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National Transportation Safety Board

Washington, D.C. 20594

Office of the Chairman

JAN 11 2002

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Docket Management System
U.S. Department of Transportation
Room Plaza 401
400 Seventh Street, SW
Washington, D.C. 20590-0001

Attention: Docket No. FAA-2001-10047 - 230

Dear Sir:

The National Transportation Safety Board has reviewed the Federal Aviation Administration's (FAA) Notice of Proposed Rulemaking (NPRM), "Regulation of Fractional Aircraft Ownership Programs and On-Demand Operations," which was published in 66 *Federal Register* 37520 on July 18, 2001.

The NPRM proposes to update and revise the regulations governing operations by aircraft in fractional ownership programs. Those operations are currently regulated as noncommercial flights that are subject to the requirements of 14 *Code of Federal Regulations* Part 91. The NPRM notes the following:

[a]s fractional ownership programs have grown in size, complexity and number, there has been considerable controversy within the aviation community as to their appropriate regulatory structure. Additionally, the FAA has had evolving concerns regarding issues of accountability and responsibility for compliance.

The NPRM further indicates the following:

the FAA has determined that current regulations do not adequately define fractional ownership programs and do not clearly allocate responsibility and authority for safety and compliance with the regulations. The proposed revisions would define fractional ownership programs and their various participants, allocate responsibility and authority for safety of flight operations for purposes of compliance with the regulations, and ensure that fractional ownership program aircraft operations maintain a high level of safety. Elements of this proposal would provide in certain of the regulations applicable to fractional ownership programs a level of safety equivalent to certain regulations that apply to on-demand operators. Changes are also proposed to some regulations that apply to on-demand operators meeting certain criteria to permit these operators an alternate means of compliance for certain commercial operations.

According to the NPRM, the proposed rule was developed by the Fractional Ownership Aviation Rulemaking Committee, which comprises 27 members selected by the FAA as representative of the various constituencies interested in regulation of fractional ownership program operations. Those constituencies included on-demand charter operators, fractional ownership program managers and owners, aircraft manufacturers, corporate flight departments, traditional aircraft management companies, aircraft financing and insurance companies, and industry trade associations.

The new regulations would require all fractional ownership program managers to hold management specifications issued by the FAA that would be subject to suspension or revocation. Appeals from such actions could be appealed to, and would be adjudicated by, the Safety Board, just as certification actions against Part 135 and 121 operators currently are.

The NPRM also proposes a new Subpart K to Part 91 titled, "Fractional Ownership Operations." Subpart K specifies that, while fractional owners have "operational control," the fractional owners and program managers are both responsible for the safe operation of flight and for compliance with the applicable regulatory requirements. Subpart K also establishes operational, maintenance, and recordkeeping requirements for fractional ownership programs. In many respects, Subpart K requirements are similar to those currently applicable to Part 135 operators. However, in some areas (including requirements for liferafts and other emergency equipment for over-water operations, minimum runway length requirements at destination airports, requirements for on-airport weather reporting, night currency requirements, aircraft proving test flight requirements, and drug/alcohol education program requirements for emergency maintenance personnel), Subpart K standards would be less stringent than those that currently apply to Part 135 operators. The NPRM also proposes a corresponding relaxation in those Part 135 standards.

The Safety Board supports the NPRM inasmuch as it establishes the accountability of fractional ownership program managers and subjects them to a clearly defined set of regulatory requirements. However, it is premature for the Board to take a position as to whether the proposed Subpart K contains the appropriate degree of regulation. The use of fractional ownership programs is relatively new and is increasing in popularity. Further, in light of heightened concerns about commercial airline travel following the events of September 11, 2001, the fractional ownership arena will likely continue to develop and expand. Therefore, the Board intends to monitor accidents, incidents, and other developments related to fractional ownership. Over time, it will likely become clearer whether the regulations contained in Subpart K are adequate and appropriate for such operations.

The Safety Board is concerned that regulatory changes affecting Part 135 operations were developed by a rulemaking committee that was convened to study fractional ownership issues, not Part 135 issues. The Board has previously expressed concern about the Aviation

Rulemaking Advisory Committee (ARAC) process.¹ In this case, the Board has even less confidence in a rulemaking process that relies on proposals made by a committee that is not composed of appropriate stakeholders. Therefore, the Board urges the FAA to reexamine those parts of the NPRM that would relax the requirements for Part 135 operations and to consider whether they should be studied separately.

Finally, the Safety Board agrees that the Board would be the appropriate and logical agency to adjudicate appeals from suspensions or revocations of management specifications, assuming the necessary jurisdiction exists. (The Board understands that the FAA intends to ask for statutory changes to expressly permit such appeals.) Accordingly, the Board has no objection to this part of the NPRM.

The Safety Board appreciates the opportunity to comment on this NPRM.

Sincerely,

A handwritten signature in black ink, reading "Marion C. Blakey". The signature is written in a cursive style with a large, sweeping initial "M".

Marion C. Blakey
Chairman

¹ On page 302 of the Safety Board's report regarding the July 17, 1996, TWA flight 800 accident, the Board expressed its concern about the nature of the results that have been achieved by ARACs. See National Transportation Safety Board. 2000. *In-flight Breakup Over the Atlantic Ocean, Trans World Airlines Flight 800, Boeing 747-131, N93119, Near East Moriches, New York, July 17, 1996*. Aircraft Accident Report NTSB/AAR-00/03. Washington, DC.