

offerings such as the "restricted" status of the privately placed securities,<sup>8</sup> and the absence of both a prescribed public disclosure document and a Section 11 remedy.<sup>9</sup> Nevertheless, the Commission believes that the limitations on price and the requirement that the sales be bona fide financing appropriately limit the availability of the exemption and should provide reasonable protections for shareholders.

In particular, requiring that private cash sales be made to multiple, unrelated purchasers in which no one purchaser or group of related purchasers can acquire more than five percent of the issuer's common stock or voting power should help to prevent the exemption from being used by issuers to avoid a shareholder vote when placing large blocks of stock with a particular purchaser. Moreover, as the NYSE states, this requirement should also help to impose pricing discipline on the transaction, as well as to ensure that control persons do not disproportionately increase their ownership in a company through private sales. Further, as the NYSE indicates, the alternative requirement that a broker dealer act as an intermediary to qualify for the private cash offering exemption is meant to cover Rule 144A sales. We agree with the NYSE that market practices in this area have developed involving both due diligence and pricing that could serve to protect shareholders from abuse of unfair stock placements. The Commission also believes that the existing disclosure requirements for private equity offerings also act as an effective safeguard against potential abuse of private cash offerings.<sup>10</sup> In summary, the Commission believes that the limitation of the exemption to only a "bona fide private financing", as defined above, coupled with the requirement that the sale be at a price at least as high as each of the book and market value of the stock provides sufficient safeguards for shareholders to support the exemption to the Policy in these limited circumstances.

## VI. Conclusion

The Commission believes the proposed change should provide listed companies with flexibility in their financing plans, while still substantially preserving the significant shareholder rights afforded under the Policy. Finally, the Commission believes the

restructuring of the wording of the Policy should simplify and clarify the Policy.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the NYSE, and in particular Section 6(b)(5).

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (File No. SR-NYSE-97-14) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 97-25770 Filed 9-26-97; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Notice of Application for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending September 19, 1997

The following Applications for Certificate of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases, a final order without further proceedings.

*Docket Number:* OST-97-2913.

*Date Filed:* September 17, 1997.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* October 15, 1997.

*Description:* Application of Delta Air Lines, Inc., pursuant to 49 U.S.C. Sections 41102 and 41108, and Subpart Q of the Regulations, applies for a Certificate of Public Convenience and Necessity authorizing Delta to engage in scheduled foreign air transportation of persons, property and mail between the following terminal points: (1) Atlanta, Georgia and Tokyo, Japan; (2) Portland, Oregon and Osaka, Japan; and (3) Portland, Oregon and Fukuoka, Japan.

*Docket Number:* OST-97-2914.

*Date Filed:* September 17, 1997.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* October 15, 1997.

*Description:* Application of American Airlines, Inc., pursuant to 49 U.S.C. Section 41108 and Subpart Q of the Regulations, applies for renewal of its certificate of public convenience and necessity for Route 370 (segment 1) (Dallas/Ft. Worth-London/Amsterdam/Brussels), as reissued by Order 96-5-9, May 12, 1996.

*Docket Number:* OST-97-2918.

*Date Filed:* September 17, 1997.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* October 15, 1997.

*Description:* Application of Pan American World Airways, Inc., pursuant to 49 U.S.C. Section 41101, and Subpart Q of the Regulations, applies for issuance of a certificate of public convenience and necessity authorizing foreign air transportation. Specifically, Pan Am is seeking authority to engage in scheduled foreign air transportation of persons, property and mail between: (1) The co-terminal points Miami, Florida, and New York, New York, on the one hand, and Santo Domingo, Dominican Republic, on the other; and (2) the co-terminal points Fort Lauderdale, and Miami, Florida, and New York, New York on the one hand, and Nassau, Bahamas, on the other.

*Docket Number:* OST-97-2919.

*Date Filed:* September 19, 1997.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* October 17, 1997.

*Description:* Application of Continental Airlines, Inc., pursuant to 49 U.S.C. Section 41102 and Subpart Q of the Regulations, applies for renewal of its Route 383 certificate authority to provide scheduled foreign air transportation of persons, property and mail between Newark, New Jersey, and London, U.K., and to integrate its Route 383 authority with Continental authority at other points.

**Paulette V. Twine,**

*Documentary Services.*

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## DEPARTMENT OF THE TREASURY

[Treasury Order Number 165-30]

### Designation of Acting Commissioner of Customs; Authority Delegation

Dated: September 17, 1997.

Pursuant to the authority vested in the Secretary of the Treasury, including the

<sup>8</sup> See Preliminary note six, and Preliminary notes three and four to Securities Act Rule 144A (Reg. § 230.144A).

<sup>9</sup> 15 U.S.C. § 77k.

<sup>10</sup> See Exchange Act Form 10-Q, Item 2(c); and Exchange Act Form 8-K, Item 9.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

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