

## AVIATION REGULATORY UPDATE

### UPDATE REQUIRED TO THE NOTICE TO INTERNATIONAL PASSENGERS ON LIMITATIONS OF LIABILITY

Pursuant to a final rule issued by the U.S. Department of Transportation (DOT) entitled “Elimination of Obsolete Provisions and Correction of Outdated Statutory References in Aviation Economic Regulations,” all carriers will be required, effective May 16, 2019 to update their limitations of liability notice, which is required under 14 CFR 221.105. By May 16, 2019, the updated notice must be provided, in a 10-point modern font: 1) on e-ticket confirmations; 2) on paper, provided in a ticket envelope with a physical ticket or attached to a physical ticket; or 3) on a ticket envelope. Carriers must also ensure that all required desk signage with the limitation on liability notice reflects the updated language by December 31, 2019. The new required language is as follows:

*Passengers embarking upon a journey involving an ultimate destination or a stop in a country other than the country of departure are advised that the provisions of an international treaty (the Warsaw Convention, the 1999 Montreal Convention, or other treaty), as well as a carrier’s own contract of carriage or tariff provisions, may be applicable to their entire journey, including any portion entirely within the countries of departure and destination. The applicable treaty governs and may limit the liability of carriers to passengers for death or personal injury, destruction or loss of, or damage to, baggage, and for delay of passengers and baggage.*

*Additional protection can usually be obtained by purchasing insurance from a private company. Such insurance is not affected by any limitation of the carrier’s liability under an international treaty. For further information please consult your airline or insurance company representative.*

If you will experience difficulty in meeting these requirements by the May 16, 2019 deadline, please contact us.

### DOT PLANS RULEMAKING ON ACCESSIBLE LAVATORIES

In an April 22, 2019 court filing in the U.S. Court of Appeals for the Tenth Circuit, DOT confirmed that it plans to issue a notice of proposed rulemaking (NPRM) to address handicap-accessible lavatories on single-aisle aircraft by December 2, 2019. DOT’s court filing was in response to a lawsuit brought against the agency by Paralyzed Veterans of America and nonprofit legal group Democracy Forward, which challenged the “unjustified and unlawful delay” in making such a rulemaking.

DOT stated in its filing that no current statute or regulation specifically requires such an NPRM. However, DOT emphasized that the agency has intended to commence the rulemaking process, but the release has been delayed due to the presidential transition in 2017 and a lack of resources at the Office of Aviation Enforcement and Proceedings.

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### FAA ISSUES POLICY STATEMENT REGARDING ADS-B ATC AUTHORIZATIONS

On April 2, 2019, the Federal Aviation Administration (FAA) issued an important policy statement regarding the issuance of air traffic control (ATC) authorizations to carriers seeking permission to operate aircraft that are not equipped with Automatic Dependent Surveillance-Broadcast (ADS-B) Out equipment in covered airspace after January 1, 2020. As you know, January 1, 2020 is the deadline by which aircraft need to be equipped with ADS-B Out equipment for most U.S. operations – unless the carrier filed for an extension prior to August 1, 2018.

As background, FAA issued the ADS-B Out final rule in 2010. The rule requires aircraft flying in controlled U.S. airspace to be equipped with ADS-B avionics that satisfy a set of prescribed performance standards after January 1, 2020. FAA's recent policy statement does not impose any new requirements on operators or make any changes to the final rule; rather, it merely implements the 2010 rule regarding ATC authorizations.

Specifically, carriers seeking permission to operate in airspace covered by the rule with aircraft that are not equipped with ADS-B Out avionics must request and obtain preflight authorization at least one hour before the proposed operation. ATC authorizations will generally be available to carriers that do not routinely operate in controlled U.S. airspace but might need to operate there on rare occasions. FAA's policy notes that per-operation authorizations are not intended to support routine operations of non-equipped aircraft in covered airspace, and that any such ATC authorizations will be considered on a case-by-case basis and might not be granted in all instances.

The FAA does not expect to issue ATC authorizations for flights conducted by regularly scheduled operators that are trying to fly non-equipped aircraft in controlled airspace. This is because FAA expects any such operators to be taking (or have taken) the steps necessary to equip applicable aircraft, so as to avoid any disruptions to their operations.

A few other takeaways from the policy statement include:

- Carriers that operate non-equipped aircraft in ADS-B airspace without obtaining a preflight authorization will be presumed to be in violation of the regulations and subject to enforcement by the FAA.
- An ATC clearance does not constitute an ATC authorization under the rule.
- If an authorization request is not approved prior to an aircraft's departure, the carrier should assume the authorization request has been denied, and should not operate the non-compliant aircraft in covered airspace.
- It is highly unlikely that authorizations will be approved for airspace at busy airports where capacity is constrained (e.g., JFK).
- In other cases, authorizations may not be granted due to workload, runway configurations, air traffic flows and weather conditions.

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### U.S. SECRETARY OF TRANSPORTATION INDICATES 1,500 HOUR PILOT TRAINING REQUIREMENT WILL NOT CHANGE

On April 17, 2019, U.S. Secretary of Transportation Elaine Chao told the families of the victims of the February 12, 2009 Colgan Air flight 3407 crash that the Department would not seek to lower the current 1,500-hour pilot training requirement for first officers of scheduled air carriers. The requirement was first instituted in 2009, following the crash of Colgan Air Flight 3407, which crashed while en route from Newark Airport to Buffalo Niagara Airport. It is widely accepted that one of the primary causes of the crash was insufficient pilot training. Secretary Chao's statement contrasts with her prior public statements on the issue, including comments made in July 2018 that the pilot training requirement has prevented capable pilots from being employed by Part 121 carriers.

Secretary Chao also confirmed that the FAA would establish an electronic database of all pilot records, as required by the FAA Extension, Safety, and Security Act of 2016. The database has been delayed due to software issues.

### FEDEX, ATLAS AND JETBLUE REBUKE AMERICAN, UNITED AND DELTA'S OPEN LETTER TO PRESIDENT TRUMP

The CEOs of FedEx, Atlas Air Worldwide, and JetBlue Airways issued a strong rebuke to the open letter to President Trump penned by the CEOs of American Airlines, United Airlines, and Delta Air Lines, which claimed that Qatar Airways' 49% stake in Air Italy violated the U.S.-Qatar Open Skies agreement. In the open letter, American, United and Delta called on the President to "hold Qatar accountable" for essentially subsidizing Air Italy's expansion in the U.S. Air Italy has recently announced that it is launching new routes to Los Angeles, San Francisco, and Miami. American, Delta and United argued that, by virtue of this investment, Qatar is circumventing its commitment not to initiate new fifth freedom flights to the U.S.

On April 17, 2019, FedEx CEO Rob Smith, Atlas CEO Bill Flynn and JetBlue CEO Robin Hayes responded via their own letter to the U.S. Secretaries of State and Department of Transportation characterizing American, Delta and United's letter as a "disinformation campaign." The response letter also claimed that Qatar has a minority stake in Air Italy, and its operations would be 3rd and 4th freedom – not 7th freedom.

Senator Ted Cruz (R-Texas), chairman of the Senate Commerce Committee's aviation and space subcommittee, has indicated that he will schedule hearings into Qatar's stake in Air Italy sometime in May 2019.

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### CANADIAN TRANSPORTATION AGENCY ORDERS SUNWING AIRLINES TO COMPENSATE PASSENGERS FOR DELAYS

On April 8, 2019, the Canadian Transportation Agency issued a Notice of Violation to Sunwing Airlines and ordered the carrier to compensate 16,255 passengers and pay a \$694,500 fine for various violations resulting from operational disruptions and delays during an ice storm in Toronto between April 14 and April 18, 2018.

During the period at issue, Sunwing did not cancel any of its flights in or out of Toronto and Montreal in advance, which led to last-minute delays and cancellations. The carrier also failed to provide meal vouchers, hotel accommodations, refund or cancellation options, or food and beverages during tarmac delays. On 15 flights that experienced tarmac delays, Sunwing violated CTA rules by not providing passengers an opportunity to disembark after 90 minutes. One such delay exceeded six hours. Sunwing has apologized to the affected passengers and stated that it has taken corrective measures including delaying flights when disruptions are anticipated.

### UNICREDIT TO PAY \$1.3 BILLION TO END U.S. SANCTIONS INVESTIGATIONS

UniCredit banking group reached a settlement agreement with U.S. and New York authorities for \$1.3 billion, following an investigation into the bank's alleged violation of U.S. sanctions on Iran, Cuba, and other countries. UCB AG, which is better known as HypoVereinsbank, will also plead guilty in D.C. federal court to conspiring to violate Iranian sanctions, and will pay an over \$468 million fine and forfeit nearly \$317 million.

The U.S. Department of Justice stated that UniCredit's German subsidiary UCB AG "knowingly and willfully" moved hundreds of millions of dollars through the U.S. financial system between 2002 and 2011 on behalf of sanctioned Iranian entities like Islamic Republic of Iran Shipping Lines ("IRISL"). UCB AG hid IRISL's involvement when processing transactions by omitting their names in "cover payment" messages sent to U.S. banks. UCB AG also committed similar violations for entities in Cuba, Sudan, and other sanctioned countries.

While the UniCredit banks were credited for their "substantial cooperation" throughout the investigation and have made "significant progress" implementing corrective compliance measures, none of the banks self-disclosed their alleged violations which were described as "egregious" cases.

### STANDARD CHARTERED PAYS \$1 BILLION TO SETTLE SANCTIONS VIOLATIONS

Standard Chartered, the London-based multinational bank, agreed to pay more than \$1 billion to U.S. and U.K. authorities, to end a five-year investigation into violations of U.S. and U.K. sanctions against Iran. Standard Chartered initially entered into a settlement agreement in 2012 with U.S. federal and state agencies for \$660 million for helping Iranian government-backed banks transfer over \$250 billion between 2001 and 2007.

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The recent settlement addresses more recent violations that were discovered after the 2012 settlement. Investigators discovered that bank employees had processed hundreds of millions of dollars' worth of transactions through U.S. financial institutions for Iranian businesses and individuals. These transactions took place between 2008 and 2014, and originated in London and Dubai before being sent to its office in New York.

The investigation uncovered evidence that senior bank officials knew of compliance issues, but were slow to address the problems. Nonetheless, regulators noted that the bank improved its controls and cooperated with investigators, and did not dispute the findings.

*This Aviation Regulatory Update is intended to keep readers current on matters affecting the industry, and is not intended to be legal advice. If you have any questions, please contact Evelyn Sahr at [esahr@eckertseamans.com](mailto:esahr@eckertseamans.com) or 202-659-6622; Drew Derco at [dderco@eckertseamans.com](mailto:dderco@eckertseamans.com) or 202-659-6665; Alexander Matthews at [amatthews@eckertseamans.com](mailto:amatthews@eckertseamans.com) or 202.659.6633.*