

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>7</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder.<sup>8</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2010-166 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2010-166. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2010-166, and should be submitted on or before February 4, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

**Elizabeth M. Murphy,**  
*Secretary.*

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**BILLING CODE 8011-01-P**

## **DEPARTMENT OF TRANSPORTATION**

### **Office of the Secretary**

### **Disclosure of Code-Share Service by Air Carriers and Sellers of Air Transportation**

**AGENCY:** Office of the Secretary, Department of Transportation.

**ACTION:** Notice.

**SUMMARY:** The Department is publishing the following notice on the enforcement of its rules relating to disclosure of code-share service on Internet Web sites and elsewhere by air carriers, their agents, and third party sellers of air transportation in view of recent amendments to 49 U.S.C. 41712.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Lowry, Attorney, Office of Aviation Enforcement and Proceedings (C-70), 1200 New Jersey Ave., SE., Washington, DC 20590, (202) 366-9349.

### **United States of America, Department of Transportation, Office of the Secretary, Washington, DC**

### *Guidance on Disclosure of Code-Share Service Under Recent Amendments to 49 U.S.C. 41712*

#### Notice

This notice is intended to provide guidance on the disclosure of code-share service in light of recent amendments to 49 U.S.C. 41712. It is also intended to provide a reminder to ticket agents with respect to their code-share disclosure responsibility, particularly as it concerns the development and provision of Internet Web sites (Web sites) that display code-share flights and to air carriers regarding their responsibilities in connection with the Web sites of their agents.

A recent amendment to section 41712, which has for some time contained a general prohibition against unfair and deceptive practices and unfair methods of competition on the part of air carriers, foreign air carriers and ticket agents, added a new section 41712(c) that specifically requires that these entities disclose in any oral, written or electronic communication to the public, prior to the purchase of a ticket, the name of the carrier providing the service for each segment of a passenger's itinerary. The language is principally intended to address service rendered pursuant to code-share arrangements. In addition, the new language explicitly requires that on Web sites, disclosure must be made "on the first display of the Web site following a search of a requested itinerary in a format that is easily visible to a viewer." Airline Safety and Federal Aviation Administration Extension Act of 2010, Public Law 111-216, Title II, § 210, 124 Stat. 2362, Aug. 1, 2010.

The Department's current regulation on the disclosure of code-sharing arrangements, 14 CFR part 257, which was issued in 1999, is based on the general unfair and deceptive practice language of section 41712. Section 257.5(a) requires, in all Web sites and other publicly available displays of schedule information, that code-share service be indicated with "an asterisk or other easily identifiable mark and that the corporate name of the transporting carrier and any other name under which that service is held out to the public is also disclosed." As with the recently amended statutory language, the rule requires that in oral communications with the public, ticket agents must inform the consumer of the code-share service "before booking transportation" and state "the name of the transporting

<sup>7</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

carrier by its corporate name and any other name under which that service is held out to the public.” (Section 257.5(b)) Written notice of code-share service is also required where an itinerary is issued. (Section 257.5(c)(1)) In printed advertisements, including those published via a Web site, the code-share relationship must be “prominently” disclosed and an abbreviated notice must be included in any radio or television advertisement. (For a recent enforcement interpretation of this requirement, see Order 2010–7–4, *Delta Air Lines, Inc.*, and *Northwest Airlines, Inc.*, and Order 2009–7–6, *United Air Lines, Inc.*, July 7, 2009.) With regard to Web sites, we have, as a matter of enforcement policy, not pursued enforcement action in cases where disclosure of an operating carrier’s corporate name and other pertinent names was provided through rollover or hyperlinked displays. On the other hand, we have pursued enforcement action where neither such disclosure nor direct disclosure of the operating carrier’s name or names was provided.

The amended language of section 41712 makes explicit that the disclosure of code-share service, in the context of Web site displays, must be included in any schedule displayed in response to an itinerary request by a consumer. To be “easily visible,” the disclosure should be on the same screen as the itinerary and immediately adjacent to that itinerary, if applicable. Nothing in section 41712(c) would permit code-share disclosure to be made through a hyperlink or rollover. Code-share service may be highlighted by an asterisk or other mark, but should still include appropriate text on the itinerary display that is easily visible to a viewer, identifying the operating carrier by its corporate name. Because of this new statutory provision, we intend to pursue enforcement action in the future where the only code-share disclosure is by rollover or hyperlinked displays.

To avoid the initiation of enforcement action in the future, air carriers, foreign air carriers, and their ticket agents, including independent Web site vendors, are advised to promptly modify their practices to conform to these statutory disclosure requirements. In view of the fact that Web site sellers will need a period in which to modify their Web site displays, the Aviation Enforcement Office will not begin to enforce the new statutory provision until 60 days after the date of publication of this notice. During the intervening period, we will continue to pursue enforcement action against sites

which fail, at a minimum, to provide full disclosure of the operating carrier’s required name or names through hyperlinks or rollovers.

By this notice we are also reminding air carriers of their general responsibility regarding the advertising practices of their agents and in particular with respect to disclosure of code-share service on the agents’ Web sites. Based on our preliminary review, it appears that most U.S. air carrier Web sites already comply with section 41712(c), while many of their agents’ sites do not. Carriers are responsible for the activities of their agents and must ensure compliance with code-share disclosure requirements by those agents, or they could face enforcement action.

We are also taking this opportunity to warn ticket agents, in particular global distribution systems, which may be assisting travel agents to establish airline ticket sales Web sites, that they should not be providing those agents Web site software that is not in compliance with the Department’s advertising requirements, in general, or code-share disclosure requirements, in particular. Such actions that facilitate violations of Department rules or section 41712 may themselves violate 41712, and we will not hesitate to institute enforcement action against ticket agents in such situations, if appropriate.

Questions regarding this notice may be addressed to the Office of Aviation Enforcement and Proceedings (C–70), U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590.

An electronic version of this document is available at <http://www.regulations.gov>.

Dated: January 10, 2011.

**Samuel Podberesky,**

*Assistant General Counsel for Aviation Enforcement and Proceedings.*

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**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### **Eighty-Fourth Meeting: RTCA Special Committee 159: Global Positioning System (GPS)**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of RTCA Special Committee 159 meeting: Global Positioning System (GPS).

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of

RTCA Special Committee 159: Global Positioning System (GPS).

**DATES:** The meeting will be held February 7–11, 2011, from 9 a.m. to 4:30 p.m. (unless stated otherwise).

**ADDRESSES:** The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

**FOR FURTHER INFORMATION CONTACT:** RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site <http://www.rtca.org>.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159: Global Positioning System (GPS) meeting. The agenda will include:

#### **SPECIFIC WORKING GROUP SESSIONS**

##### **Monday, February 7**

- All Day, Working Group 2C, GPS/ Inertial, MacIntosh-NBAA Room and Hilton-ATA Room

##### **Tuesday, February 8**

- All Day, Working Group 2, GPS/ WAAS, Colson Board Room

##### **Wednesday, February 9**

- All Day, Working Group 2, GPS/ WAAS, Colson Board Room
- All Day, Working Group 4, Precision Landing Guidance (GPS/LAAS), MacIntosh-NBAA Room and Hilton-ATA Room

##### **Thursday, February 10**

- All Day, Working Group 4, Precision Landing Guidance (GPS/LAAS), MacIntosh-NBAA Room and Hilton-ATA Room.
- Afternoon, Working Group 7, Antenna (GPS Antenna), Colson Board Room

##### **Friday, February 11, 9 a.m.**

#### **Plenary Session—See Agenda Below**

*Agenda—Plenary Session—Agenda*

Colson Board Room

- Chairman’s Introductory Remarks
- Approval of Summary of the 83rd Meeting held October 29, 2010, RTCA Paper No. 004–11/SC159–989
- Review Working Group (WG) Progress and Identify Issues for Resolution
  - GPS/3rd Civil Frequency (WG–1)
  - GPS/WAAS (WG–2)
  - GPS/GLONASS (WG–2A)
  - GPS/Inertial (WG–2C)
  - GPS/Precision Landing Guidance (WG–4)
  - GPS/Airport Surface Surveillance (WG–5)
  - GPS/Interference (WG–6)