U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

AUG 11 2015

Mr. Tony Thompson
President, Quantum Airways
344 Hauser Boulevard
Unit 5-305
Los Angeles, CA 90036

Re: Request for Legal Interpretation of 14 C.F.R. Part 119, *Certification: Air Carriers and Commercial Operators*

Dear Mr. Thompson:

This responds to your March 29, 2015 letter requesting an interpretation by the Federal Aviation Administration (FAA) of 14 C.F.R. part 119. Specifically, you ask whether §119.5(k), *Certifications, authorizations, and prohibitions*, would prohibit Quantum Airways, which plans in the future to become a part 135 certificated air carrier offering scheduled service, to advertise for purposes of raising pre-certification capital from equity investors and crowd funders.

You indicate in your letter that §119.5(k) could be interpreted to permit pre-certification advertising to investors in order to raise capital because the intent of the regulation is to prohibit the advertising of seats to potential passengers prior to the air carrier or operator obtaining a certificate from the FAA under part 119. You state that in your view, advertising a potential capital return on an investment would not be prohibited by §119.5(k) because the subject of the advertising would constitute a "non-seat benefit," such as "admission to launch parties, possible meetings with celebrity sponsors, food and meal benefits, and other similar non-seat benefits."

In response to your question, §119.5(k) would not apply to the pre-certification advertising of Quantum Airways as a potential investment opportunity. This is because by advertising the investment opportunity in a planned, not-yet-certified, part 135 certificated carrier, you would not be advertising the sale of air transportation of persons or property for compensation or hire as a common carrier.

In accordance with §119.5(k),

> [n]o person may advertise or otherwise offer to perform an operation subject to this part unless that person is authorized by the Federal Aviation Administration to conduct that operation.

The rule states that no person may (1) advertise an operation or (2) offer to perform an operation subject to part 119. Among other things, part 119 prescribes the certification requirements an

operator must meet in order to obtain and hold a certificate authorizing operations under part 121, 125, or 135, and operations specifications for each kind of operation to be conducted and each class and size of aircraft to be operated under part 121 or 135 of this chapter. §119.1(b)(2). Part 119 also prescribes the requirements an operator must meet to conduct operations under part 121, 125, or 135 and in operating each class and size of aircraft authorized in its operations specifications. §119.1(b)(3). In addition, 14 CFR §1.1, *General definitions*, defines "operate," with respect to aircraft, to mean

> use, cause to use or authorize to use aircraft, for the purpose (except as provided in §91.13 of this chapter) of air navigation including the piloting of aircraft, with or without the right of legal control (as owner, lessee, or otherwise).

Thus, the context of "operations," "operated," and "operate" in part 119 is flight operations. These terms refer to the use of aircraft for the purpose of air navigation. Because your proposed advertising does not relate to "operations" within the meaning of part 119, it would not violate §119.5(k).[1]

Finally, for your information, under 14 C.F.R. part 201, *Air Carrier Authority Under Subtitle VII of Title 49 of the United States Code*, an applicant for new or amended certificate or commuter air carrier authority "shall not … [a]dvertise, list schedules, or accept reservations for the air transportation covered by its application until the application has been approved by the Department." 14 C.F.R. §201.5(a)(1). We also recommend that you disclose to investors that they are not pre-purchasing air transportation with their investment.

This response was prepared by Jonathan Cross, a Senior Attorney in the Regulations Division, Office of the Chief Counsel, and coordinated with the Air Transportation Division of Flight Standards Service, and the U.S. Department of Transportation's Office of the General Counsel, Aviation Enforcement and Proceedings Division. If you need further assistance, please contact our office at (202) 267-8013.

Sincerely,

Lorelei Peter
Deputy Assistant Chief Counsel for Regulations, AGC-200

[1] Compare *In the Matter of Island Helicopters International, Ltd.*, FAA Docket No. CP08SO0013, DMS No. FAA-2008-0693 (July 1, 2010), in which the FAA, citing §119.5(k), sought to recover an $11,000 civil penalty against Island Helicopters, for offering on its website to perform helicopter charter flights for hire when it did not hold authority from the FAA to conduct charter operations for hire.