration, but would be required under the merger agreement to receive cash merger consideration (other than cash in lieu of fractional shares of Berkshire Class B common stock), you may have the right, if you do not vote in favor of the merger agreement, in lieu of receiving the cash merger consideration for those shares, to obtain payment in cash for the fair value of those shares as determined by the Delaware Chancery Court. It is possible that the fair value as determined by the Delaware Chancery Court may be more or less than, or the same as, the merger consideration. BNSF reserves the right to take the position that appraisal may only be sought with respect to shares described in the first sentence of this paragraph, and may not be exercised with respect to any shares as to which cash was elected or stock was received. To exercise appraisal rights, you must follow the strict procedures prescribed by Section 262 of the Delaware General Corporation Law. For additional information, please see the section titled *The Merger Appraisal Rights* beginning on page 69. In addition, the full text of Section 262 of the Delaware General Corporation Law is included as Annex B to this proxy statement/prospectus.

**Q: When is the merger expected to be completed?**

A: Berkshire and BNSF will complete the merger when all of the conditions to completion of the merger under the merger agreement have been satisfied or waived. Berkshire and BNSF are working toward satisfying these conditions and completing the merger as quickly as possible. Berkshire and BNSF currently expect to complete the merger during the first quarter of 2010. However, because the merger is subject to a number of conditions, some of which are beyond the control of Berkshire and BNSF, exact timing for completion of the merger cannot be predicted with any amount of certainty.

**Q: Is the merger taxable to BNSF stockholders for U.S. Federal income tax purposes?**

A: Berkshire and BNSF each expect the merger to qualify as a tax-free reorganization pursuant to Section 368(a) of the Internal Revenue Code. The U.S. Federal income tax consequences of a reorganization to a BNSF stockholder will depend on the relative mix of cash and Berkshire common stock received by such BNSF stockholder. Assuming that the merger qualifies as a reorganization, you will not recognize any gain or loss for U.S. Federal income tax purposes if you exchange your shares of BNSF common stock solely for shares of Berkshire common stock in the merger, except with respect to cash received in lieu of fractional shares of Berkshire Class B common stock. You will recognize gain or loss if you exchange your shares of BNSF common stock solely for cash in the merger. You will recognize gain, but not loss, if you exchange your shares of BNSF common stock for a combination of Berkshire common stock and cash, but your taxable gain in that case will not exceed the cash you receive in the merger.

Please carefully review the information set forth in the section titled *Material U.S. Federal Income Tax Consequences of the Merger* beginning on page 90 for a description of the material U.S. Federal income tax consequences of the merger. **The tax consequences of the merger to you will depend on your own situation. Please consult your tax advisors for a full understanding of the tax consequences of the merger to you.**

**Q: Do Berkshire stockholders need to approve the merger?**

A: No. However, to facilitate the merger and related transactions, Berkshire stockholders will be asked to approve a restatement to Berkshire's certificate of incorporation to increase the number of shares of Berkshire Class B common stock and the total number of shares of Berkshire common stock authorized to be issued and to make certain other changes so as to permit and effectuate a 50-for-1 stock split with respect to the Berkshire Class B common stock. A special meeting of Berkshire stockholders will be called to consider and vote on this proposal. However, obtaining the stockholder vote necessary to effect the Berkshire Class B stock split is not a condition to completion of the merger.



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**Q: Will Berkshire stockholders receive any shares or other consideration as a result of the merger?**

A: No. Except for any shares of Berkshire Class B common stock received as a result of the proposed stock split described above, Berkshire stockholders will not receive any shares or consideration as a result of the merger and will continue to hold the shares of Berkshire common stock they owned prior to the effective time of the merger.

**Q: What will happen to outstanding BNSF equity compensation awards in the merger?**

A: The Board of Directors of BNSF (the BNSF Board ) will adjust the terms of all BNSF stock options, restricted stock units and awards of restricted shares (to the extent that the vesting of any award of BNSF restricted shares is not accelerated prior to completion of the merger as the merger agreement generally requires) outstanding immediately prior to the effective time of the merger to provide that, at the effective time of the merger, each such stock option, restricted stock unit (including any shares of performance stock issuable with respect to such BNSF restricted stock unit) and award of restricted shares shall be deemed to be an option to acquire shares of Berkshire Class B common stock, a restricted stock unit with respect to Berkshire Class B common stock (including performance shares) or an award of restricted shares of Berkshire Class B common stock, as the case may be. For additional information, please see the section titled The Merger Agreement Treatment of BNSF Equity Compensation Awards beginning on page 78.

**Q: What are the conditions to consummation of the merger?**

A: In addition to the BNSF stockholder approvals described above, the conditions to consummation of the merger include the following:

the shares of Berkshire Class A and Class B common stock issuable to BNSF stockholders in the merger having been approved for listing on the NYSE, subject to official notice of issuance;

the waiting period under the Hart-Scott-Rodino Act having been terminated or expired, any required approval from the Federal Communications Commission having been obtained and all other material governmental consents and approvals having been obtained;

no statute, rule, regulation, judgment, order or injunction prohibiting, restraining or making the merger illegal having been issued;

the representations and warranties of each party to the merger agreement remaining true and correct in all material respects as of the closing date;

each party to the merger agreement having performed or complied with all of its material obligations, agreements and covenants under the merger agreement;

holders of BNSF equity compensation awards (such as stock options and restricted stock units) no longer having the right to acquire shares of BNSF common stock or any other equity securities of BNSF pursuant to such awards; and

BNSF and Berkshire each having received an opinion from its legal counsel to the effect that the merger will qualify as a tax-free reorganization for U.S. Federal income tax purposes.

**Q: Will I still be paid dividends prior to the merger?**

A: BNSF's dividend for the fourth quarter of 2009 that was declared in October 2009 will still be paid in January 2010, as usual. If the BNSF Board makes a determination that a dividend is payable in respect of the first quarter of 2010, and the closing of the merger would occur prior to the date on which BNSF would otherwise pay such dividend for the first quarter, BNSF is permitted under the merger agreement to accelerate the payment of the first quarter dividend and pay a prorated dividend based on the portion of the first quarter dividend period that is completed prior to closing. However, no dividend shall be paid unless and until the BNSF Board, in its sole discretion, makes a declaration that such dividend is payable.

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**Q: Are there any risks in the merger that I should consider?**

A: Yes. There are risks associated with all business combinations, including the merger. These risks are discussed in more detail in the section titled "Risk Factors" beginning on page 26.

**Q: Where can I find more information about the parties to the merger?**

A: You can find more information about Berkshire and BNSF from the various sources described in the section titled "Where To Find More Information" beginning on page 116.

**Questions About the Special Meeting of BNSF stockholders**

**Q: When and where will the special meeting be held?**

A: The special meeting is scheduled to be held at [ ], on [ ] at [ ], local time.

**Q: On what am I being asked to vote?**

A: You are being asked to consider and vote on a proposal to adopt the Agreement and Plan of Merger, dated as of November 2, 2009, by and among Berkshire, Merger Sub and BNSF, a copy of which is attached to this proxy statement/prospectus as Annex A. The merger agreement is further described in the sections titled "The Merger" and "The Merger Agreement," beginning on pages 36 and 75, respectively.

**Q: How does the BNSF Board recommend that I vote regarding the merger agreement?**

A: The BNSF Board unanimously recommends that BNSF stockholders vote "FOR" the adoption of the merger agreement.

**Q: How do I vote my shares at the special meeting?**

A: If you are a registered stockholder, you may vote in person at the special meeting. However, to ensure that your shares are represented at the special meeting, you are recommended to vote promptly by proxy by taking any of the following steps, even if you plan to attend the meeting in person:

call the toll-free number specified on the enclosed proxy card and follow the instructions when prompted;

access the Internet website specified on the enclosed proxy card and follow the instructions provided to you; or

complete, sign, date and return the enclosed proxy card in the postage-paid envelope provided.

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If you are not a registered stockholder, but instead hold your shares in street name through a bank, broker or other nominee, please follow the instructions provided to you by your bank, broker or other nominee to vote by proxy and ensure your shares are represented at the special meeting. If you want to vote in person at the special meeting, you must provide a proxy executed in your favor from your bank, broker or other nominee. For more information, please see the section titled "Special Meeting of BNSF Stockholders Voting at the Special Meeting" beginning on page 32.

If you hold shares through any of BNSF's 401(k) savings plans, only the trustees of such plans can vote those shares on your behalf. Your proxy card permits you to direct the trustee how to vote the number of shares allocated to your account. In order to direct the trustee how to vote your shares, you must return your directions to the trustee so that they are received no later than [ ] on [ ]. 401(k) plan participants may not vote their plan shares in person at the special meeting.

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**Q: What happens if I do not vote or submit a proxy, or do not instruct my bank, broker or other nominee to vote, or abstain from voting?**

A: If you fail to vote, either in person or by proxy, or fail to instruct your bank, broker or other nominee how to vote, or abstain from voting, it will have the same effect as a vote cast AGAINST the proposal to adopt the merger agreement.

**Q: What should I do if I want to change my vote?**

A: If you are a registered stockholder, you can revoke your proxy at any time before it is voted at the special meeting by:

submitting a new proxy with a later date by using the telephone or Internet voting procedures, or by completing, signing, dating and returning a proxy card by mail to BNSF;

attending the special meeting and voting in person; or

sending written notice of revocation to the Corporate Secretary at Burlington Northern Santa Fe Corporation, 2650 Lou Menk Drive, Fort Worth, Texas 76131.

If you are not a registered stockholder, but instead hold your shares in street name through a bank, broker or other nominee, you will need to follow the instructions provided to you by your bank, broker or other nominee in order to revoke your proxy and submit new voting instructions.

**Q: If my bank, broker or other nominee holds my shares in street name, will they be able to vote my shares for me without my instructions?**

A: No. If you do not provide specific voting instructions to your bank, broker or other nominee, your bank, broker or other nominee will not be able to vote your shares, which will have the same effect as a vote AGAINST the proposal to adopt the merger agreement. You should receive instructions regarding voting procedures directly from your bank, broker or other nominee. You should follow the directions provided to you to vote your shares, or you should instruct your bank, broker or other nominee to vote your shares, following the procedure your bank, broker or other nominee provides to you.

**Q: How are shares held in any of BNSF's 401(k) savings plans voted?**

A: If you are a participant in any of BNSF's 401(k) savings plans, your proxy card permits you to direct the trustee how to vote the number of shares allocated to your account. The trustees of BNSF's 401(k) plans also vote allocated shares of common stock for which they have not received direction in the same proportion as directed shares are voted. In order to direct the trustee how to vote your shares, you must return your directions to the trustee so that they are received no later than [ ] on [ ].

**Q: How are shares held in BNSF's dividend reinvestment plan voted?**

A: Shares held in BNSF's dividend reinvestment plan will be voted in accordance with the vote indicated by the stockholder of record on the proxy. If the proxy is properly executed and returned but no choice is indicated, both record shares and shares held in BNSF's dividend

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reinvestment plan will be voted in accordance with BNSF's recommendations above. If a stockholder holds shares both of record and in the dividend reinvestment account and does not vote the shares held of record, the stockholder's shares held in the dividend reinvestment account will not be voted.

**Q: What happens if I transfer my shares after the record date for the special meeting?**

A: The record date for the special meeting is earlier than the expected date of completion of the merger. Therefore, if you transfer your shares of BNSF common stock after the record date, but prior to completion

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of the merger, you will retain the right to vote at the special meeting, but the person to whom you transferred your shares of BNSF common stock will have the right to be paid the merger consideration in respect of those shares following completion of the merger.

**Q: Should I send my stock certificates with my proxy card?**

A: No. Please do not send your stock certificates with your proxy card. Promptly after the completion of the merger, the exchange agent will mail to you a letter of transmittal with instructions for exchanging your BNSF stock certificates for the merger consideration.

**Q: Who can help answer my questions?**

A: If you have more questions about the merger or the special meeting, or desire additional copies of this proxy statement/prospectus or additional proxy cards, please contact:

Innisfree M&A Incorporated

501 Madison Avenue

20<sup>th</sup> Floor

New York, New York 10022

PHONE (TOLL-FREE): (877) 456-3463

or

Burlington Northern Santa Fe Corporation

2650 Lou Menk Drive

Fort Worth, Texas 76131

Attention: Investor Relations

PHONE: (817) 352-6452

For media inquiries, please contact:

Burlington Northern Santa Fe Corporation

2650 Lou Menk Drive

Fort Worth, Texas 76131

Attention: Corporate Relations

PHONE: (817) 867-6407

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**SUMMARY**

**The Companies (see page 94)**

*Burlington Northern Santa Fe Corporation*

*2650 Lou Menk Drive*

*Fort Worth, Texas 76131*

*(800) 795-2673*

BNSF is a holding company that conducts no operating activities and owns no significant assets other than through its interests in its subsidiaries. Through its subsidiaries, BNSF is engaged primarily in the freight rail transportation business. As of September 30, 2009, BNSF and its subsidiaries had approximately 37,000 employees. The rail operations of BNSF Railway Company, BNSF's principal operating subsidiary, make up one of the largest railroad systems in North America.

Additional information about BNSF and its subsidiaries is included in documents incorporated by reference into this proxy statement/prospectus. For further information, please see the section titled "Where To Find More Information" beginning on page 116.

*Berkshire Hathaway Inc.*

*3555 Farnam Street*

*Omaha, Nebraska 68131*

*(402) 346-1400*

Berkshire is a holding company owning subsidiaries that engage in a number of diverse business activities including property and casualty insurance and reinsurance, utilities and energy, finance, manufacturing, services and retailing. As of September 30, 2009, Berkshire and its subsidiaries had approximately 240,000 employees.

Additional information about Berkshire and its subsidiaries is included in documents incorporated by reference into this proxy statement/prospectus. For further information, please see the section titled "Where To Find More Information" beginning on page 116.

**The Merger (see page 36)**

Berkshire and BNSF agreed to the acquisition of BNSF by Berkshire under the terms of the merger agreement that is described in this proxy statement/prospectus. In the merger, BNSF will merge with and into Merger Sub, an indirect wholly owned subsidiary of Berkshire. Following the merger, Merger Sub will continue as the surviving entity and will remain an indirect wholly owned subsidiary of Berkshire. Merger Sub will change its name to Burlington Northern Santa Fe, LLC upon consummation of the merger. The merger agreement is attached as Annex A to this proxy statement/prospectus, and both Berkshire and BNSF encourage you to read it carefully and in its entirety because it is the legal document that governs the merger.

**Merger Consideration (see page 75)**

In the merger, each share of BNSF common stock (other than certain restricted shares, shares owned by Berkshire, BNSF or any of their respective subsidiaries, or shares in respect of which appraisal rights have been properly exercised and not withdrawn) will be converted into the right to receive, at the election of the stockholder (subject to certain proration and reallocation procedures described below), either (i) \$100.00 in cash, without interest, or (ii) a portion of a share of Berkshire Class A common stock equal to the exchange ratio, which is calculated by dividing \$100.00 by the Class A average trading value.



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This calculation, however, is subject to a collar that will fix the exchange ratio at 0.000802233 or 0.001253489 if the Class A average trading value is above \$124,652.09 or below \$79,777.34, as the case may be.

If the application of the exchange ratio to all shares in respect of which a stockholder has elected to receive stock would cause such stockholder to receive a fraction of a share of Berkshire Class A common stock, such stockholder will instead receive a number of shares of Berkshire Class B common stock equal in value to the fractional share of Berkshire Class A common stock. If after applying this calculation, the stockholder would receive a fraction of a share of Berkshire Class B common stock, the stockholder will instead receive cash with a value equal to the value of the fractional share of Berkshire Class B common stock.

Approximately 60% of the total merger consideration payable by Berkshire to BNSF stockholders will be in the form of cash and approximately 40% will be in the form of Berkshire common stock. Therefore, the cash and stock elections that BNSF stockholders make (or are deemed to have made) with respect to their shares may be subject to proration and reallocation to achieve as closely as practicable this 60/40 cash-stock split.

### **Treatment of BNSF Equity Compensation Awards (see page 78)**

Upon completion of the merger, each outstanding stock option to acquire shares of BNSF common stock, each outstanding restricted stock unit with respect to BNSF common stock and, to the extent that the vesting of any award of BNSF restricted shares is not accelerated by BNSF prior to completion of the merger (as the merger agreement requires, unless such vesting would result in a breach of any BNSF equity compensation plan or award agreement or any applicable law or adverse tax consequences), each outstanding award of BNSF restricted shares will be converted into an option, restricted stock unit or award of restricted shares, as applicable, on the same terms and conditions as were applicable under such BNSF equity award, with respect to the number of shares of Berkshire Class B common stock equal to the product of the number of shares of BNSF common stock issuable with respect to such BNSF equity award (including any shares of performance stock issuable with respect to BNSF restricted stock units) and the option exchange ratio, rounded down to the nearest whole number of shares of Berkshire Class B common stock. The option exchange ratio means the quotient obtained by dividing the average of the daily volume-weighted average trading prices per share of BNSF common stock over the ten trading day period ending on the second full trading day prior to completion of the merger by the average of the daily volume-weighted average trading prices per share of Berkshire Class B common stock over such period. The terms of each resulting Berkshire equity award will provide for an appropriate payment of cash in lieu of any fractional share of Berkshire Class B common stock lost due to rounding. The per share exercise price of each resulting Berkshire stock option will be equal to the per share exercise price for the shares of BNSF common stock otherwise purchasable pursuant to the corresponding BNSF stock option divided by the option exchange ratio, rounded up to the nearest whole cent. BNSF may, based on BNSF's Chief Executive Officer's consultation with Berkshire's Chairman, amend the performance criteria applicable to performance-based restricted stock units.

### **Risk Factors (see page 26)**

There are risks associated with the merger, which are described in the section titled Risk Factors beginning on page 26. You should carefully read and consider these risks, which include, without limitation, the following:

because the market price of Berkshire Class A common stock will fluctuate, you cannot be sure of the market value of Berkshire Class A or Class B common stock that you will receive in the merger;

you may receive a combination of consideration different from that which you elect, and while such elections are being calculated, you may not be able to transfer the shares of Berkshire common stock, if any, to which you may be entitled;

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the merger and related transactions are subject to certain stockholder approvals;

directors and executive officers of BNSF have interests in the merger that are different from, or in addition to, the interests of BNSF stockholders generally; and

the merger is subject to the receipt of consents and approvals from various governmental entities, which may impose conditions on, jeopardize or delay completion of the merger or reduce the anticipated benefits of the merger.

**Special Meeting of BNSF Stockholders (see page 31)**

The special meeting of BNSF stockholders will take place on [ ], [ ] at [ ], local time, at [ ]. At the special meeting, you will be asked:

to adopt the merger agreement, pursuant to which BNSF will be merged with and into Merger Sub and Merger Sub will continue as the surviving entity; and

to transact any other business that may properly be brought before the special meeting, or any adjournments or postponements thereof, including, without limitation, a motion to adjourn or postpone the special meeting to another time and/or place for the purpose of soliciting additional proxies in favor of the proposal to adopt the merger agreement, if necessary.

You may vote at the special meeting if you owned shares of BNSF common stock at the close of business on [ ], the record date for the meeting. You may cast one vote for each share of BNSF common stock that you owned as of that record date.

Adoption of the merger agreement requires the vote of (i) holders of at least 66-<sup>2</sup>/<sub>3</sub>% of the issued and outstanding shares of BNSF common stock not owned by Berkshire or any of its affiliates or associates and (ii) holders of a majority of the issued and outstanding shares of BNSF common stock.

As of the close of business on [ ], the record date for the special meeting, there were [ ] shares of BNSF common stock outstanding and entitled to vote. As of the same date, Berkshire and its affiliates and associates owned [ ] shares of BNSF common stock, representing approximately [ ]% of total issued and outstanding shares of BNSF common stock. In addition, as of the same date, the directors and executive officers of BNSF as a group owned and were entitled to vote [ ] shares of BNSF common stock, or less than [ ]% of the total issued and outstanding shares of BNSF common stock on that date. BNSF currently expects that all directors and executive officers will vote their shares in favor of the merger, although none of them has entered into any agreement obligating them to do so.

**Recommendation of the BNSF Board and its Reasons for the Merger (see page 40)**

After careful consideration, the BNSF Board unanimously approved the merger agreement, declared its advisability and determined that the merger agreement and the transactions contemplated by it are fair to and in the best interests of BNSF and its stockholders. **Accordingly, the BNSF Board unanimously recommends that BNSF stockholders vote FOR the adoption of the merger agreement.** For the factors considered by the BNSF Board in reaching its decision to adopt the merger agreement, please see the section titled "The Merger Recommendation of the BNSF Board and its Reasons for the Merger" beginning on page 40.

**Opinions of BNSF's Financial Advisors (see page 43)**

Goldman, Sachs & Co. (Goldman Sachs) delivered its opinion to the BNSF Board that, as of November 2, 2009, and based upon and subject to the factors and assumptions set forth therein, the stock consideration and the cash consideration, taken in the aggregate, to be paid to the holders (other than Berkshire and its affiliates) of the outstanding shares of BNSF common stock, pursuant to the merger agreement was fair from a financial point of view to such holders. The full text of the written opinion of Goldman Sachs, dated November 2, 2009, which sets



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forth assumptions made, procedures followed, matters considered and limitations on the review undertaken in connection with the opinion, is attached as Annex C to this proxy statement/prospectus. Goldman Sachs provided its opinion for the information and assistance of the BNSF Board in connection with its consideration of the merger. The Goldman Sachs opinion is not a recommendation as to how any holder of BNSF common stock should vote or make an election with respect to the merger or any other matter.

The BNSF Board also received an opinion, dated November 2, 2009, from Evercore Group L.L.C. ( Evercore ) as to the fairness, from a financial point of view, of the merger consideration to the holders (other than Berkshire and its affiliates) of the shares of BNSF common stock entitled to receive such consideration. The full text of Evercore's written opinion, which sets forth, among other things, the procedures followed, assumptions made, matters considered and limitations on the scope of review undertaken by Evercore in rendering its opinion is attached as Annex D to this proxy statement/prospectus. The opinion was directed to the BNSF Board and addresses only the fairness, from a financial point of view, of the merger consideration to the holders (other than Berkshire and its affiliates) of the shares of BNSF common stock entitled to receive such consideration. The opinion does not address any other aspect of the proposed merger and does not constitute a recommendation as to how any holder of BNSF common stock should vote or make an election with respect to the merger or any other matter.

### **Interests of BNSF Directors and Executive Officers in the Merger (see page 63)**

Aside from their interests as BNSF stockholders, BNSF directors and executive officers have interests in the merger that are different from, or in addition to, those of other BNSF stockholders generally. The members of the BNSF Board were aware of and considered these interests, among other matters, in evaluating and negotiating the merger agreement and the merger, and in recommending to the BNSF stockholders that the merger agreement be adopted. These interests include vesting and settlement of BNSF restricted stock units held by directors, funding of a director's benefits under BNSF's Directors' Charitable Award Program, conversion of BNSF stock options held by executive officers and one non-employee director and BNSF restricted stock units held by executive officers into Berkshire equity awards, payment of directors' benefits under BNSF's director deferred compensation and retirement plans, settlement of executive officers' units in BNSF's Senior Management Stock Deferral Plan, vesting of executive officers' unvested benefits in BNSF's supplemental retirement plans, executive officers' receipt of certain benefits under their change in control agreements upon certain terminations of employment in connection with the merger, funding of BNSF's Benefits Protection Trust with respect to certain benefit plans and agreements and Berkshire's agreement to indemnify directors and officers against certain claims and liabilities and to continue such indemnification for a period of six years from the effective time of the merger. Please see the section titled "The Merger Interests of BNSF Directors and Executive Officers in the Merger" beginning on page 63 for additional information about these interests.

### **NYSE Listing of Berkshire Class A and Class B Common Stock (see page 73)**

Shares of Berkshire Class A and Class B common stock are quoted on the NYSE under the stock symbols BRK.A and BRK.B, respectively. It is a condition to completion of the merger that the shares of Berkshire Class A and Class B common stock to be issued by Berkshire to BNSF stockholders in connection with the merger be approved for listing on the NYSE, subject to official notice of issuance. Berkshire has agreed to use its best efforts to cause such shares to be listed on the NYSE and expects to obtain the NYSE's approval to list such shares prior to completion of the merger, subject to official notice of issuance.

### **Delisting and Deregistration of BNSF Common Stock (see page 73)**

Shares of BNSF common stock currently trade on the NYSE under the stock symbol BNI. Upon completion of the merger, all shares of BNSF common stock will cease to be listed for trading on the NYSE and will be deregistered under the Exchange Act.

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### **Regulatory Approvals Required for the Merger (see page 68)**

The following is a summary of the material regulatory requirements for completion of the merger. There can be no guarantee if and when any of the consents or approvals required for the merger will be obtained or as to the conditions that such consents and approvals may contain. Berkshire and BNSF intend to make all required filings as promptly as practicable. The management of each of Berkshire and BNSF currently believe that the necessary regulatory approvals can be obtained by the end of the first quarter of 2010; however, there can be no assurances that such approvals will be obtained in accordance with this timing or at all. For further information, please read the section titled "Risk Factors" beginning on page 26.

Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act") and the rules promulgated by the U.S. Federal Trade Commission (the "FTC"), the merger cannot be completed until (i) certain information and materials are furnished to the Antitrust Division of the U.S. Department of Justice (the "DOJ") and the FTC and (ii) the applicable waiting period under the HSR Act is terminated or expires.

Notwithstanding the foregoing, at any time before or after the completion of the merger, the DOJ, the FTC or any state may still challenge the merger on antitrust grounds. Accordingly, at any time before or after the completion of the merger, any of the DOJ, the FTC or any state may take action under the antitrust laws as it deems necessary or desirable in the public interest, including, without limitation, seeking to enjoin the completion of the merger, permitting completion subject to regulatory concessions or conditions or seeking divestiture of the businesses acquired as a result of the merger. Private parties and non-U.S. governmental authorities may also institute legal actions under the antitrust laws under some circumstances. There can be no assurance that a challenge to the merger under the antitrust laws will not be made, or, if such a challenge is made, that it will not succeed.

Under the merger agreement, consummation of the merger is also conditional upon the receipt of certain approvals from the Federal Communication Commission (the "FCC") with respect to the transfer of control of certain types of licenses and other authorizations issued by the FCC. There can be no assurance that the requisite FCC approvals will be obtained on a timely basis or at all.

Berkshire and BNSF also intend to make all required filings under the Securities Act and the Exchange Act relating to the merger, and obtain all other approvals and consents which may be necessary to give effect to the merger.

### **Appraisal Rights (see page 69)**

Under Delaware law, appraisal rights are only available if, among other things, stockholders are required to accept cash for their shares (other than cash in lieu of fractional shares). Therefore, with respect to any shares of BNSF common stock for which you did not elect to receive cash merger consideration, but would be required under the merger agreement to receive cash merger consideration (other than cash in lieu of fractional shares of Berkshire Class B common stock), you may have the right, if you do not vote in favor of the merger agreement, in lieu of receiving the cash merger consideration for those shares, to obtain payment in cash for the "fair value" of those shares as determined by the Delaware Chancery Court (the "Court"). It is possible that the fair value as determined by the Court may be more or less than, or the same as, the merger consideration. BNSF reserves the right to take the position that appraisal may only be sought with respect to shares described in the first sentence of this paragraph, and may not be exercised with respect to any shares as to which cash was elected or stock was received.

BNSF stockholders electing to exercise appraisal rights must comply with the strict procedures set forth in Section 262 of the Delaware General Corporation Law ( "Section 262"), the full text of which appears in

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Annex B to this proxy statement/prospectus, in order to demand and perfect their rights. Failure to so comply may result in termination or waiver of such stockholder's appraisal rights. For a summary of the material provisions of Section 262 of the Delaware General Corporation Law required to be followed by dissenting BNSF stockholders wishing to demand and perfect their appraisal rights, please read the section titled "The Merger Appraisal Rights" beginning on page 69.

**Conditions to the Merger (see page 83)**

The obligations of each of BNSF and Berkshire to complete the merger are subject to the satisfaction or waiver of the following conditions:

the merger agreement shall have been adopted by the necessary votes of the BNSF stockholders;

the approval for listing on the NYSE of shares of Berkshire Class A and Class B common stock issuable to BNSF stockholders as consideration in the merger, subject to official notice of issuance;

no statute, rule, regulation, judgment, order or injunction shall have been promulgated, entered, enforced, enacted, or issued or be applicable to the merger by any governmental entity that prohibits, restrains, or makes illegal the completion of the merger;

the Registration Statement on Form S-4 (of which this proxy statement/prospectus is a part) shall have become effective under the Securities Act and shall not be the subject of any stop order or proceeding seeking a stop order;

all material governmental consents, orders, approvals and waiting periods required for the completion of the merger shall have been obtained and shall be in effect, or, with respect to waiting periods, shall have expired or been terminated; and

all material filings with governmental authorities required to complete the merger shall have been made.

In addition, BNSF's obligation to complete the merger is subject to the following conditions:

the representations and warranties of Berkshire and Merger Sub qualified by materiality must be true and correct in all respects, and all other representations and warranties must be true and correct in all material respects, as of the date of the merger agreement and as of the closing date, except representations and warranties that speak as of a particular date;

Berkshire and Merger Sub must have complied with all of their material obligations and covenants under the merger agreement; and

BNSF shall have received an opinion of its tax counsel to the effect that the merger will qualify as a tax-free reorganization within the meaning of Section 368 of the Internal Revenue Code of 1986, as amended (the "Code").

The obligation of Berkshire and Merger Sub to complete the merger is subject to the following conditions:

BNSF's representations and warranties qualified by materiality must be true and correct in all respects, and all other representations and warranties must be true and correct in all material respects, as of the date of the merger agreement and as of the closing date, except representations and warranties that speak as of a particular date;

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BNSF must have complied with all of its material obligations and covenants under the merger agreement;

no statute, rule, regulation, judgment, order or injunction shall have been promulgated, entered, enforced, enacted or issued or be applicable to the merger by any governmental entity that imposes certain limitations on Berkshire s or its subsidiaries or affiliates respective businesses or assets, as specified in the merger agreement;

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Berkshire shall have received an opinion of its tax counsel to the effect that the merger will qualify as a tax-free reorganization within the meaning of Section 368 of the Code; and

the holders of BNSF stock options and restricted stock units shall no longer have the right to acquire any equity securities of BNSF or its subsidiaries after the effective time of the merger.

### **Expected Timing of the Merger**

Berkshire and BNSF currently expect to complete the merger during the first quarter of 2010, subject to the receipt of required stockholder and regulatory approvals and the satisfaction or waiver of the other conditions to completion of the merger. Because many of the conditions to completion of the merger are beyond the control of Berkshire and BNSF, exact timing for completion of the merger cannot be predicted with any amount of certainty.

### **No Solicitations of Other Offers (see page 84)**

The merger agreement contains detailed provisions that restrict BNSF, its subsidiaries and their respective representatives from soliciting, initiating or knowingly encouraging, or taking any other action intended to facilitate, the submission of any other takeover proposal. The merger agreement also restricts BNSF, its subsidiaries and their respective representatives from participating in any discussions or negotiations regarding any other takeover proposal. The merger agreement does not, however, prohibit the BNSF Board from considering and recommending to BNSF stockholders an alternative transaction with a third party if specified conditions are met, including the payment of the termination fee required by the merger agreement.

### **Termination of the Merger Agreement (see page 86)**

The merger agreement may be terminated at any time prior to the completion of the merger by mutual consent of BNSF and Berkshire. The merger agreement may also be terminated by either BNSF or Berkshire if:

any final, non-appealable governmental order, decree, ruling or other action prohibits the completion of the merger, except that the party seeking to terminate (subject to certain limitations in the case of Berkshire) shall have used all reasonable best efforts to challenge that order, decree, ruling or other action;

the merger is not completed on or before June 30, 2010, except that (a) this right to terminate will not be available to any party whose failure to comply with the merger agreement results in the failure of the merger to be completed by that date, and (b) this date will be extended day-by-day for each day any party is subject to a nonfinal order, decree, ruling or action restraining, enjoining or otherwise prohibiting the consummation of the merger, but not beyond July 31, 2010; or

BNSF's stockholders fail to adopt the merger agreement by the required votes. Berkshire may terminate the merger agreement if:

the BNSF Board or any committee thereof withdraws or modifies, or proposes publicly to withdraw or modify, in a manner adverse to Berkshire, its approval, determination of advisability or recommendation of the merger agreement and the transactions contemplated by that agreement, including the merger, or approves, determines to be advisable or recommends, or proposes publicly to approve, determine to be advisable or recommend, any takeover proposal by a third party, or resolves to take any such action; or

any of BNSF's representations or warranties qualified by materiality are not true and correct in any respect or, with respect to those not qualified by materiality, are not true and correct in all material respects, or BNSF shall have breached or failed in any material respect to perform or comply with any of its material obligations, agreements or covenants under the merger agreement where that

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inaccuracy or breach is incapable of being cured or has not been cured within 30 business days after Berkshire delivers written notice of the inaccuracy or breach to BNSF.

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BNSF may terminate the merger agreement if:

BNSF enters into a definitive agreement providing for a superior proposal, provided that BNSF has complied with the provisions of the merger agreement regarding solicitations of other offers, and provided that BNSF pays to Berkshire the termination fee described below and reimburses certain of Berkshire's out-of-pocket expenses; or

any of Berkshire's representations or warranties qualified by materiality are not true and correct in any respect or, with respect to those not qualified by materiality, are not true and correct in all material respects, or either Berkshire or Merger Sub shall have breached or failed in any material respect to perform or comply with any of its material obligations, agreements or covenants under the merger agreement where that inaccuracy or breach is incapable of being cured or has not been cured within 30 business days after BNSF delivers written notice of the inaccuracy or breach to Berkshire.

### **Termination Fee (see page 87)**

BNSF has agreed to pay Berkshire a termination fee of \$264 million and to reimburse it for any SEC filing fees previously paid by Berkshire or Merger Sub in connection with the transactions contemplated by the merger agreement if the merger agreement is terminated under any of the following circumstances:

a takeover proposal shall have been made known to BNSF or shall have been made directly to BNSF stockholders generally or any person shall have publicly announced an intention to make a takeover proposal and thereafter either party terminates the merger agreement because:

the merger has not been completed by June 30, 2010 (as such date may be extended as described above);

the stockholder approvals necessary to complete the merger are not obtained at the special meeting of BNSF stockholders or any adjournment thereof, as described above; or

there exists a final non-appealable governmental order, decree or ruling based on the existence of the takeover proposal; and that takeover proposal is consummated within one year of the termination;

BNSF terminates the merger agreement because it enters into a definitive agreement providing for a superior proposal; or

Berkshire terminates the merger agreement because the BNSF Board or any committee thereof withdraws or modifies, or proposes publicly to withdraw or modify, in a manner adverse to Berkshire, its approval, determination of advisability or recommendation of the merger agreement and the transactions contemplated by that agreement, or approves, determines to be advisable or recommends, or proposes publicly to approve, determine to be advisable or recommend, any takeover proposal by a third party, or resolves to take any such action.

### **Material U.S. Federal Income Tax Consequences of the Merger (see page 90)**

Berkshire and BNSF expect that the merger will qualify as a reorganization within the meaning of Section 368 of the Code and that each of Berkshire, National Indemnity Company (NICO, the parent of Merger Sub and an indirect wholly owned subsidiary of Berkshire) and BNSF will be a party to the reorganization within the meaning of Section 368(b) of the Code, and it is a condition to completion of the merger that each of Berkshire and BNSF receive opinions from legal counsel to that effect.

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Assuming that the merger qualifies as a reorganization, and each of Berkshire, NICO and BNSF is a party to the reorganization, you will not recognize any gain or loss for U.S. Federal income tax purposes if you exchange

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your shares of BNSF common stock solely for shares of Berkshire common stock in the merger, except with respect to cash received in lieu of fractional shares of Berkshire Class B common stock. You will recognize gain or loss if you exchange your shares of BNSF common stock solely for cash in the merger. You will recognize gain, but not loss, if you exchange your shares of BNSF common stock for a combination of Berkshire common stock and cash, but your taxable gain in that case will not exceed the cash you receive in the merger.

BNSF stockholders are urged to read the discussion in the section titled **Material U.S. Federal Income Tax Consequences of the Merger** beginning on page 90 of this proxy statement/prospectus and to consult their tax advisors as to the U.S. Federal income tax consequences of the transaction, as well as the effects of state, local and non-U.S. tax laws.

### **Accounting Treatment (see page 89)**

In accordance with accounting principles generally accepted in the United States, Berkshire will account for the merger using the acquisition method of accounting for business combinations.

### **Comparative Rights of Stockholders (see page 96)**

The rights of BNSF stockholders are currently governed by the BNSF certificate of incorporation, the BNSF bylaws and Delaware law. BNSF stockholders who elect or who are deemed to have elected to receive a portion of the merger consideration in Berkshire Class A common stock will become stockholders of Berkshire upon completion of the merger. Thereafter, their rights will be governed by the Berkshire certificate of incorporation, the Berkshire bylaws and Delaware law. As a result, these BNSF stockholders will have different rights once they become stockholders of Berkshire due to the differences in the governing documents of Berkshire and BNSF. The key differences are described in the section titled **Comparative Rights of Stockholders** beginning on page 96 of this proxy statement/prospectus.

### **Litigation (see page 73)**

BNSF and the BNSF Board, and in some cases Berkshire, are named as defendants in purported class action lawsuits brought by alleged BNSF stockholders challenging the proposed merger. These lawsuits generally allege, among other things, that (i) the consideration being offered is unfair and inadequate, (ii) BNSF's directors did not adequately seek to maximize stockholder value through open bidding or market check mechanisms, (iii) the no shop clause and termination fee are onerous deal protection devices designed to discourage a superior offer, (iv) BNSF's earnings forecasts were manipulated to drive its stock price down and thus make the proposed transaction appear more favorable to stockholders than it truly is, (v) BNSF's directors have (for these reasons and others) thus breached their fiduciary duties and (vi) Berkshire aided and abetted these breaches. Certain of the stockholder actions also allege that BNSF's disclosures have been, or will in the future be, inadequate. The stockholder actions seek various remedies, including enjoining the transaction from being consummated in accordance with the agreed-upon terms. The defendants intend to defend against these and any additional future claims.

**Table of Contents****SELECTED HISTORICAL CONSOLIDATED FINANCIAL DATA OF BERKSHIRE**

The following table sets forth selected historical consolidated financial data of Berkshire. The selected historical consolidated financial data of Berkshire as of and for the years ended December 31, 2008, 2007, 2006, 2005 and 2004 have been derived from Berkshire's historical audited consolidated financial statements. Berkshire's historical audited consolidated financial statements for the years ended December 31, 2008, 2007 and 2006 are incorporated into this proxy statement/prospectus by reference to Berkshire's Annual Report on Form 10-K for the year ended December 31, 2008. The selected historical consolidated financial data of Berkshire as of September 30, 2009 and for the nine month periods ended September 30, 2009 and 2008 have been derived from Berkshire's historical unaudited interim consolidated financial statements contained in its Quarterly Report on Form 10-Q for the quarter ended September 30, 2009, which is incorporated by reference into this proxy statement/prospectus. The selected historical consolidated financial data of Berkshire as of September 30, 2008 has been derived from Berkshire's historical unaudited interim consolidated financial statements contained in its Quarterly Report on Form 10-Q for the quarter ended September 30, 2008. In the opinion of Berkshire's management, the unaudited interim consolidated financial statements of Berkshire have been prepared on the same basis as its audited consolidated financial statements and include all adjustments, consisting of normal recurring adjustments, necessary for a fair statement of the financial position of Berkshire as of September 30, 2009 and its results of operations for the nine month periods ended September 30, 2009 and 2008. Results of interim periods are not necessarily indicative of the results expected for a full year or for future periods. This information is only a summary, and you should read it in conjunction with Berkshire's historical consolidated financial statements and the related notes contained in the reports and the other information that Berkshire has previously filed with the SEC and which are incorporated into this proxy statement/prospectus by reference. For additional information, please see the section titled "Where To Find More Information" beginning on page 116.

	Nine Months Ended September 30, 2009      2008 (Unaudited)		2008	Year Ended December 31, 2007      2006      2005			2004
<i>(In millions, except per share data)</i>							
<b>Selected Income Statement Data:</b>							
<b>Revenues</b>							
Insurance premiums earned(1)	\$ 21,263	\$ 18,905	\$ 25,525	\$ 31,783	\$ 23,964	\$ 21,997	\$ 21,085
Sales and service revenues	46,075	49,415	65,854	58,243	51,803	46,138	43,222
Revenues of utilities and energy businesses(2)	8,416	9,727	13,971	12,628	10,644		
Interest, dividend and other investment income	4,133	3,588	4,966	4,979	4,382	3,487	2,816
Interest and other revenues of finance and financial products businesses	3,244	3,707	4,931	5,103	5,111	4,633	3,788
Investment and derivative gains/losses(3)	(836)	(2,148)	(7,461)	5,509	2,635	5,408	3,471
<b>Total revenues</b>	<b>\$ 82,295</b>	<b>\$ 83,194</b>	<b>\$ 107,786</b>	<b>\$ 118,245</b>	<b>\$ 98,539</b>	<b>\$ 81,663</b>	<b>\$ 74,382</b>
<b>Earnings</b>							
Net earnings attributable to Berkshire(3)(4)	\$ 4,999	\$ 4,877	\$ 4,994	\$ 13,213	\$ 11,015	\$ 8,528	\$ 7,308
Net earnings per Class A equivalent share attributable to Berkshire shareholders	\$ 3,223	\$ 3,149	\$ 3,224	\$ 8,548	\$ 7,144	\$ 5,538	\$ 4,753

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	As of September 30,		2008	As of December 31,			
	2009	2008		2007	2006	2005	2004
	<i>(Unaudited)</i>		<i>(In millions, except per share data)</i>				
<b>Selected Balance Sheet Data:</b>							
Total assets	\$ 292,010	\$ 281,729	\$ 267,399	\$ 273,160	\$ 248,437	\$ 198,325	\$ 188,874
Notes payable and other borrowings of insurance and other non-finance businesses	3,815	4,068	4,349	2,680	3,698	3,583	3,450
Notes payable and other borrowings of utilities and energy businesses(2)	19,564	18,995	19,145	19,002	16,946		
Notes payable and other borrowings of finance and financial products businesses	14,642	14,495	13,388	12,144	11,961	10,868	5,387
Berkshire Hathaway shareholders' equity	126,073	120,155	109,267	120,733	108,419	91,484	85,900
Class A equivalent common shares outstanding, in thousands	1,552	1,549	1,549	1,548	1,543	1,541	1,539
Berkshire Hathaway shareholders' equity per outstanding Class A equivalent common share	\$ 81,247	\$ 77,558	\$ 70,530	\$ 78,008	\$ 70,281	\$ 59,377	\$ 55,824

- (1) Insurance premiums earned in 2007 included \$7.1 billion from a single reinsurance transaction with Equitas.
- (2) On February 9, 2006, Berkshire converted its non-voting preferred stock of MidAmerican Energy Holdings Company ( MidAmerican ) to common stock and upon conversion, owned approximately 83.4% (80.5% diluted) of the voting common stock interests. Accordingly, the consolidated financial statements reflect the consolidation of the accounts of MidAmerican beginning in 2006. Berkshire's investment in MidAmerican was accounted for pursuant to the equity method in 2004 and 2005.
- (3) The amount of investment and derivative gains and losses for any given period has no predictive value, and variations in amount from period to period have no practical analytical value. For the first nine months of 2009 and 2008, after-tax investment and derivative gains/losses were \$(0.5) billion and \$(1.4) billion, respectively. Investment and derivative gains/losses for the first nine months of 2009 include non-cash pre-tax losses of \$3.2 billion (\$2.0 billion after-tax) relating to other-than-temporary impairments of certain investments offset by gains of \$2.0 billion (\$1.3 billion after-tax) relating to long duration equity index put option contracts. Investment and derivative gains/losses for the first nine months of 2008 include non-cash pre-tax losses of \$1.7 billion (\$1.1 billion after-tax) relating to long duration equity index put option contracts. For each of the five years ended December 31, after-tax investment and derivative gains/losses were \$(4.65) billion in 2008, \$3.58 billion in 2007, \$1.71 billion in 2006, \$3.53 billion in 2005 and \$2.26 billion in 2004. Investment and derivative gains/losses in 2008 include non-cash pre-tax losses of \$5.0 billion (\$3.25 billion after-tax) relating to long duration equity index put option contracts and \$1.8 billion (\$1.2 billion after-tax) relating to other-than-temporary impairments of certain investments. Investment and derivative gains/losses in 2005 include a non-cash pre-tax gain of \$5.0 billion (\$3.25 billion after-tax) relating to the exchange of Gillette stock for Procter & Gamble stock.
- (4) Net earnings attributable to Berkshire for the year ended December 31, 2005 include a pre-tax underwriting loss of \$3.4 billion in connection with Hurricanes Katrina, Rita and Wilma that struck the Gulf coast and Southeast regions of the United States. Such loss reduced net earnings attributable to Berkshire by approximately \$2.2 billion.

**Table of Contents****SELECTED HISTORICAL CONSOLIDATED FINANCIAL DATA OF BNSF**

The following table sets forth selected historical consolidated financial data for BNSF. The selected historical consolidated financial data of BNSF as of and for the years ended December 31, 2008, 2007, 2006, 2005 and 2004 have been derived from BNSF's historical audited consolidated financial statements, except for the earnings per share information which has been adjusted to reflect the adoption of ASC Topic 260-10, *Earnings per Share* (formerly FSP EITF 03-06-1, *Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities*). BNSF's historical audited consolidated financial statements for the years ended December 31, 2008, 2007 and 2006 are incorporated into this proxy statement/prospectus by reference to BNSF's Annual Report on Form 10-K for the year ended December 31, 2008. The selected historical consolidated financial data of BNSF as of September 30, 2009 and for the nine month periods ended September 30, 2009 and 2008 have been derived from BNSF's historical unaudited interim consolidated financial statements contained in its Quarterly Report on Form 10-Q for the quarter ended September 30, 2009, which is incorporated by reference into this proxy statement/prospectus. The selected historical consolidated financial data of BNSF as of September 30, 2008 has been derived from BNSF's historical unaudited interim consolidated financial statements contained in its Quarterly Report on Form 10-Q for the quarter ended September 30, 2008. In the opinion of BNSF's management, the unaudited interim consolidated financial statements of BNSF have been prepared on the same basis as its audited consolidated financial statements, except for the adoption of ASC Topic 260-10, *Earnings per Share* (formerly FSP EITF 03-06-1, *Determining Whether Instruments Granted in Share-Based Payment Transactions Are Participating Securities*), and include all adjustments, consisting of normal recurring adjustments, necessary for a fair statement of the financial position of BNSF as of September 30, 2009 and its results of operations for the nine month periods ended September 30, 2009 and 2008. Results of interim periods are not necessarily indicative of the results expected for a full year or for future periods. This information is only a summary, and you should read it in conjunction with BNSF's historical consolidated financial statements and the related notes contained in the reports and the other information that BNSF has previously filed with the SEC and which are incorporated into this proxy statement/prospectus by reference. For additional information, please see the section titled "Where To Find More Information" beginning on page 116.

	Nine Months Ended September 30,		Year Ended December 31,				
	2009	2008	2008	2007	2006	2005	2004
	(Unaudited)		(In millions, except per share data)				
<b>Selected Income Statement Data:</b>							
Revenues(1)	\$ 10,335	\$ 13,645	\$ 18,018	\$ 15,802	\$ 14,985	\$ 12,987	\$ 10,946
Operating income(1)(2)(3)	\$ 2,367	\$ 2,796	\$ 3,912	\$ 3,486	\$ 3,521	\$ 2,927	\$ 1,709
Net income(1)(2)(3)	\$ 1,185	\$ 1,500	\$ 2,115	\$ 1,829	\$ 1,889	\$ 1,534	\$ 805
Basic earnings per share(1)(2)(3)	\$ 3.48	\$ 4.33	\$ 6.13	\$ 5.15	\$ 5.19	\$ 4.09	\$ 2.16
Average basic shares	339.8	344.9	343.8	352.5	361.0	371.8	370.0
Diluted earnings per share(1)(2)(3)	\$ 3.45	\$ 4.28	\$ 6.06	\$ 5.06	\$ 5.07	\$ 3.98	\$ 2.12
Average diluted shares	342.2	349.2	347.8	358.9	369.8	381.8	376.6
Dividends declared per common share	\$ 1.20	\$ 1.04	\$ 1.44	\$ 1.14	\$ 0.90	\$ 0.74	\$ 0.64

- (1) 2009 revenues and operating income include an unfavorable coal rate case decision of \$66 million, which impacted net income by \$46 million, or \$0.13 per basic and diluted share.
- (2) 2005 operating income, net income and earnings per share include an impairment charge related to an agreement to sell certain line segments to the State of New Mexico in the future of \$71 million pre-tax, \$44 million net of tax, or \$0.12 per basic and diluted share.

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- (3) 2004 operating income, net income and earnings per share include a charge for a change in estimate of unasserted asbestos and environmental liabilities of \$465 million pre-tax, \$288 million net of tax, or \$0.78 per share and \$0.77 per diluted share.

	As of September 30,		2008	2007	As of December 31,		2005	2004
	2009	2008			2006	2005		
	<i>(Unaudited)</i>		<i>(In millions, except per share data)</i>					
<b>Selected Balance Sheet Data:</b>								
Total assets	\$ 38,553	\$ 35,633	\$ 36,403	\$ 33,583	\$ 31,797	\$ 30,436	\$ 29,023	
Long-term debt and commercial paper, including current portion	\$ 10,385	\$ 8,700	\$ 9,555	\$ 8,146	\$ 7,385	\$ 7,154	\$ 6,516	
Stockholders' equity	\$ 12,255	\$ 11,604	\$ 11,131	\$ 11,144	\$ 10,528	\$ 9,638	\$ 9,438	
Net debt to total capitalization(1)	42.9%	41.5%	44.5%	41.2%	40.0%	42.3%	39.6%	

- (1) Net debt to total capitalization is calculated as total debt (long-term debt plus long-term debt due within one year) less cash and cash equivalents divided by the sum of net debt and total stockholders' equity.

	Nine Months Ended		2008	2007	2006	2005	2004	
	September 30,	2008						
	<i>(Unaudited)</i>		<i>(In millions, except per share data)</i>					
<b>Selected Cash Flow Data:</b>								
Capital expenditures excluding equipment(1)	\$ 1,669	\$ 1,704	\$ 2,167	\$ 2,248	\$ 2,014	\$ 1,750	\$ 1,511	
Depreciation and amortization	\$ 1,135	\$ 1,039	\$ 1,397	\$ 1,293	\$ 1,176	\$ 1,111	\$ 1,035	

- (1) Certain comparative prior period amounts have been adjusted to conform to the current period presentation.

**Table of Contents****SUMMARY UNAUDITED PRO FORMA CONDENSED COMBINED FINANCIAL DATA**

The following table presents summary unaudited pro forma condensed combined financial information about the financial condition and results of operations of Berkshire and BNSF after giving effect to the merger. The summary unaudited pro forma condensed combined income statement data for the nine months ended September 30, 2009 and the year ended December 31, 2008 give effect to the merger as if the merger had taken place on January 1, 2008. The summary unaudited pro forma condensed combined balance sheet data gives effect to the merger as if it had taken place on September 30, 2009. The following summary unaudited pro forma condensed combined financial information has been prepared by applying the acquisition method of accounting with Berkshire treated as the acquirer for accounting purposes. The following summary unaudited pro forma condensed combined financial information has been derived from, and should be read in conjunction with, the consolidated financial statements and the related notes of both Berkshire and BNSF incorporated herein by reference, together with the more detailed unaudited pro forma condensed combined financial information provided in the section titled "Unaudited Pro Forma Condensed Combined Financial Information" beginning on page 102. For further information with respect to the documents incorporated into this proxy statement/prospectus by reference, please see the section titled "Where To Find More Information" beginning on page 116. The summary unaudited pro forma condensed combined financial information set forth below has been presented for informational purposes only and is not necessarily indicative of what the combined financial condition or results of operations actually would have been had the merger been completed as of the dates indicated. In addition, the summary unaudited pro forma condensed combined financial information presented below does not purport to project the combined financial condition or operating results for any future period.

	<b>Year Ended December 31, 2008</b>	<b>Nine Months Ended September 30, 2009</b>
		<i>(Unaudited)</i>
		<i>(In millions, except per share amounts)</i>
<b>Income Statement Data:</b>		
<b>Revenues:</b>		
Insurance premiums earned	\$ 25,525	\$ 21,263
Sales and service revenues	65,854	46,075
Revenues of utilities, energy and railroad businesses	32,540	19,164
Interest, dividend and other investment income	4,852	4,118
Interest and other revenues of finance and financial products businesses	4,931	3,244
Investment and derivative gains/losses	(7,461)	(836)
<b>Total revenues</b>	<b>\$ 126,241</b>	<b>\$ 93,028</b>
<b>Earnings:</b>		
Net earnings attributable to Berkshire	\$ 7,117	\$ 6,064
Earnings per Class A equivalent share attributable to Berkshire	\$ 4,305	\$ 3,664

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	<b>As of September 30, 2009</b> <i>(Unaudited)</i> <i>(In millions, except per share amounts)</i>
<b>Balance Sheet Data:</b>	
Total assets	\$ 344,253
Notes payable and other borrowings:	
Insurance and other non-finance businesses	11,724
Utilities, energy, and railroad businesses	30,754
Finance and financial products businesses	14,642
Berkshire shareholders' equity	138,212
Outstanding Berkshire Class A equivalent shares, in thousands	1,655
Berkshire shareholders' equity per outstanding Class A equivalent common share	\$ 83,494

**Table of Contents****COMPARATIVE HISTORICAL AND UNAUDITED PRO FORMA PER SHARE DATA**

The following table sets forth, for the nine months ended September 30, 2009 and the year ended December 31, 2008, selected per share information for Berkshire common stock on a historical and pro forma combined basis and for BNSF common stock on a historical and pro forma equivalent basis. Except for the historical information as of and for the year ended December 31, 2008, the information provided in the table below is unaudited. The pro forma information provided in the table below is for informational purposes only and is not necessarily an indication of the results that would have been achieved had the transaction been completed as of the dates indicated or that may be achieved in the future. You should read the data provided below with the historical consolidated financial statements and related notes of Berkshire and BNSF contained in their respective Annual Reports on Form 10-K for the year ended December 31, 2008 and Quarterly Reports on Form 10-Q for the quarter ended September 30, 2009, all of which are incorporated by reference into this proxy statement/prospectus. For further information, please see the section titled **Where To Find More Information** beginning on page 116. You should also read the section titled **Unaudited Pro Forma Condensed Combined Financial Information** beginning on page 102.

The BNSF pro forma equivalent per share amounts are calculated by multiplying each Berkshire pro forma combined per share amount by the exchange ratio. The exchange ratio for purposes of these calculations is determined by dividing \$100.00 by \$102,846.8803 (the average of the daily volume-weighted average trading prices per share of Berkshire Class A common stock over the ten trading day period ending on November 19, 2009). The BNSF pro forma equivalent per share amounts assume each BNSF stockholder receives merger consideration only in the form of Berkshire Class A common stock.

	Berkshire(1)		BNSF	
	Historical	Pro Forma Combined	Historical	Pro Forma Equivalent
<b>Earnings per share attributable to Berkshire/BNSF</b>				
Nine months ended September 30, 2009	\$ 3,223	\$ 3,664	\$ 3	\$ 4
Year ended December 31, 2008	\$ 3,224	\$ 4,305	\$ 6	\$ 4
<b>Cash dividends declared per share attributable to BNSF</b>				
Nine months ended September 30, 2009	\$	\$	\$ 1.20	\$
Year ended December 31, 2008	\$	\$	\$ 1.44	\$
<b>Book value per share attributable to Berkshire/BNSF</b>				
As of September 30, 2009	\$ 81,247	\$ 83,494	\$ 36	\$ 81

(1) Berkshire per share data is shown on a Class A equivalent basis.

**Table of Contents****COMPARATIVE PER SHARE MARKET PRICE DATA**

Shares of Berkshire Class A and Class B common stock are listed on the NYSE under the stock symbols BRK.A and BRK.B, respectively. Shares of BNSF common stock are listed on the NYSE under the stock symbol BNI. The following table presents the closing price per share of Berkshire Class A and Class B common stock and BNSF common stock on (i) November 2, 2009, the last full trading day prior to the date on which the merger was publicly announced, (ii) November 18, 2009, for comparative illustrative purposes, and (iii) [ ], the last full trading day for which it was reasonably practicable to obtain this information prior to the filing of this proxy statement/prospectus. The table also includes the equivalent value of the merger consideration per share of BNSF common stock on those dates. The equivalent per share value of BNSF common stock reflects the value, on a per share basis, that BNSF stockholders would receive in exchange for their shares of BNSF common stock if the merger were completed on any of those dates, assuming that such stockholder received, on any of those dates, 60% of the aggregate merger consideration payable to such stockholder in cash and 40% in shares of Berkshire Class A common stock.

	<b>Berkshire Class A Common Stock</b>	<b>Berkshire Class B Common Stock</b>	<b>BNSF Common Stock</b>	<b>Equivalent Per Share Value(1)</b>
November 2, 2009	\$ 98,750.00	\$ 3,265.00	\$ 76.07	\$ 99.34(2)
November 18, 2009	\$ 103,875.00	\$ 3,452.00	\$ 98.05	\$ 100.65(3)
[ ]	[ ]	[ ]	[ ]	[ ](4)

- (1) The equivalent per share value is calculated as the sum of (a) \$100.00 (the cash portion of the merger consideration) multiplied by 60% and (b) the closing price per share of Berkshire Class A common stock on November 2, 2009, November 18, 2009 or [ ], as applicable, multiplied by the product of (i) 40% and (ii) the exchange ratio. The exchange ratio for purposes of these calculations is determined by dividing \$100.00 by the average of the daily volume-weighted average trading prices per share of Berkshire Class A common stock over the ten trading day period ending on the second full trading day prior to November 2, 2009, November 18, 2009 or [ ], as applicable. BNSF stockholders will not receive the merger consideration until the merger is completed. Each BNSF stockholder (other than stockholders who properly exercise and perfect appraisal rights) will receive the merger consideration as promptly as practicable after surrendering such stockholder's BNSF stock certificates to the exchange agent together with a properly completed letter of transmittal. Due to the need to obtain certain regulatory approvals and satisfy other conditions prior to the completion of the merger, the merger may not be completed for a substantial period of time after the special meeting of BNSF stockholders, or at all. The market prices of shares of Berkshire Class A and Class B common stock will be subject to fluctuation prior to the time the merger consideration is received by BNSF stockholders, and no assurance can be given as to the trading prices of shares of Berkshire Class A and Class B common stock at the time the merger consideration is received by BNSF stockholders.
- (2) This value is based on an exchange ratio of 0.000996073, calculated by dividing \$100.00 by \$100,394.2410 (the average of the daily volume-weighted average trading prices per share of Berkshire Class A common stock over the ten trading day period ending on October 29, 2009).
- (3) This value is based on an exchange ratio of 0.000978247, calculated by dividing \$100.00 by \$102,223.6702 (the average of the daily volume-weighted average trading prices per share of Berkshire Class A common stock over the ten trading day period ending on November 16, 2009).
- (4) This value is based on an exchange ratio of [ ], calculated by dividing \$100.00 by [ ] (the average of the daily volume-weighted average trading prices per share of Berkshire Class A common stock over the ten trading day period ending on [ ]).

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**Table of Contents****RISK FACTORS**

*In addition to the other information included and incorporated by reference into this proxy statement/prospectus, including the matters addressed in the section titled **Forward-Looking Statements**, you should carefully consider the following risks before deciding whether to vote for adoption of the merger agreement. In addition, you should read and consider the risks associated with each of the businesses of BNSF and Berkshire. These risks can be found in BNSF's and Berkshire's respective Annual Reports on Form 10-K for the year ended December 31, 2008, as updated by subsequent Quarterly Reports on Form 10-Q, all of which are filed with the SEC and incorporated by reference into this proxy statement/prospectus. For further information regarding the documents incorporated into this proxy statement/prospectus by reference, please see the section titled **Where To Find More Information** beginning on page 116.*

**Because the market price of Berkshire Class A common stock will fluctuate, BNSF stockholders cannot be sure of the market value of Berkshire Class A or Class B common stock that they will receive in the merger.**

At the time the merger is completed, each share of BNSF common stock (other than certain restricted shares, shares owned by Berkshire, BNSF or any of their respective subsidiaries, or shares in respect of which appraisal rights have been properly exercised and not withdrawn) will be converted into the right to receive, at the election of the stockholder (subject to the proration and reallocation procedures described below), either (i) \$100.00 in cash, without interest, or (ii) a portion of a share of Berkshire Class A common stock equal to the exchange ratio (as described below), with shares of Berkshire Class B common stock issued in lieu of any fractional shares of Berkshire Class A common stock, and cash paid in lieu of any fractional shares of Berkshire Class B common stock. The exchange ratio is subject to a collar and may fluctuate, depending on the market price of Berkshire Class A common stock. If the Class A average trading value is equal to or between \$79,777.34 and \$124,652.09, then the number of shares of Berkshire Class A common stock exchangeable for each share of BNSF common stock will be determined by dividing \$100.00 by the Class A average trading value.

Within the price range prescribed by the collar, the exchange ratio floats so as to ensure that the aggregate value of Berkshire common stock to be received in exchange for each share of BNSF common stock, as calculated based on the Class A average trading value and the Class B average trading value, will be \$100.00 per share of BNSF common stock. If the Class A average trading value is less than \$79,777.34, the exchange ratio will be fixed at 0.001253489 shares of Berkshire Class A common stock for each share of BNSF common stock. If the Class A average trading value is greater than \$124,652.09, the exchange ratio will be fixed at 0.000802233 shares of Berkshire Class A common stock for each share of BNSF common stock. Accordingly, if the Class A average trading value is less than the low end of the collar, then the value of the stock portion of the merger consideration to be paid per share of BNSF common stock, as calculated based on the Class A average trading value and the Class B average trading value, will be less than the cash portion of such consideration. Conversely, if the Class A average trading value is greater than the high end of the collar, then the value of the stock portion of the merger consideration to be paid per share of BNSF common stock, as calculated based on the Class A average trading value and the Class B average trading value, will be greater than the cash portion of such consideration.

There will be a time lapse between the date on which BNSF stockholders vote on the merger agreement at the special meeting and the date on which BNSF stockholders entitled to receive shares of Berkshire common stock actually receive such shares. The market value of Berkshire common stock may fluctuate during this period. These fluctuations may be caused by changes in the businesses, operations, results and prospects of both Berkshire and BNSF, market expectations of the likelihood that the merger will be completed and the timing of the completion, the effect of any of the conditions or restrictions imposed on or proposed with respect to the merging parties by regulatory agencies, general market and economic conditions or other factors. At the time BNSF stockholders cast their votes regarding approval of the merger agreement and make their election in respect of the merger consideration to be paid to them, BNSF stockholders will not know the actual market value

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of the shares of Berkshire common stock they will receive when the merger is finally completed. The actual market value of Berkshire shares, when received by BNSF stockholders, will depend on the market value of those shares on that date. This market value may be less than the value used to determine the number of shares to be received, as the determination will be made with respect to a period occurring prior to the consummation of the merger.

BNSF and Berkshire stockholders are urged to obtain current market quotations for shares of Berkshire Class A and Class B common stock and BNSF common stock.

**BNSF stockholders may receive a combination of consideration different from that which they elect, and while such elections are being calculated, may not be able to transfer the shares of Berkshire common stock, if any, to which they may be entitled.**

In the merger, BNSF stockholders may not receive the entirety of their merger consideration in the form which they have elected to receive. While each BNSF stockholder may elect to receive all cash or all Berkshire common stock for each of their shares of BNSF common stock in the merger, the pools of cash and Berkshire common stock available for all BNSF stockholders in the aggregate will be fixed at approximately 60% and 40%, respectively, of the total merger consideration. Accordingly, depending on the elections made by other BNSF stockholders, each BNSF stockholder who elects to receive all cash for their shares in the merger may receive a portion of their consideration in Berkshire common stock, and each BNSF stockholder who elects to receive all Berkshire common stock for their shares in the merger may receive a portion of their consideration in cash. A BNSF stockholder who elects to receive a combination of cash and Berkshire common stock for their shares in the merger may receive cash and Berkshire common stock in a proportion different from what such stockholder elected. If a BNSF stockholder does not submit a properly completed and signed election form to the exchange agent by the election deadline, such stockholder will receive cash or Berkshire common stock as necessary to achieve as closely as practicable the 60/40 cash-stock split as described above, unless Berkshire's shares of Class A common stock are trading outside the collar, in which case such stockholder will be deemed to have elected whichever form of consideration has the higher value, subject to proration and reallocation as necessary to achieve as closely as practicable the 60/40 cash-stock split.

The tax consequences to a BNSF stockholder may change in the event such stockholder receives a larger or smaller portion of their merger consideration in cash than such stockholder elected. For additional information, please see the section titled "Material U.S. Federal Income Tax Consequences of the Merger" beginning on page 90.

**The merger and related transactions are subject to certain stockholder approvals.**

In order for the merger to be completed, Delaware law requires that the merger must be approved by the affirmative vote of holders of at least 66-<sup>2</sup>/<sub>3</sub>% of the issued and outstanding shares of BNSF common stock not owned by Berkshire or any of its affiliates or associates, as well as by the vote of holders of a majority of the issued and outstanding shares of BNSF common stock.

In addition, while a vote of Berkshire stockholders is not required to approve the merger, approval by a majority of the outstanding shares of Berkshire Class A and Class B common stock voting together, and by the holders of a majority of the outstanding shares of Berkshire Class B common stock and by the holders of a majority of the outstanding shares of Berkshire Class A common stock, each voting as a separate class, will be necessary to approve the restatement of Berkshire's certificate of incorporation in order to increase Berkshire's authorized share capital so as to permit and effectuate a 50-for-1 stock split with respect to the Berkshire Class B common stock.

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**Directors and executive officers of BNSF have interests in the merger that are different from, or in addition to, the interests of BNSF stockholders generally in recommending that BNSF stockholders vote in favor of the merger agreement.**

Some of the directors and executive officers of BNSF have interests in the merger that are different from, or in addition to, the interests of BNSF stockholders generally. These interests include:

the vesting and settlement of BNSF restricted stock units held by directors;

funding of a director's benefits under BNSF's Directors' Charitable Award Program;

conversion of BNSF stock options held by executive officers and one non-employee director and BNSF restricted stock units held by executive officers into Berkshire equity awards;

payment of directors' benefits under BNSF's director deferred compensation and retirement plans;

settlement of executive officers' units in BNSF's Senior Management Stock Deferral Plan;

vesting of executive officers' unvested benefits in BNSF's supplemental retirement plans;

executive officers' receipt of certain benefits under their change in control agreements if certain terminations of employment occur in connection with the merger;

funding of BNSF's Benefits Protection Trust with respect to certain benefit plans and agreements; and

Berkshire's agreement to indemnify directors and officers against certain claims and liabilities and to continue such indemnification for a period of six years from the effective time of the merger.

BNSF stockholders should consider these interests in connection with their votes to adopt the merger agreement. For more information, please see the section titled "The Merger: Interests of BNSF Directors and Executive Officers in the Merger" beginning on page 63.

**The merger is subject to the receipt of consents and approvals from various governmental entities, which may impose conditions on, jeopardize or delay completion of the merger or reduce the anticipated benefits of the merger.**

Completion of the merger is conditioned upon filings with, and the receipt of required consents, orders, approvals or clearances from, various governmental entities, including the DOJ, the FTC and the FCC. There can be no assurance that all of these required consents, orders, approvals and clearances will be obtained. If they are obtained, at any time before or after the time that the merger is effective, governmental entities may impose conditions on, or require divestitures relating to, the divisions, operations or assets of Berkshire or BNSF. These conditions or divestitures may jeopardize or delay completion of the merger or reduce the anticipated benefits of the merger.

**Any delay in completing the merger may reduce or eliminate the benefits expected.**

In addition to the required stockholder approvals and regulatory clearances and approvals, the merger is subject to certain other conditions beyond the control of Berkshire and BNSF that may prevent, delay, or otherwise materially adversely affect completion of the merger. BNSF cannot predict whether and when these other conditions will be satisfied. The requirements for satisfying such conditions could delay completion

of the merger for a period of time, reducing or eliminating some anticipated benefits of the merger, or prevent completion of the merger from occurring at all. For further information, please see the section titled "The Merger Agreement - Conditions to the Merger" beginning on page 83.

**The pendency of the merger could materially adversely affect the future business and operations of Berkshire and BNSF and/or result in a loss of BNSF employees.**

In connection with the pending merger, while it is not expected by the respective managements of Berkshire and BNSF, it is possible that some customers, suppliers and other persons with whom Berkshire or BNSF have a business relationship may delay or defer certain business decisions, which could negatively impact revenues, earnings and cash flows of Berkshire or BNSF, as well as the market prices of Berkshire common stock or BNSF

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common stock, regardless of whether the merger is completed. Similarly, current and prospective employees of BNSF may experience uncertainty about their future roles with BNSF following completion of the merger, which may materially adversely affect the ability of BNSF to attract and retain key employees. While no changes in BNSF's management are expected as a result of the merger, BNSF may nevertheless lose some members of management and other key employees following the completion of the merger.

**The fairness opinions obtained by BNSF from its financial advisors will not reflect subsequent changes.**

Goldman Sachs and Evercore, BNSF's financial advisors in connection with the proposed merger, have each delivered to the BNSF Board its respective opinion dated as of November 2, 2009. The opinion of Goldman Sachs stated that as of such date, and based upon and subject to the factors and assumptions set forth therein, the stock consideration and the cash consideration, taken in the aggregate, to be paid to the holders (other than Berkshire and its affiliates) of the outstanding shares of BNSF common stock pursuant to the merger agreement, was fair from a financial point of view to such holders. The opinion of Evercore stated that, as of the date thereof, based upon and subject to the assumptions, limitations, qualifications and other matters set forth in its opinion letter, the merger consideration was fair, from a financial point of view, to the holders (other than Berkshire and its affiliates) of the shares of BNSF common stock entitled to receive such consideration. The opinions do not reflect changes that may occur or may have occurred after the date of the opinions, including changes to the operations and prospects of Berkshire or BNSF, changes in general market and economic conditions or regulatory or other factors. Any such changes, or other factors on which the opinions are based, may materially alter or affect the relative values of Berkshire and BNSF.

**If the merger is not completed by June 30, 2010, either Berkshire or BNSF may choose not to proceed with the merger.**

Either Berkshire or BNSF may terminate the merger agreement if the merger has not been completed by June 30, 2010, unless the failure of the merger to have been completed by such date was the result of the failure of the party seeking to terminate the merger agreement to have performed its obligations thereunder. This date may be extended on a day-by-day basis for each day during which any party to the merger agreement is subject to a nonfinal order, decree, ruling or action restraining, enjoining or otherwise prohibiting the consummation of the merger, but may not be extended past July 31, 2010. For more information, please see the section titled "The Merger Agreement - Termination of the Merger Agreement" beginning on page 86.

**The merger may not qualify as a tax-free reorganization under the Code, and therefore BNSF stockholders may recognize gain on the shares of any Berkshire common stock they receive.**

Although Berkshire and BNSF believe that the merger should qualify as a tax-free reorganization under the Code, it is possible that the Internal Revenue Service (the "IRS") may assert that the merger fails to qualify as such. If the IRS were to be successful in any such contention, or if for any other reason the merger were to fail to qualify as a tax-free reorganization, each BNSF stockholder would recognize gain or loss with respect to all such stockholder's shares of BNSF common stock based on the difference between (i) that stockholder's tax basis in such shares and (ii) the aggregate cash and the fair market value of the Berkshire common stock received. For additional information, please see the section titled "Material U.S. Federal Income Tax Consequences of the Merger" beginning on page 90.

**A different set of factors and conditions affect Berkshire stock and could have a negative impact on its stock price.**

Upon completion of the merger, some BNSF stockholders will become holders of Berkshire common stock. The businesses and markets of Berkshire and the other companies it has acquired and may acquire in the future are different from those of BNSF. There is a risk that various factors, conditions and developments which would not affect the price of BNSF's stock could negatively affect the price of Berkshire's stock. Please see the section titled "Forward-Looking Statements" beginning on page 30 for a summary of some of the key factors that might affect Berkshire and the prices at which Berkshire Class A and Class B common stock may trade from time to time.

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**FORWARD-LOOKING STATEMENTS**

Statements set forth or incorporated by reference herein concerning projections or expectations of financial or operational performance or economic outlook, or concerning other future events or results, or which refer to matters which are not historical facts, are forward-looking statements within the meaning of the Federal securities laws. Similarly, statements that describe BNSF's or Berkshire's objectives, expectations, plans or goals are forward-looking statements. Forward-looking statements include, without limitation, BNSF's or Berkshire's expectations concerning the marketing outlook for their respective businesses, productivity, plans and goals for future operational improvements and capital investments, operational performance, future market conditions or economic performance and developments in the capital and credit markets and expected future financial performance, as well as any information concerning possible or assumed future results of operations of Berkshire and BNSF as set forth in the sections of this proxy statement/prospectus titled "Summary Unaudited Pro Forma Condensed Combined Financial Data," "Comparative Historical and Unaudited Pro Forma Per Share Data," "The Merger Recommendation of the BNSF Board and its Reasons for the Merger," "The Merger Berkshire's Reasons for the Merger," "The Merger Opinions of BNSF's Financial Advisors" and "Unaudited Pro Forma Condensed Combined Financial Information." Forward-looking statements also include statements regarding the expected benefits of the proposed acquisition of BNSF by Berkshire.

Forward-looking statements involve a number of risks and uncertainties, and actual results or events may differ materially from those projected or implied in those statements. Important factors that could cause such differences include, but are not limited to:

the matters described in the section titled "Risk Factors" beginning on page 26;

adverse changes in economic or industry conditions, both in the United States and globally;

continuing volatility in the capital or credit markets and other changes in the securities and capital markets;

changes affecting customers or suppliers;

competition and consolidation in the industries in which BNSF and Berkshire compete;

labor costs and labor difficulties;

developments and changes in laws and regulations;

developments in and losses resulting from claims and litigation;

natural events such as severe weather, fires, floods and earthquakes, or acts of terrorism;

changes in operating conditions and costs; and

the extent of BNSF's or Berkshire's ability to achieve their respective operational and financial goals and initiatives.

In addition, the acquisition of BNSF by Berkshire is subject to the satisfaction of the conditions to the completion of the acquisition and the absence of events that could give rise to the termination of the merger agreement, and the possibility that the acquisition does not close, and risks

that the proposed acquisition disrupts current plans and operations and business relationships, or poses difficulties in attracting or retaining employees.

We caution against placing undue reliance on forward-looking statements, which reflect our current beliefs and are based on information currently available to us as of the date a forward-looking statement is made. Forward-looking statements set forth or incorporated by reference herein speak only as of the date of this proxy statement/prospectus or the date of the document incorporated by reference into this proxy statement/prospectus, as the case may be. We undertake no obligation to revise forward-looking statements to reflect future events, changes in circumstances, or changes in beliefs. In the event that we do update any forward-looking statements, no inference should be made that we will make additional updates with respect to that statement, related matters, or any other forward-looking statements. Any corrections or revisions and other important assumptions and factors that could cause actual results to differ materially from forward-looking statements, including discussions of significant risk factors, may appear in BNSF's or Berkshire's public filings with the SEC, which are accessible at [www.sec.gov](http://www.sec.gov), and which you are advised to consult. For additional information, please see the section titled "Where To Find More Information" beginning on page 116.

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**SPECIAL MEETING OF BNSF STOCKHOLDERS**

**General Information**

The BNSF Board is using this proxy statement/prospectus to solicit proxies to be voted at the special meeting of BNSF stockholders described below. Your vote is very important. For this reason, the BNSF Board is requesting that you allow your shares to be represented at the special meeting by the proxies named on the enclosed proxy card. BNSF began mailing this proxy statement/prospectus and the form of proxy on or about [ ].

**Date, Time and Place of Special Meeting**

The special meeting is scheduled to be held at [ ], on [ ] at [ ], local time.

**Purpose of Special Meeting**

At the special meeting, BNSF stockholders will be asked to consider and vote on:

a proposal to adopt the Agreement and Plan of Merger, dated as of November 2, 2009, by and among Berkshire, Merger Sub and BNSF, which agreement is further described in the sections titled "The Merger" and "The Merger Agreement," beginning on pages 36 and 75, respectively; and

the transaction of any other business that may properly be brought before the special meeting, or any adjournments or postponements thereof, including, without limitation, a motion to adjourn or postpone the special meeting to another time and/or place for the purpose of soliciting additional proxies in favor of the proposal to adopt the merger agreement, if necessary.

**Recommendation of the BNSF Board**

The BNSF Board has unanimously approved the merger agreement and the transactions contemplated by it, declared its advisability and determined that the merger agreement and the transactions contemplated by it are fair to and in the best interests of BNSF and its stockholders.

*The Board of Directors of BNSF unanimously recommends that you vote **FOR** the adoption of the merger agreement.*

Please see the section titled "The Merger" Recommendation of the BNSF Board and its Reasons for the Merger" beginning on page 40 for more information.

**Required Vote**

The adoption of the merger agreement requires the affirmative vote of:

holders of at least 66-<sup>2</sup>/<sub>3</sub>% of the issued and outstanding shares of BNSF common stock not owned by Berkshire or any of its affiliates or associates; and

holders of a majority of the issued and outstanding shares of BNSF common stock.

**Record Date; Voting**

Only holders of record of BNSF common stock at the close of business on [ ] are entitled to notice of, and to vote at, the special meeting and at any adjournment of the meeting. A complete list of BNSF stockholders entitled to vote at the special meeting will be available during the ten day period before the special meeting at BNSF's offices, located at 2650 Lou Menk Drive, Fort Worth, Texas 76131, for inspection by BNSF stockholders during ordinary business hours for any purpose germane to the special meeting. The stockholder list will also be available at the

special meeting for examination by any BNSF stockholder present at the special meeting.

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Each share of BNSF common stock entitles the stockholder to one vote.

As of the close of business on [ ], the record date for the special meeting, there were [ ] shares of BNSF common stock outstanding. As of the same date, Berkshire and its affiliates and associates owned [ ] shares of BNSF common stock, representing approximately [ ]% of total issued and outstanding shares of BNSF common stock. In addition, as of the same date, the directors and executive officers of BNSF as a group owned and were entitled to vote [ ] shares of BNSF common stock, or less than [ ]% of the total issued and outstanding shares of BNSF common stock on that date. BNSF currently expects that all directors and executive officers will vote their shares in favor of the merger, although none of them has entered into any agreement obligating them to do so.

### **Quorum**

No business may be transacted at the special meeting unless a quorum is present. Attendance in person or by proxy at the special meeting of holders of record of a majority of the total number of issued and outstanding shares of BNSF common stock entitled to vote at the meeting will constitute a quorum. If a quorum is not present, or if fewer shares of BNSF common stock are voted in favor of the adoption of the merger agreement than the number required for its adoption, the special meeting may be adjourned or postponed to allow additional time for obtaining additional proxies or votes. At any subsequent reconvening of the special meeting, all proxies will be voted in the same manner as they would have been voted at the original convening of the special meeting, except for any proxies that have been effectively revoked or withdrawn prior to the subsequent meeting.

### **Abstentions and Broker Non-Votes**

Abstentions (shares of BNSF common stock for which proxies have been received but for which the holders have abstained from voting) and broker non-votes (shares of BNSF common stock for which proxies have been returned by a broker indicating that the broker has not received voting instructions from the beneficial owner of the shares and does not have discretionary authority to vote the shares) will be included in the calculation of the number of shares of BNSF common stock represented at the special meeting for purposes of determining whether a quorum has been achieved. However, in accordance with the rules of the NYSE, banks, brokers and other nominees who hold shares of BNSF common stock in street name for their customers but do not have discretionary authority to vote the shares may not exercise their voting discretion with respect to the adoption of the merger agreement. Accordingly, if banks, brokers or other nominees do not receive specific voting instructions from the beneficial owner of such shares, they may not vote such shares with respect to the adoption of the merger agreement. For shares of BNSF common stock held in street name, only shares of BNSF common stock affirmatively voted FOR adoption of the merger agreement will be counted as a favorable vote for such proposal. Abstaining from voting, or failing to provide voting instructions to your bank, broker or other nominee, will have the same effect as a vote AGAINST the proposal to adopt the merger agreement.

### **Voting at the Special Meeting**

#### *Attendance*

All holders of shares of BNSF common stock as of the close of business on [ ], the record date for voting at the special meeting, including registered stockholders (stockholders holding shares in their own name) and beneficial owners of stock registered in the street name of a bank, broker or other nominee, are invited to attend the special meeting. If you are a registered stockholder, please be prepared to provide proper identification, such as a driver's license. If you hold your shares in street name, you will need to provide proof of ownership, such as a recent account statement or letter from your bank, broker or other nominee, along with proper identification.

We can provide reasonable assistance to help stockholders or their proxy holders with disabilities who wish to attend the special meeting. Please notify us of your plans to attend and describe your disability by writing to the Corporate Secretary at Burlington Northern Santa Fe Corporation, 2650 Lou Menk Drive, Fort Worth, Texas 76131, at least two weeks before the meeting date.

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### ***Voting in Person***

Registered stockholders will be able to vote in person at the special meeting. If you are not a registered stockholder, but instead hold your shares in street name through a bank, broker or other nominee, you must provide a proxy executed in your favor from your bank, broker or other nominee in order to be able to vote in person at the special meeting. If you hold your shares through any of BNSF's 401(k) plans, you may not vote your shares in person at the special meeting.

### ***Voting by Proxy***

To ensure that your shares are represented at the special meeting, you are recommended to vote promptly by proxy, even if you plan to attend the special meeting in person. If you attend the special meeting and wish to vote in person or change your vote, you can always revoke your proxy by voting at the meeting.

If your shares are held by a bank, broker or other nominee on your behalf in street name, your bank, broker or other nominee will send you instructions as to how to vote your shares by proxy. Many banks and brokerage firms have a process for their customers to provide voting instructions by telephone or via the Internet. If you do not provide your bank, broker or other nominee with instructions as to how to vote your shares, your bank, broker or other nominee will not be able to vote your shares, which will have the same effect as a vote AGAINST the proposal to adopt the merger agreement.

If you are a registered stockholder, you may vote by proxy using one of the methods described below.

**Vote by Telephone or via the Internet.** This proxy statement/prospectus is accompanied by a proxy card with instructions for voting. You may vote by telephone by calling the toll-free number or via the Internet by accessing the Internet address as specified on the enclosed proxy card. Your shares will be voted as you direct in the same manner as if you had completed, signed, dated and returned your proxy card, as described below.

**Vote by Proxy Card.** If you complete, sign, date and return the enclosed proxy card by mail so that it is received before the special meeting, your shares will be voted in the manner directed by you on your proxy card. You may vote FOR, vote AGAINST or abstain from voting with respect to the proposal to adopt the merger agreement.

If you return your signed proxy card, but do not specify how you want to vote your shares, your shares will be voted FOR the proposal to adopt the merger agreement. In addition, your shares will be voted in the discretion of the persons appointed as proxies in the proxy card as to any other business that is properly brought before the special meeting or any adjournment or postponement of the meeting. Proxy cards that are returned without a signature will not be counted as present at the special meeting and cannot be voted.

### **Revocation of Proxies**

Your proxy is revocable. If you are a registered stockholder, you can revoke your proxy at any time before it is voted at the special meeting by:

submitting a new proxy with a later date, by using the telephone or Internet voting procedures described above, or by completing, signing, dating and returning a new proxy card by mail to BNSF;

attending the special meeting and voting in person; or

sending written notice of revocation to the Corporate Secretary at Burlington Northern Santa Fe Corporation, 2650 Lou Menk Drive, Fort Worth, Texas 76131.

Attending the special meeting without taking one of the actions described above will not in itself revoke your proxy. Please note that if you want to revoke your proxy by mailing a new proxy card to BNSF or by sending a written notice of revocation to the Corporate Secretary, you should ensure that you mail your new proxy card or written notice of revocation in sufficient time for it to be received by BNSF before the day of the special meeting.



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If you hold your shares in street name through a bank, broker or other nominee, you will need to follow the instructions provided to you by your bank, broker or other nominee in order to revoke your proxy or submit new voting instructions.

### **Voting Shares Held Through BNSF's 401(k) Plans**

If you hold shares through any of BNSF's 401(k) savings plans, only the trustees of such plans can vote those shares on your behalf. Your proxy card permits you to direct the trustee how to vote the number of shares allocated to your account. The trustees of BNSF's 401(k) plans also vote allocated shares of common stock for which they have not received direction in the same proportion as directed shares are voted. In order to direct the trustee how to vote your shares, you must return your directions to the trustee so that they are received no later than [ ] on [ ].

### **Voting Shares Held in BNSF's Dividend Reinvestment Plan**

Shares held in BNSF's dividend reinvestment plan will be voted in accordance with the vote indicated by the stockholder of record on the proxy. If the proxy is properly executed and returned but no choice is indicated, both record shares and shares held in BNSF's dividend reinvestment plan will be voted in accordance with BNSF's recommendations above. If a stockholder holds shares both of record and in the dividend reinvestment account and does not vote the shares held of record, the stockholder's shares held in the dividend reinvestment account will not be voted.

### **Other Business**

The BNSF Board is not currently aware of any business to be acted upon at the special meeting of stockholders other than the proposal to adopt the merger agreement described above. If, however, other matters (including a motion to adjourn or postpone the special meeting for the purpose of soliciting additional proxies in favor of the proposal to adopt the merger agreement, if necessary) are properly brought before the special meeting, or any adjournments or postponements thereof, the persons appointed as proxies in the proxy cards will have discretion to vote or act on such matters according to their judgment.

### **Adjournments and Postponements**

Any adjournment or postponement of the special meeting may be made from time to time by approval of the holders of a majority of the shares of common stock present in person or represented by proxy at the special meeting, whether or not a quorum exists, without further notice other than by an announcement made at the special meeting. If a quorum is not present at the special meeting, or if a quorum is present at the special meeting but there are not sufficient votes at the time of the special meeting to adopt the merger agreement, then BNSF stockholders may be asked to vote on a proposal to adjourn or postpone the special meeting so as to permit the further solicitation of proxies.

### **Solicitation of Proxies**

The BNSF Board is soliciting proxies to be voted at the special meeting and any adjournment or postponement thereof. Proxies are being solicited through the mail. The directors, executive officers and certain other employees of BNSF may also solicit proxies personally, by telephone, fax, email, the Internet, press release or other means, without additional compensation for such activities. BNSF will bear all expenses relating to the solicitation of proxies from BNSF stockholders, except that BNSF and Berkshire have agreed to share equally expenses incurred in connection with filing, printing and mailing this proxy statement/prospectus.

BNSF has engaged Innisfree M&A Incorporated (Innisfree) to assist it in connection with the solicitation of proxies for a fee estimated not to exceed \$150,000 in the aggregate, plus additional charges related to telephone calls and certain other services, costs and expenses. BNSF has agreed to indemnify Innisfree against certain liabilities relating to or arising out of the engagement. Innisfree may conduct its solicitation personally, by mail, telephone, fax, email, the Internet, press release or other means.

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BNSF will request banks, brokers and other custodians, fiduciaries and nominees to forward proxy soliciting material to the beneficial owners of shares held of record by such banks, brokers or nominees and obtain their voting instructions. BNSF will reimburse such banks, brokers or nominees at approved rates for their reasonable expenses in connection with the foregoing activities.

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**THE MERGER**

**Background of the Merger**

On October 22, 2009, Mr. Warren E. Buffett, Chairman and Chief Executive Officer of Berkshire, made a previously scheduled visit to the offices of BNSF in Fort Worth, Texas and met with Mr. Matthew K. Rose, Chairman, President and Chief Executive Officer of BNSF, and other senior members of BNSF management. BNSF has a long-standing practice of meeting with investors at their request to discuss BNSF and its performance. Mr. Buffett's scheduled visit, which took place in line with such practice, also coincided with an annual offsite meeting of the Board of Directors of Berkshire (the Berkshire Board) being held from October 22, 2009 to October 24, 2009 in Fort Worth due to the proximity to several Berkshire companies. At the time, Berkshire owned approximately 22.6% of BNSF's outstanding common stock, which it had previously acquired through open market purchases. At the meeting, Mr. Buffett, Mr. Rose and the BNSF executives discussed a number of general issues, including BNSF's overall business and financial performance, issues related to the rail industry and the economy as a whole.

On October 23, 2009, Mr. Buffett's assistant called Mr. Rose's assistant and requested a meeting between Mr. Buffett and Mr. Rose for early that evening.

At the meeting, Mr. Buffett told Mr. Rose that if the BNSF Board would be receptive, Berkshire would promptly work toward negotiating an agreement for a transaction in which Berkshire would acquire all of the outstanding shares of BNSF not already owned by Berkshire for \$100 per share. Mr. Buffett expressed that Berkshire would not want to pursue such a transaction unless it was supported by the BNSF Board. Mr. Buffett discussed a transaction in which 40% of the consideration would be paid in Berkshire common stock and 60% of the consideration would be paid in cash. Mr. Buffett expressed his belief that fair value for BNSF's common stock was in the mid-\$90s per share, and that therefore the \$100 per share price he was contemplating was, in Mr. Buffett's view, as high as Berkshire could pay. Mr. Buffett indicated that he would be willing to consider a collar on the stock portion of the merger consideration, based upon the trading price of Berkshire Class A common stock over a certain period of time prior to completion of the merger. Mr. Buffett also indicated that in the event of an agreement for such a transaction, he would be willing to recommend a stock split with respect to the Berkshire Class B common stock in order to address the issue of fractional shares that would be issued to BNSF stockholders in any transaction and facilitate the rollover of certain BNSF equity compensation awards into equity compensation awards with respect to Berkshire Class B common stock. Mr. Buffett also explained that Berkshire would expect to obtain approximately \$8 billion in external financing to consummate such a transaction. Mr. Rose told Mr. Buffett that he would take the matter to the BNSF Board to see if the BNSF Board was interested in considering such a transaction.

The next morning Mr. Rose called Mr. Edward T. Whitacre, Jr., the lead director of BNSF, and related the details of his conversation with Mr. Buffett. Mr. Whitacre and Mr. Rose discussed that the matter needed to be considered by the full BNSF Board, and Mr. Whitacre directed Mr. Rose to inform the other BNSF directors. Mr. Whitacre also directed Mr. Rose to retain appropriate financial and legal advisors to assist the BNSF Board in evaluating the potential transaction. Mr. Rose also discussed with certain directors and senior management the advisors BNSF planned to engage to assist BNSF in evaluating the potential transaction, after which Goldman Sachs and Evercore were contacted. Over the next two days, Mr. Rose notified each member of the BNSF Board and certain senior members of BNSF management of his discussion with Mr. Buffett and the potential transaction. A special meeting of the BNSF Board was scheduled for October 26, 2009 to discuss the potential transaction.

On October 26, 2009, the BNSF Board held a meeting by telephone conference to review and discuss the potential transaction described by Mr. Buffett. At the meeting, Mr. Rose provided a report on his October 23 meeting with Mr. Buffett. Mr. Rose also notified the BNSF Board that he had contacted Goldman Sachs and Evercore following the meeting with Mr. Buffett and his discussions with the directors in order to engage Goldman Sachs and Evercore as financial advisors in connection with the evaluation of the potential transaction.

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Mr. Rose reviewed with the directors that Berkshire had an existing investment in Goldman Sachs, and the nature of that investment. The BNSF Board discussed Goldman Sachs' substantial experience in providing investment banking and other advice to BNSF and its reputation and experience in connection with merger and acquisition transactions. The BNSF Board also discussed that the engagement of Evercore was on the basis that advice and financial analyses of Evercore would be independent of that provided by Goldman Sachs. After discussion, the BNSF Board concurred with the engagement of both Goldman Sachs and Evercore as financial advisors in connection with the potential transaction.

Representatives of Cravath, Swaine & Moore LLP ( Cravath ), BNSF's outside counsel, then provided an overview of the fiduciary duties of the BNSF Board in connection with the evaluation of the potential transaction. During the meeting, the BNSF Board reviewed BNSF's stand-alone business plan and outlook, which had also been previously reviewed in accordance with BNSF's customary practices at the BNSF Board's September meeting. Representatives of Goldman Sachs reviewed with the BNSF Board their preliminary financial analyses regarding the potential transaction described by Mr. Buffett. During the discussion, representatives of Goldman Sachs expressed their view that a superior proposal from certain other strategic buyers was unlikely to be accretive, except for an acquisition that, in the view of counsel advising the BNSF Board, would present substantial regulatory issues. Representatives of Goldman Sachs and Evercore also expressed their view that the current state of the financial markets and BNSF's market capitalization would make a superior proposal by a private equity buyer unlikely. The BNSF Board also discussed that if BNSF pursued discussions with Berkshire, any potential agreement would have to provide flexibility to consider bids from unanticipated potential buyers.

During the meeting, the BNSF Board received a preliminary regulatory analysis from members of BNSF management with respect to the potential transaction described by Mr. Buffett. In that discussion, it was noted that Berkshire appeared to have made passive investments in at least two other rail carriers and owned several other transportation-related businesses.

At the conclusion of the meeting, another special meeting of the BNSF Board was scheduled for October 28, 2009 to further discuss the potential transaction and to receive additional information and analyses, including a financial presentation by Evercore.

On October 27, 2009, Mr. Rose telephoned Mr. Buffett and informed him that the BNSF Board had convened the prior day to review and discuss the potential transaction that had been outlined by Mr. Buffett, and that the BNSF Board was still considering the matter. During the conversation, Mr. Rose raised the issue of Berkshire's investments in two other rail carriers with Mr. Buffett. Mr. Buffett informed Mr. Rose that if an agreement was reached with BNSF, Berkshire would be willing to dispose of any shares held in other rail carriers in order to address any potential regulatory concerns those holdings might raise. Mr. Buffett also informed Mr. Rose that if BNSF wanted to proceed with a transaction along the basis he had described, a structure that provided a collar on the stock portion of the merger consideration would be acceptable to Berkshire if it was preferred by BNSF, and discussed the terms of such a collar with Mr. Rose. In addition, Mr. Buffett told Mr. Rose he would be willing to recommend a 50-for-1 stock split with respect to the Berkshire Class B common stock to facilitate such a transaction. Mr. Rose informed Mr. Buffett that the BNSF Board would meet again the next day and that he would contact him following the meeting.

On October 28, 2009, the BNSF Board held another meeting by telephone conference. At the meeting, Mr. Rose provided the BNSF Board with an update regarding the conversation he had with Mr. Buffett on the previous day. Also at the meeting, Evercore reviewed with the BNSF Board its preliminary financial analyses regarding the potential transaction described by Mr. Buffett. Evercore reiterated to the BNSF Board that its analyses were prepared independently of Goldman Sachs. Representatives of Goldman Sachs then discussed with the BNSF Board their updated preliminary financial analyses with respect to the potential transaction. The BNSF Board also received additional regulatory analysis from Mayer Brown LLP ( Mayer Brown ), BNSF's outside regulatory counsel, with respect to the potential transaction. In connection with the discussion, the BNSF Board considered a number of matters, including the value that would be obtained by the stockholders of BNSF in the potential transaction as compared to the value that could be obtained by BNSF continuing as a stand-alone entity.

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The BNSF Board also considered whether to contact other potential acquirors to solicit interest for an acquisition of BNSF. During the discussion, representatives of Goldman Sachs and Evercore each expressed their view that a superior proposal from certain other strategic buyers was unlikely to be accretive, except for an acquisition that, in the view of counsel advising the BNSF Board, would present substantial regulatory issues. Representatives of Goldman Sachs and Evercore also expressed their view that the current state of the financial markets and BNSF's market capitalization would make a superior proposal by a private equity buyer unlikely.

After extensive discussion, the BNSF Board authorized Mr. Rose, together with BNSF's financial and legal advisors, to enter into discussions with Berkshire in respect of a potential transaction, including attempting to obtain a higher price and otherwise negotiating a merger agreement on the most favorable terms that could be obtained from Berkshire. The BNSF Board also concluded that it would be in the best interests of BNSF and its stockholders not to solicit other bids for the company prior to executing a merger agreement, but to pursue discussions regarding a potential transaction with Berkshire. However, the BNSF Board instructed management and BNSF's financial and legal advisors to seek merger agreement terms, including a break-up fee that would be very low in relation to market standards, that would allow BNSF to entertain third party bids if a merger agreement were to be executed and announced.

That same day, after the meeting, Mr. Rose consulted with BNSF's financial and legal advisors regarding their advice with respect to the issues he intended to discuss with Mr. Buffett concerning the proposed transaction. Mr. Rose then telephoned Mr. Buffett and informed him that the BNSF Board had authorized management and BNSF's financial and legal advisors to enter into discussions with respect to a potential acquisition of BNSF by Berkshire and negotiate a merger agreement. During the call, Mr. Rose discussed with Mr. Buffett various issues relating to the potential transaction, including price, the structure of a collar on the stock portion of the consideration, the size of the break-up fee that would be payable in the event that BNSF determined to pursue an alternative transaction after entering into a merger agreement with Berkshire and the need to conduct a diligence investigation with Mr. Buffett in respect of Berkshire.

Mr. Rose requested that Mr. Buffett increase the merger consideration above \$100 per share. In response, Mr. Buffett informed Mr. Rose that \$100 per share was at the very top of the range that he was willing to pay for BNSF and therefore Berkshire would not be willing to increase the merger consideration. In that discussion, Mr. Buffett confirmed to Mr. Rose that Berkshire would agree to a collar on the stock portion of the consideration, such that the value of the stock portion of the consideration would be fixed at \$100 per share so long as the shares of Berkshire Class A common stock traded between approximately \$80,000 and \$125,000 per share. Mr. Rose then explained to Mr. Buffett that the BNSF Board was seeking favorable terms with respect to BNSF's ability to terminate any agreement with Berkshire in response to a competing proposal that the BNSF Board determined was superior. Mr. Rose requested that Berkshire agree to a break-up fee in that context of 1% of the equity value of BNSF (based on the price of \$100 per share), calculated excluding shares owned by Berkshire and its affiliates. Mr. Buffett said this request would be acceptable in the context of the potential transaction being discussed. Finally, Mr. Rose explained to Mr. Buffett that BNSF would require access to Mr. Buffett in order to engage in diligence with respect to Berkshire. Mr. Buffett responded by agreeing to make himself available to BNSF and its advisors in this regard. Mr. Buffett then told Mr. Rose that he would instruct Munger, Tolles & Olson LLP (Munger Tolles), Berkshire's outside counsel, to begin drafting a merger agreement containing the terms and conditions upon which Berkshire would be willing to acquire BNSF.

On the evening of October 29, 2009, Munger Tolles circulated a draft merger agreement to Cravath.

On the morning of October 30, 2009, BNSF executed a confidentiality agreement with Berkshire. After execution of this agreement, BNSF, together with representatives from Goldman Sachs and Evercore, engaged in a session with Mr. Buffett in which Mr. Buffett reviewed and discussed various matters related to Berkshire, including a discussion of the publicly available estimates of a certain research analyst and current consensus analyst forecasts regarding Berkshire.

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That same day, two members of the BNSF Board, Messrs. Boeckmann and Whisler, who had been unable to attend the meeting of the BNSF Board held on October 28, 2009, each received a detailed briefing from Mr. Rose and other members of BNSF management, along with representatives of Cravath, Goldman Sachs and Evercore, with respect to the matters discussed at that meeting.

From October 30, 2009 through November 2, 2009, BNSF, Berkshire and their respective legal advisors negotiated the terms of the draft merger agreement.

On October 31, 2009, a special meeting of the Compensation and Development Committee of the BNSF Board was held by telephone conference. At the meeting, members of BNSF management and representatives of Cravath reviewed with the Committee members the effect that the potential transaction would have on BNSF's existing employee benefit plans and arrangements, including the effect on BNSF equity awards and arrangements of members of BNSF management and the BNSF Board.

On the afternoon of November 2, 2009, the BNSF Board held a special meeting in Detroit, Michigan to review and discuss the contemplated merger agreement and its terms. Representatives of Goldman Sachs and Evercore reviewed with the BNSF Board the meeting held with Mr. Buffett on October 30, 2009. Representatives of Cravath provided an overview of the fiduciary duties of the BNSF Board in connection with its consideration of the contemplated merger, and reviewed with the BNSF Board the terms of the contemplated merger agreement. Representatives of Mayer Brown provided a regulatory analysis with respect to the contemplated merger. Representatives of Goldman Sachs and Evercore each presented to the BNSF Board their respective financial analyses with respect to the contemplated merger. Upon conclusion of their respective presentations, Goldman Sachs delivered its oral opinion, which was subsequently confirmed in writing, that as of such date and based upon and subject to the factors and assumptions set forth therein, the stock consideration and cash consideration, taken in the aggregate, to be paid to the holders (other than Berkshire and its affiliates) of the outstanding shares of BNSF common stock pursuant to the merger agreement was fair from a financial point of view to such holders, and Evercore delivered its oral opinion, which was subsequently confirmed in writing, that as of such date and based upon and subject to the assumptions, limitations, qualifications and other matters set forth therein, the merger consideration was fair, from a financial point of view, to the holders (other than Berkshire and its affiliates) of shares of BNSF common stock entitled to receive such consideration.

The BNSF Board again considered whether to contact other potential acquirors to solicit interest for an acquisition of BNSF. The BNSF Board also considered the discussions with representatives of Goldman Sachs and Evercore regarding a superior proposal from certain other strategic buyers being unlikely to be accretive, except for an acquisition that, in the view of counsel advising the BNSF Board, would present substantial regulatory issues. The BNSF Board also again considered the discussions with representatives of Goldman Sachs and Evercore with respect to the current state of the financial markets and the effect that current financial market conditions, together with BNSF's market capitalization, would have on the possibility of a superior proposal by a private equity buyer being made. Finally, the BNSF Board also considered the terms of the merger agreement that would allow BNSF to entertain certain third party bids following the execution and announcement of the merger agreement, including the relatively low break-up fee that would be payable in the event the BNSF Board were to pursue an alternative proposal that was superior to the merger with Berkshire.

After engaging in extensive discussion, the BNSF Board unanimously approved the merger agreement as being in the best interests of BNSF and its stockholders and unanimously authorized the execution and delivery of the merger agreement.

On the afternoon of November 2, 2009, the Berkshire Board met by telephone. Mr. Buffett described the contemplated transaction and the terms of the merger agreement that had been negotiated. He described the desirability of splitting the Berkshire Class B common stock on a 50-for-1 basis to enable the BNSF stockholders and holders of equity awards to obtain more Berkshire common stock instead of cash for fractional shares, and the desirability of permitting the rollover of certain outstanding BNSF equity awards as contemplated by the

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merger agreement. After discussion, the Berkshire Board unanimously approved the merger agreement, and approved recommending a 50-for-1 stock split to the stockholders of Berkshire at a Berkshire stockholder meeting to be called for this purpose.

That evening, BNSF and Berkshire executed the merger agreement.

On the morning of November 3, 2009, prior to the commencement of trading on the NYSE, BNSF and Berkshire issued a joint press release announcing the transaction and their execution of a definitive merger agreement.

### **Recommendation of the BNSF Board and its Reasons for the Merger**

The BNSF Board has unanimously approved the merger agreement, declared its advisability and determined that the merger agreement and the transactions contemplated by it are fair to and in the best interests of BNSF and its stockholders. **Accordingly, the BNSF Board unanimously recommends that BNSF stockholders vote FOR the adoption of the merger agreement.**

In reaching its decision to approve the merger agreement, the BNSF Board consulted with management, as well as BNSF's legal and financial advisors, and considered a variety of factors weighing in favor of or relevant to the merger, including, without limitation, those described below.

#### ***Strategic Considerations***

The BNSF Board considered a number of strategic aspects of the merger, including, but not limited to, the following factors:

BNSF's business, results of operations, financial condition, earnings and return to stockholders on a historical and prospective basis, and its evaluation of BNSF's business plan and the risks and benefits associated with the implementation of that plan compared to the risks and benefits associated with the merger;

Berkshire's business, results of operations, financial condition, earnings and return to stockholders on a historical and prospective basis, including, but not limited to, the potential for growth, development and profitability of Berkshire;

the then-current financial market conditions and historical market prices, volatility and trading information with respect to the common stock of each of BNSF and Berkshire; and

whether there were other potential parties that might have an interest in and be financially capable of engaging in an alternative strategic transaction with BNSF, and the valuation, regulatory and financing issues that might arise in connection with pursuing an alternative strategic transaction.

#### ***Financial Considerations***

The BNSF Board considered a number of financial aspects of the merger, including, but not limited to, the following factors:

the fact that the merger consideration represented a premium of 32.8% to the closing price for shares of BNSF common stock on October 30, 2009, the last trading day prior to the date of execution of the merger agreement, and a premium of 36.9% to the average closing price for shares of BNSF common stock over the twelve month period ended October 30, 2009;

the respective financial analyses of each of Goldman Sachs and Evercore, BNSF's financial advisors in connection with the merger, and the respective opinions of each of Goldman Sachs and Evercore to the BNSF Board, each dated as of November 2, 2009. The opinion of Goldman Sachs stated that as of such date and based upon and subject to the factors and assumptions set forth therein, the stock consideration



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and the cash consideration, taken in the aggregate, to be paid to the holder (other than Berkshire and its affiliates) of the outstanding shares of BNSF common stock, was fair from a financial point of view to such holders. The opinion of Evercore stated that, as of that date and based upon and subject to the assumptions, limitations, qualifications and other matters set forth in its opinion letter, the merger consideration was fair, from a financial point of view, to the holders (other than Berkshire and its affiliates) of the shares of BNSF common stock entitled to receive such consideration;

the ability of BNSF stockholders to receive either cash, shares of Berkshire common stock or a combination of cash and shares of Berkshire common stock in the proposed merger, subject to any proration or reallocation necessary to achieve as closely as practicable the 60/40 cash-stock split with respect to the aggregate merger consideration;

the protection afforded by the collar mechanism to BNSF stockholders receiving Berkshire common stock in the proposed merger against significant fluctuations in the value of such stock; and

the opportunity for BNSF stockholders who elect to receive shares of Berkshire common stock in the merger to participate in the continued growth and other opportunities of Berkshire.

***Other Considerations***

The BNSF Board also considered a number of other aspects of the merger, including, but not limited to, the following factors:

the terms and conditions of the merger agreement, including, but not limited to, the representations, warranties and covenants of the parties, the conditions to closing, the form and structure of the merger consideration, and the ability of BNSF or the BNSF Board, as the case may be, to entertain competing transaction proposals, withdraw its approval or recommendation with respect to the merger agreement, or terminate the merger agreement in certain circumstances, subject, in each case, to compliance with certain procedural requirements, which may include the payment of a break-up fee;

the fact that the break-up fee described above is approximately equal to 1% of the equity value of BNSF (based on the assumed merger consideration of \$100.00 per share), calculated excluding shares owned by Berkshire or its affiliates, which break-up fee the BNSF Board did not believe would preclude any other party from making a competing proposal for BNSF;

the fact that the terms of the merger agreement were determined through negotiations between BNSF, with the advice of its advisors, and Berkshire, with the advice of its outside counsel;

Berkshire's track record in successfully acquiring other companies, and Berkshire's agreements in the merger agreement to use its reasonable best efforts to consummate the proposed merger (subject to the terms and conditions of the merger agreement);

the expectation that the merger is expected to qualify as a tax-free reorganization pursuant to Section 368(a) of the Code;

the fact that some of BNSF's directors and executive officers have interests in the merger that are different from, or in addition to, the interests of BNSF stockholders generally, including the treatment of BNSF stock options and restricted stock units held by such directors and executive officers in the merger and Berkshire's agreement to indemnify BNSF directors and officers against certain claims and liabilities;

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the regulatory and other government approvals required in connection with the merger, and the likelihood that such approvals will be obtained without unacceptable conditions;

the ability of the parties to consummate the merger, including the fact that Berkshire's obligation to complete the merger is not conditioned upon receipt of financing; and

the commitment made by Mr. Buffett to vote all Berkshire common stock owned by him in favor of the Berkshire stockholder approval necessary to effect the stock split in respect of the Berkshire Class B common stock, so as to facilitate the merger and related transactions.

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### ***Potential Risks***

The BNSF Board also identified and considered potential risks and disadvantages associated with the merger agreement and the transactions contemplated by it, including, but not limited to, the following:

the possibility that the consummation of the merger may be delayed or not occur at all, and the adverse impact such event would have on BNSF and its business;

the possibility that, notwithstanding the size of the collar mechanism, shares of Berkshire Class A common stock might trade outside the collar, in which case the value of the stock portion of the merger consideration would be different from the cash portion of the merger consideration;

the possibility that the proration and reallocation provisions of the merger agreement might result in BNSF stockholders receiving a combination of merger consideration different from that which they elected;

the risk of incurring substantial expenses related to the merger;

the possible disruption to BNSF's business that may result from announcement of the merger and the resulting distraction of management's attention from the day-to-day operations of the business;

the risk that the pendency of the merger could materially adversely affect BNSF's relationships with its customers, suppliers and any other persons with whom BNSF has a business relationship, or pose difficulties in attracting and retaining key employees; and

the other potential risks described in the section titled "Risk Factors" beginning on page 26 of this proxy statement/prospectus. The above discussion of the information and factors considered by the BNSF Board includes the principal information and factors, both positive and negative, considered by the BNSF Board, but is not intended to be exhaustive and may not include all of the information and factors considered by the BNSF Board. The above factors are not presented in any order of priority. In view of the variety of factors considered in connection with its evaluation, the BNSF Board did not quantify or assign relative or specific weights to the factors considered in reaching its conclusion that the merger agreement is advisable and in the best interests of BNSF and its stockholders. Rather, the BNSF Board views its position and recommendation as being based on the totality of the information presented to and considered by it. In addition, individual members of the BNSF Board may have given different weights to different factors. It should be noted that this explanation of the reasoning of the BNSF Board and certain information presented in this section is forward-looking in nature and should be read in light of the factors discussed in the section titled "Forward-Looking Statements" beginning on page 30 of this proxy statement/prospectus.

### **Management Cases**

Every September, the BNSF Board conducts a multi-day meeting to consider long range issues impacting BNSF, as well as a review of normal business activity. As part of this meeting, management presents a long range plan, typically looking out five years and, depending upon circumstances, considering multiple scenarios. These long range plans are the result of a several-month exercise by BNSF management, where risks, opportunities and strategies are discussed and debated. On September 24, 2009, the BNSF Board was presented with four scenarios for the period 2010 through 2014. Each case considered a different set of economic conditions as well as level of freight volume, revenue per unit (RPU), costs and efficiency. These scenarios were described as (i) the 2010 Recovery Case, which assumed economic recovery occurring in mid-2010, and assumed the highest RPU and unit growth and operational efficiency improvements, (ii) the 2011 Recovery Case, which assumed economic recovery occurring in mid-2011, and assumed slightly lower RPU growth, unit growth and operational efficiency improvements, (iii) the No Recovery Case, which assumed a flat unit growth rate over the five-year forecast period, as well as low RPU growth and small operational efficiency improvements, and (iv) the Deeper Recession Case, which assumed a general worsening of economic conditions over the

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five-year forecast period, and also assumed low RPU growth, a slight unit decline and small operational efficiency improvements. Due to the current economic conditions, the BNSF Board had reviewed scenarios similar to the first three at their July meeting and requested that a fourth case be developed. These cases have not been shared by BNSF with Berkshire and have not been discussed by Messrs. Rose and Buffett.

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### **Berkshire's Reasons for the Merger**

In deciding to acquire BNSF, Berkshire is making a big bet on the economic future of the United States. Berkshire believes that the future prosperity of the United States depends on its having an efficient and well-maintained rail system while, at the same time, the country's economy must grow and prosper for railroads to do well.

Berkshire believes that railroads are an efficient and environmentally friendly way to move freight around the country. It also believes that BNSF, in particular, is a leader in the rail industry in the areas of innovative equipment and technology. Furthermore, Berkshire is very impressed with BNSF's management team, including Chief Executive Officer Matthew Rose, and it intends to rely on them to manage the surviving entity following the merger.

### **Opinions of BNSF's Financial Advisors**

#### *Opinion of Goldman Sachs*

Goldman Sachs delivered its opinion to the BNSF Board that, as of November 2, 2009, and based upon and subject to the factors and assumptions set forth therein, the stock consideration and the cash consideration, taken in the aggregate, to be paid to the holders (other than Berkshire and its affiliates) of the outstanding shares of BNSF common stock, pursuant to the merger agreement was fair from a financial point of view to such stockholders.

**The full text of the written opinion of Goldman Sachs, dated November 2, 2009, which sets forth assumptions made, procedures followed, matters considered and limitations on the review undertaken in connection with the opinion, is attached as Annex C to this proxy statement/prospectus. Goldman Sachs provided its opinion for the information and assistance of the BNSF Board in connection with its consideration of the merger. The Goldman Sachs opinion is not a recommendation as to how any holder of shares of BNSF common stock should vote or make an election with respect to the merger or any other matter.**

In connection with rendering the opinion described above and performing its related financial analyses, Goldman Sachs reviewed, among other things:

the merger agreement;

annual reports to stockholders and Annual Reports on Form 10-K of BNSF and Berkshire