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Washington, DC

March 11, 2021

Blane Workie
Assistant General Counsel
Office of Aviation Consumer Protection
U.S. Department of Transportation

RE: 14 CFR Part 295 Question

Dear Blane,

We hope this finds you well.

We were consulted recently by the National Business Aviation Association (NBAA) on a question that has arisen in the air charter broker industry. As you know, NBAA strives to provide up-to-date and accurate guidance to its members and, toward that end, has appreciated the Department's assistance in the past when faced with questions over interpretation of the Department's rules.

In this instance, the question concerns the interpretation of § 295.24 **Disclosures**. Specifically, we ask you to confirm our understanding that it is permissible under § 295.24 for an air charter broker to contract with a charterer, subsequently contract with a direct air carrier to perform the flight in question, and disclose the direct air carrier's identity to the charterer upon contracting with the direct air carrier.

We analyze the question as follows. Subsection (a) of § 295.24 states, "[b]efore entering a contract for a specific flight or series of flights with charterers, air charter brokers must disclose" certain items of information. Of these disclosures, paragraph (a)(1) states in essence that before entering into a contract for a charter flight an air charter broker must disclose to the charterer the name of the direct air carrier that will operate the flight. This suggests an air charter broker cannot enter into a contract with a charterer until the broker has entered into an underlying contract with a direct air carrier.

However, § 295.24(b) appears to establish an exception to the pre-contract disclosures otherwise required in § 295.24(a) to the extent that information is unknown at the time a contract is entered into. Section 295.24(b) states that "[i]f any of the information in paragraph (a) of this section that is required to be disclosed to the charterer or requested by the charterer is not known at the time the contract is entered into or changes thereafter," the information must be provided the charterer within a reasonable time after the air charter broker learns of it. (Emphasis added.) This subsection, especially the underscored portion, appears to contemplate that a broker may not know the identity of the direct air carrier at the time the broker contracts with the charterer. Consistently, the latter portion of § 295.24(b) requires that the "charterer [have] enough time to make an informed decision as to whether to accept the additional information or accept the change." (Emphasis added.) This appears to establish that an air charter broker is permitted to contract with a charterer prior to entering into a corresponding contract with a direct air carrier.

If § 295.24(a) was an absolute requirement, then § 295.24(b) would be unnecessary, except in cases where the information changes post-contract. While § 295.24(b) contemplates such post-contract changes (i.e. "changes thereafter"), subsection (b) also includes a scenario where the information "is not known at the time the contract is entered into." Such an exception can only apply if § 295.24(a) allows a broker to enter into a contract with the charterer before entering into a contract with a direct air carrier.

The above understanding of § 295.24 is consistent with the intent of the rule. To our understanding, the Department's intent was that a charterer should be informed of, among other matters, who the direct air carrier will be as soon as the information is available, whether that be prior to or after a contract is signed. Until the charterer is provided that information, the charterer has an "out". Under subsection (a), the broker divulges the direct air carrier with which it has a charter contract, and the charterer is free to decide whether to contract with the broker. Under subsection (b), even though the broker does not contract with a direct air carrier until after contracting with the charterer, the charterer has the "out" provided by subsection (c), which permits the charterer to terminate the contract and receive a refund if the identity of the direct air carrier is not disclosed.

Lastly, under § 295.50(b)(8), "[r]epresenting that a contract for a specified direct air carrier, direct foreign air carrier, aircraft, flight, or time has been arranged without a binding commitment with a direct air carrier or direct foreign air carrier for the furnishing of such transportation as represented" is considered an unfair or deceptive practice or unfair method of competition. Thus, a broker would be free to contract with a charterer prior to entering into a corresponding contract with a direct air carrier, so long as the broker does not misrepresent to the charterer that the latter contract is in place.

We would very much appreciate the Department confirming it is permissible under Part 295 for an air charter broker to contract with a charterer and then subsequently contract with a direct air carrier and disclose the air carrier's identity to the charterer at that time.

Thank you for your consideration. Should you have any questions or desire any clarification, please let us know.

Sincerely,



Dayton Lehman Jr.



Jason E. Maddux

cc: Brian Koester
NBAA