



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 29th day of November, 2012

Fitness Determination of

BOUTIQUE AIR, INC.

as a commuter air carrier under section 49 U.S.C. 41738

Docket DOT-OST-2012-0108

**ORDER TO SHOW CAUSE
PROPOSING ISSUANCE OF COMMUTER AIR CARRIER AUTHORITY**

Summary

By this order, we tentatively find that Boutique Air, Inc. (“Boutique Air”), is a citizen of the United States and is fit, willing, and able to conduct scheduled passenger operations as a commuter air carrier, subject to conditions.

Background

Section 41738 of Title 49 of the United States Code (“the Transportation Code”) and section 298.21(d) of the Department’s Aviation Economic Regulations (14 CFR 298.21(d)) direct us to determine whether companies proposing to provide scheduled passenger service as commuter air carriers are “fit, willing, and able to perform the service,” and to ensure that all operations relating to this service conform to the safety standards established by the Federal Aviation Administration (“FAA”). In making fitness findings, the Department uses a three-part test that reconciles the Airline Deregulation Act’s liberal entry policy with Congress’ concern for operational safety and consumer protection. The three areas of inquiry that must be addressed in order to determine a carrier’s fitness are whether the applicant: (1) will have the managerial skills and technical ability to conduct the proposed operations, (2) has sufficient financial resources to commence the operations proposed without posing an undue risk to consumers or their funds, and (3) will comply with the Transportation Code and regulations imposed by federal and state agencies. We must also determine that the applicant is a U.S. citizen.

On July 2, 2012, Boutique Air, an on-demand air taxi serving the Northern California area and operating under Part 298 of the Department’s regulations and Part 135 of the Federal Aviation Regulations, filed an application in Docket DOT-OST-2012-0108 for authority to conduct scheduled passenger operations as a commuter air carrier. The air carrier accompanied its application with fitness information required by section 204.3 of our regulations and

supplemented its application with additional information on September 5, October 11, and October 15, 2012.

No answers opposing Boutique Air's application were filed and no special issues regarding the applicant have come to our attention. Under these circumstances, we propose to decide the issue of the applicant's fitness on the basis of the written record, and we tentatively conclude that Boutique Air is a U.S. citizen and is fit, willing, and able to provide scheduled passenger operations as a commuter air carrier. However, we will give interested persons an opportunity to show cause why we should not adopt as final these tentative findings and conclusions.

FITNESS

The Company

Boutique Air was formed as a corporation under the laws of the State of California on June 1, 2007. The company was originally called Shasta Flyers Aviation, Inc. ("Shasta Flyers") and was owned by Clare Farnsworth and his wife Janice Farnsworth. The company currently performs on-demand charters, pilot training, and air attack patrol services for government sectors, such as the U.S. Forest Service, Bureau of Land Management, and California Department of Forestry and Fire Protection. On September 20, 2011, Shasta Flyers was purchased by Open Trip, Inc. ("Open Trip"), which subsequently changed the name of the company to Boutique Air, Inc.¹

The applicant currently operates as an on-demand passenger and cargo services provider and seeks to become a commuter air carrier operating scheduled service in Northern California between Redding Municipal Airport and Oakland International Airport using one 9-passenger turbine aircraft.

Managerial Competence

Boutique Air's management and key personnel consist of the following individuals, each of whom is a U.S. citizen.

Mr. Shawn Simpson- President, Chief Executive Officer ("CEO")

Mr. Clare Farnsworth- Director of Operations

Mr. Jack Coberly- Chief Pilot

Mr. Steve Hoppes- Director of Maintenance

Mr. Shawn Simpson, Boutique Air's President and CEO since acquiring the applicant in 2011, is also the Founder and Director of Open Trip, a Delaware corporation. Mr. Simpson owns 95.18 percent of Open Trip, which in turn, is the parent company of Boutique Air. Prior to founding Open Trip and acquiring Boutique Air, Mr. Simpson worked in real estate and corporate investing (2005-2008) and as a System Administrator and Computer Information Specialist for Google (2000-2005), Xoom.com (1999-2000), and GreenInfo Network (1998-1999), all companies in the Northern California area.

¹ The ownership structure of Boutique Air is described in more detail in the **Citizenship** section of this order.

Mr. Clare Farnsworth started Shasta Flyers (the original company before the acquisition by Mr. Simpson) in 2006 and served as its Director of Operations, Part 135 Chief Pilot for charter operations, and as Pilot and Instructor. In addition, he created the operations, training, and safety manuals for the Part 135 operation for the company. In the years prior to 2006, Mr. Farnsworth was employed as a pilot for various Part 135 flight operations, including Pacific Crest Aviation, Redding Aero Enterprise, Iasco Flight Center, and the California Highway Patrol. Mr. Farnsworth holds Commercial Pilot and Flight Instructor certificates and currently serves as the Director of Operations for Boutique Air. At the time of this application, Mr. Farnsworth had 13,919 total hours of flight time.

Mr. Jack Coberly became Chief Pilot for Boutique Air in 2011. He has previous experience as a Vice President of Operations and Pilot at various Part 135 air carriers in Arizona (1983-2004) and an Air Attack Pilot for the U.S. Forest Service (2004-2011). Mr. Coberly holds an Airline Transport Pilot certificate, Flight and Ground Instructor certificates, and an Airframe and Powerplant (“A&P”) license. At the time of this application, Mr. Coberly had 7,850 total hours of flight time.

Mr. Steve Hoppes has been Boutiques Air’s Director of Maintenance since 2007. He is also the Director of Maintenance for Redding Aero Enterprises, Inc., an on-demand Part 135 operation in Redding, California, where he holds a 10 percent ownership interest (1988-present). Mr. Hoppes has experience as a Line Service Technician at Cal-Todd Aviation (1972-1981), a Parts Manager and Line Service Manager at Northstar Aviation (1981-1986), and a Carpenter at Roche Construction (1986-1988). Mr. Hoppes is also an A&P mechanic.

In view of the experience and background of the applicant’s key personnel, we tentatively conclude that Boutique Air has demonstrated that it has both senior management and key technical personnel who have the managerial skills and technical ability to support its proposed operations. Moreover, the FAA has advised us that they know of no reason to act unfavorably on the company’s commuter application.²

Operating Proposal and Financial Plan

Boutique Air is currently operating as an on-demand air taxi using two Cessna-337 aircraft, one of which is leased from Targaryen, LLC (“Targaryen”), an aircraft leasing company wholly owned by Open Trip. The company has now requested commuter authority to conduct scheduled passenger operations, flying one round-trip flight four days a week between Redding, California, and Oakland, California, using one nine-passenger seat Pilatus PC-12, dry-leased from Targaryen.

In establishing financial fitness, the Department typically asks an applicant to demonstrate that it has access to financial resources sufficient to cover its pre-operating expenses and any negative

² Before authorizing an air carrier to conduct air transportation operations, the FAA also evaluates certain of the air carrier’s key personnel with respect to the minimum qualifications for those positions as prescribed in the FARs. The FAA’s evaluation of these key personnel provides an added practical and in-person test of their skills and technical ability.

working capital balance, plus a working capital reserve equal to the operating costs that are reasonably projected to be incurred during three months of “normal” operations. Because projected expenses during the first several months of air service frequently do not include all costs that will be incurred during a “normal” period of operations, it is our practice to base our three-month test on one-quarter of the first year’s operating costs. Further, in calculating available resources, projected revenues may not be used.

Boutique Air will incur approximately \$78,600 in pre-operating costs related to its proposed operations. More specifically, Boutique Air estimates that its pre-operating costs will include those expenses associated with updating its manuals for its Pilatus aircraft, recruiting and training additional pilots, hangar, etc. Additionally, Boutique Air submitted a letter from the City of Redding Airports Division waiving landing fees for a period of one year after the initial startup of the proposed Redding-Oakland service. Boutique Air asserts that expenses normally incurred for establishing stations is negligible. Boutique Air will operate at already established fixed base operators (“FBO”) at both Redding and Oakland airports. Because the applicant purchases fuel and maintenance services at these locations, both the Redding and Oakland FBOs are willing to allow passenger boarding and use of their facilities at no additional cost. Marketing will be done in conjunction with Boutique Air’s current operation and no additional expenses are required for startup operations.

The applicant also submitted a forecast of its first year operating expenses. Boutique Air projects its first year expenses will total approximately \$745,215. Based on this forecast, we estimate that it will require approximately \$264,904 to meet our financial fitness criteria.³

In support of its ability to fund its proposed operations, Boutique Air submitted a balance sheet for September 30, 2012, that shows the company has current assets of \$706,518 and no current liabilities. Additionally, the air carrier provided third-party verification that as of June 29, 2012, it has \$609,324 on deposit in its name.

We have reviewed the forecasts and financial statements provided by Boutique Air and find them to be reasonable. In light of the above, we tentatively conclude that Boutique Air will have access to sufficient financial resources to enable it to commence the proposed operations without posing an undue risk to consumers or their funds.⁴

Compliance Disposition

The applicant states that there are no actions or outstanding judgments against it, persons holding a substantial interest in it, or its key personnel, and that none of these parties have been the subject of any charges of unfair, deceptive or anti-competitive business practices, or of fraud, felony or antitrust violations, or other legal action during the past ten years. Boutique Air also states that there are no pending investigations, enforcement actions, or formal complaints

³ The \$264,904 noted above consists of the applicant’s pre-operating expense forecast of \$78,600 plus \$186,304, which is one-quarter of Boutique Air’s estimated first-year expenses.

⁴ As is our practice, prior to making any authority awarded to Boutique Air effective, we will require the company to demonstrate that it continues to have the financial resources needed to meet our financial fitness criteria.

involving the applicant, persons holding a substantial interest in it, or its key personnel with respect to compliance with the Statute or the Department's regulations.

Our search of the Department's records found no compliance problems with Boutique Air and our review of FAA records indicates that Boutique Air has not been involved in any incidents or accidents in a 5-year period from September 2008 through August 2012.

In light of these circumstances, we tentatively conclude that Boutique Air has the proper regard for the laws and regulations governing its services to ensure that its aircraft and personnel conform to applicable safety standards, and that acceptable consumer relations practices will be followed.

CITIZENSHIP

Section 41102 of the Transportation Code requires that an applicant for commuter authority to engage in air transportation be held only by citizens of the United States as defined in 49 U.S.C. 40102(a)(15). That section requires that the president and two-thirds of the Board of Directors and other managing officers be U.S. citizens, that at least 75 percent of the outstanding voting interest be owned by U.S. citizens, and that the air carrier must be under the actual control of U.S. citizens.

As stated previously, Boutique Air is wholly owned by Open Trip, a company located in San Francisco and incorporated under the laws of the State of Delaware. Ownership of Open Trip is majority held (95.18 percent) by Mr. Simpson, a U.S. citizen, with the remaining 4.82 percent held by 19 individuals.⁵ Boutique Air's key personnel are U.S. citizens and the company has provided an affidavit attesting that it is a citizen of the United States within the meaning of the Statute. Our review of the applicant's citizenship has uncovered no reason to suggest that control of Boutique Air rests with non-U.S. citizens.

In light of the foregoing, we tentatively find that Boutique Air is owned and actually controlled by U.S. citizens, consistent with 49 U.S.C. 40102(a)(15) and is fit, willing, and able to provide the proposed scheduled passenger operations, subject to conditions.

OBJECTIONS

We will give interested persons 14 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; answers to objections will be due within 7 days thereafter. We expect such persons to direct their objections, if any, to the application and points at issue and to support such objections with detailed economic analyses. If an oral evidentiary hearing or discovery procedures are requested, the objector should state in detail why such a hearing or discovery is considered necessary, and what material issues of decisional fact the objector would expect to establish through a hearing or discovery that cannot be established in written pleadings. The objector should consider whether discovery procedures alone would be sufficient to resolve material issues of decisional fact. If so, the type of procedure should be specified (*See* Part 302, Rules 19

⁵ None of the 4.82 percent individual shareholders hold more than 1.0 percent of the company's stock.

and 20); if not, the reasons why not should be explained. We will not entertain general, vague, or unsupported objections. If no substantive objections are filed, we will issue an order that will make final our tentative findings and conclusions with respect to Boutique Air's fitness and certification.

EFFECTIVE COMMUTER CONDITIONS & LIMITATIONS

If Boutique Air is found fit and issued the Commuter Air Carrier Authorization it seeks, its authority will not become effective until the company has fulfilled all requirements for effectiveness as set forth in the terms and conditions attached. Among other things, this includes our receipt of evidence that Boutique Air has been certified by the FAA to engage in the subject operations, a fully executed OST Form 6410 evidencing liability insurance coverage that meets the requirements of section 205.5(b) of our rules for all of its aircraft, third-party verification of available funding necessary to meet the Department's fitness requirements, and a statement of changes it may have undergone since its fitness was examined. In addition, consistent with the applicant's proposed operations, we propose to limit any authority issued to Boutique Air to operations using aircraft that can be operated under FAR Part 135 (that is, aircraft with no more than 9 seats in scheduled passenger operations). Should Boutique Air desire to operate aircraft that would require certification from the FAA under Part 121, it must first provide the Department with at least 45 days advance notice of such plans and provide updated information establishing its fitness for such expansion.

Furthermore, we remind Boutique Air of the requirements of 49 U.S.C. 41110(e). Specifically, that section requires that, once an air carrier is found fit initially, it must remain fit in order to hold its authority. To be assured that air carriers continue to be fit after effective authority has been issued to them, we require that they supply information describing any subsequent substantial changes they may undergo in areas affecting fitness. Therefore, if Boutique Air is issued an effective commuter authorization and should it subsequently propose substantial changes in its ownership, management, or operations, it must first comply with the requirements of section 204.5 of our rules.⁶ The compliance of the company with this requirement is essential if we are to carry out our responsibilities under section 41110(e).⁷

Additionally, if Boutique Air is granted effective authority, it would be required to submit a detailed progress report, within 45 days following the end of the first years of actual flight

⁶ The air carrier may contact our Air Carrier Fitness Division to report proposed substantial changes in its operations, ownership, or management, and to determine what additional information, if any, will be required under section 204.5. In addition, by notice dated July 21, 1998, the Department requested air carriers to provide a 30-day advance notification of any proposed change in ownership, restructuring, or recapitalization. If the air carrier fails to file this updated information or if the information fails to demonstrate that the air carrier will continue to be fit upon implementation of the substantial change, the Department may take such action as is appropriate, including enforcement action or steps to modify, suspend, or revoke the air carrier's commuter authority.

⁷ We also remind Boutique Air about the requirements of section 204.7 of our rules. This section provides, among other things, that (1) the commuter authority granted to a company shall be revoked if the company does not commence actual flying operations under that authority within one year of the date of the Department's determination of its fitness; (2) if the company commences operations for which it was found fit and subsequently ceases such operations, it may not resume commuter operations unless its fitness has been redetermined; and (3) if the company does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.

operations, to the Air Carrier Fitness Division. The submission of a first year progress report is conditioned upon all newly authorized air carriers and was adopted as policy by the Department to aid in monitoring the fitness of new air carriers. The report should include a description of the air carrier's current operations (number and type of aircraft, principle markets served, total number of full-time employees), a summary of how its operations have changed during the year, a discussion of any changes it anticipates from its current operations during its second year, current financial statements,⁸ and a listing of current senior management and key technical personnel. The air carrier should also be prepared to meet with staff members of the Fitness Division to discuss its current and future operations.

ACCORDINGLY,

1. We direct all interested persons to show cause why we should not issue an order finding that Boutique Air is fit, willing, and able under 49 U.S.C. 41738 to provide scheduled passenger service as a commuter air carrier using small aircraft pursuant to Part 135 of the Federal Aviation Regulations.
2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or award of authority set forth here to file them with Department of Transportation Dockets, 1200 New Jersey Ave. SE, Washington, D.C. 20590, in Docket DOT-OST-2012-0108 and serve them upon all persons listed in Attachment A no later than 14 days after the service date of this order; answers to objections shall be filed no later than 7 days thereafter.
3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised by the objections before we take further action.⁹
4. In the event that no objections are filed, we will consider all further procedural steps to be waived and we will enter an order making final our tentative findings and conclusions.
5. We will serve a copy of this order on the persons listed in Attachment A.

⁸ These financial statements should include a balance sheet as of the end of the company's first full year of commuter flight operations and a 12-month income statement ending that same date.

⁹ Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.

6. We will publish a summary of this order in the Federal Register.

By:

SUSAN L. KURLAND
Assistant Secretary
for Aviation and International Affairs

*An electronic version of this document is available on the World Wide Web at:
<http://www.regulations.gov>*



SPECIMEN

Terms, Conditions, and Limitations

BOUTIQUE AIR, INC.

is authorized to engage in scheduled passenger air transportation operations as a commuter air carrier.

This authority is subject to the following provisions:

(1) The authority to conduct scheduled passenger operations will not become effective until six (business) days after the Department has received the following documents; provided, however, that the Department may stay the effectiveness of this authority at any time prior to that date:

(a) A copy of the holder's Air Carrier Certificate and Operations Specifications authorizing such operations from the Federal Aviation Administration (FAA).

(b) A certificate of insurance on OST Form 6410 evidencing liability insurance coverage meeting the requirements of 14 CFR 205.5(b) for all of its aircraft.

(c) A statement of any changes the holder has undergone in its ownership, key personnel, operating plans, financial posture, or compliance history, since the date of the Show Cause Order in this case.

(d) A revised list of pre-operating expenses already paid and those remaining to be paid, as well as independent verification that the holder has available to it funds sufficient to cover any remaining pre-operating expenses and to provide a working capital reserve equal to the operating costs that would be incurred in three months of operations.

(2) Pending receipt of effective authority, the holder may not accept payment of any kind (i.e., cash, check, or credit card) or issue tickets for scheduled passenger operations, and any advertisement or listing of flights by the holder must prominently state: "This service is subject to receipt of government operating authority."

(3) The holder authority is limited to operations conducted pursuant to Part 135 of the Federal Aviation Regulation. In the event that the holder wishes to institute operations that would require Part 121 certification from the FAA, it must first be determined fit for such operations.

(4) *The holder shall at all times conduct its operations in accordance with the requirements of 14 CFR Part 298 and any other regulations prescribed by the Department of Transportation for the services authorized here, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.*

(4) *The holder may not operate aircraft designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds.*

(5) *The holder's authority under this certificate is effective only to the extent that such operations are also authorized by the Federal Aviation Administration (FAA), and comply with all U.S. Government requirements concerning security, including, but not limited to 49 CFR Part 1544.**

(6) *The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).*

(7) *The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render this authority ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this authority.*

(8) *In the event that the holder receives effective scheduled passenger authority, the following additional conditions will apply:*

(a) *The holder may reduce or terminate service at any point or between any two points, subject to compliance with the provisions of 49 U.S.C. 41734 and all orders and regulations issued by the Department of Transportation under that section.*

(b) *The holder may not provide scheduled passenger air transportation to or from Dallas (Love Field), Texas, except within the limits set forth in section 29 of the International Air Transportation Competition Act of 1979, as amended by section 337 of the Department of Transportation and Related Agencies Appropriations Act, 1998.*

(9) *Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(l)), it must first comply with the requirements of 14 CFR 204.5.*

(10) *In the event that the holder does not commence actual flying operations as a commuter air carrier under this authority within one year of the date of the Department's determination of its fitness, its commuter authority shall be revoked for dormancy. Further, in the event that the holder commences but subsequently ceases all scheduled passenger operations, the authority*

** To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) to or from a foreign airport, contact its Principal Security Inspector (PSI) to advise the PSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served.*

granted here shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume such operations within one year of its cessation, its commuter authority shall be revoked for dormancy.

Attachment A

**SERVICE LIST FOR
BOUTIQUE AIR, INC.**

SHAWN SIMPSON
PRESIDENT
BOUTIQUE AIR, INC
340 PINE ST SUITE 503
SAN FRANCISCO
CA 94104

PETER LYNCH
ASST. CHIEF COUNCEL FOR
ENFORCEMENT, AGC-300
FEDERAL AVIATION
ADMINISTRATION
800 INDEPENDENCE AVE SW
WASHINGTON DC 20591

MARK MAZOR
MANAGER
CERTIFICATION &
EVALUATION PROGRAM
OFFICE
FAA AFS-900
45005 AVIATION DRIVE
SUITE 131
DULLES, VA 20166

GERALD GRISWOLD
PRINCIPAL OPERATIONS
INSPECTOR
SACRAMENTO FSDO
1102 CORPORATE HIGHWAY
SUITE 200
SACRAMENTO CA 95831

OFFICE OF AIRLINE
INFORMATION
DOT/RITA/BTS E-34
1200 NEW JERSEY AVE SE
WASHINGTON, DC 20590