Applications of

BOSTON-MAINE AIRWAYS CORP.

for issuance of new or amended certificates of public convenience and necessity pursuant to 49 U.S.C. §41102 (Interstate and Foreign Large-Aircraft Operations)

Docket OST-00-7668
Docket OST-03-14985
Docket OST-04-19919

OBJECTIONS AND COMMENTS OF
BOSTON-MAINE AIRWAYS CORP.
IN RESPONSE TO SHOW CAUSE ORDER 2008-2-3

Communications with respect to this document should be sent to:

Robert B. Culliford
Senior Vice President and General Counsel
BOSTON-MAINE AIRWAYS CORP.
Pease International Tradeport
14 Aviation Avenue
Portsmouth, NH 03801
(603) 766-2000 (tel.)
(603) 766-2094 (fax)
rnullford@flypanam.com

Nathaniel P. Breed, Jr.
ZUCKERT SCOUTT & RASENBERGER, L.L.P.
888 17th Street, NW Suite 700
Washington, D.C. 20006-3309
(202) 973-7919 (tel.)
(202) 342-0683 (fax)
nbreed@zsrlaw.com

Attorneys for
BOSTON-MAINE AIRWAYS CORP.

March 3, 2008
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March 3, 2008

OBJECTIONS AND COMMENTS OF  
BOSTON-MAINE AIRWAYS CORP.  
IN RESPONSE TO SHOW CAUSE ORDER 2008-2-3

Boston-Maine Airways Corp. ("BMAC"), hereby submits its Objections, and certain additional Comments, in response to the tentative findings and conclusions stated by the Department of Transportation ("the Department") in Show Cause Order 2008-2-3, served February 1, 2008.

In support of these Objections and related Comments, BMAC hereby states as follows:

I. INITIAL COMMENTS OF BMAC

A. Part 300 Applicability and Impact.

It would be an understatement to observe that this proceeding became a bitterly-contested adversary proceeding five and one-half years ago, on September 19, 2002,
shortly after BMAC first filed an application for authority to operate one Boeing 727 aircraft, and that application was vehemently opposed by an airline labor union. That labor union had no direct involvement with BMAC, and did not represent any of BMAC’s employees, either then or now.

Because of that opposition, BMAC’s routine application for expanded authority became a bitterly contested “public proceeding” in which “an identifiable written opposition” had been filed in the docket. As a result of that opposition, BMAC and the Department’s staff immediately became subject to the provisions of 14 CFR Section 300.2(a) of the Department’s Rules of Conduct, which prohibits all “substantive communications”, in either direction, between an applicant and the Department’s staff, except on-the-record filings in the public docket.

The relevance of Part 300 at this juncture is simply that BMAC firmly believes that, if it were not for the airline labor union’s kill-the-baby-in-the-cradle opposition, and the resulting Part 300 prohibition precluding even wholly innocent informal communications between BMAC and the staff of the Fitness Division (which are commonplace and mutually helpful to both the applicant and the Department in uncontested licensing and fitness-determination proceedings), BMAC would have certainly avoided the extraordinary added costs and extremely long delays of this case.
B. **Impact On BMAC Of Its Former General Counsel’s Concealed Crimes.**

Far more significant than the labor union’s opposition, and the resulting Part 300 restrictions, however, is the extremely grave harm inflicted on BMAC which is directly and exclusively attributable to the failure of its former General Counsel, John R. Nadolny ("Nadolny") to disclose his unlawful actions to the very owners and fellow senior officers to whom he owed a duty of loyalty which he had gravely betrayed.

Rather than having the honesty and courage to admit his initial serious mistake to his closest friends and colleagues at BMAC immediately after he had first falsified and filed with the Department an inaccurate financial statement (the purported 9/15/02 Balance Sheet of BMAC’s parent company, Pan Am Airways), Nadolny instead went to great lengths to conceal his unlawful actions from his employer, fellow officers and BMAC’s outside counsel, by making every fraudulent alteration and forgery himself and by doing so at times of night and on Sundays when he was alone in the small suite of executive offices at BMAC’s headquarters in Portsmouth, NH.

That first falsified and inaccurate financial statement was filed at the Department in the name of BMAC on September 26, 2002 (Order 2008-2-3, Appendix A) – over two and one-half years before BMAC and the Department first learned, on the same day (June 1, 2005), of Nadolny’s deliberate and concealed forgery of the signature of a purported representative of the Great American Insurance Company as the issuer of a surety bond delivered to opposing counsel in connection with the settlement of certain litigation. That
first disclosure of serious wrongdoing by Nadolny led to the immediate institution of
three intensive investigations—first by BMAC itself and subsequently by the
Department’s Inspector General and by an Assistant District Attorney of the U.S. Justice
Department.

If Nadolny had disclosed his very first unlawful act to even just one person in
BMAC’s senior management group shortly after September 26, 2002, all of his
subsequent crimes would not have occurred, and BMAC would have taken disciplinary
action against Nadolny and would have promptly filed a corrected Balance Sheet at the
Department with an explanation, and this Show Cause certificate revocation proceeding
would not have occurred.

Even if Nadolny had delayed his first disclosure of his wrongdoing to BMAC’s
management until the unknown date prior to June 1, 2005 when BMAC knows that
Nadolny first learned of Great American’s discovery of and investigation into the forged
surety bond which had been fraudulently issued in its name, and when Nadolny knew that
his forgery would soon be discovered and proven, that “early warning” to BMAC would
have enabled BMAC to begin an investigation into whether Nadolny had committed any
other forgeries in the course of his duties at BMAC immediately.

Such an internal investigation would have quickly disclosed the existence of
significant disparities between BMAC’s actual bank balances and the working capital
evidence depicted in BMAC’s falsified financial-fitness exhibits submitted to the
Boston-Maine Objections to and Comments on Show Cause Order

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Department. BMAC would have promptly advised the Department about that falsified evidence, and, equally important, BMAC would have been able to provide corrected financial exhibits to be submitted to the Department, and to advise the Department either that Nadony had admitted to the falsification of the prior evidence and had resigned, or that BMAC was referring the matter to appropriate state investigative officials.

As discussed in greater detail below, inasmuch as the primary basis for the Department’s tentative finding that BMAC is unfit for certification is based upon the Department’s findings that BMAC’s senior officers failed to discover Nadolny’s wrongful acts, and that BMAC’s senior management either knew or should have known of Nadolny’s falsification of BMAC’s financial evidence submitted to the Department, Nadolny’s failure to disclose his crimes to BMAC and his extraordinary efforts to conceal his wrongdoing, has placed BMAC in a nearly untenable position before the Department which threatens BMAC’s very survival.

C. Tentative Findings In Order 2008-2-3 To Which BMAC Does NOT Object

Because of the extremely contentious circumstances into which this proceeding became embroiled, BMAC believes that it is appropriate to begin these Objections with a few Comments by BMAC noting those tentative findings in Order 2008-2-3 with which BMAC does not disagree, as follows:

1. Falsified Financial Information and Documents. BMAC does not disagree with the Department’s finding that falsified financial information and financial
fitness evidence was submitted in this proceeding in the name of BMAC on numerous occasions over a period of two and one-half years (Order 2008-2-3, pp. 2, 10-14; Appendix A). It is important to note, however, that, with one exception – the surety bond forgery discovered prior to June 2005 by the Great American Insurance Company – all of the evidence regarding falsified financial information and documents submitted to the Department under oath in this proceeding was discovered and reported to the Department by BMAC itself, as a result of rigorous internal investigations undertaken by BMAC starting immediately after Great American’s discovery, and BMAC’s first awareness, of a forged surety bond which was procured, forged and submitted to opposing counsel in a litigated court proceeding by BMAC’s disgraced former General Counsel.

As BMAC subsequently discovered, all of the forged, altered and falsified financial information and documents submitted to the Department in this proceeding were created, caused to be filed, and sworn to by the same disgraced former General Counsel. That former General Counsel, turned out to be the epitome of a clandestine “rogue officer”, who shamelessly betrayed the trust of BMAC’s owners and senior officer who had first hired him in January 1988, and who had mentored and promoted him over a 17-year period. Nadolny repaid their kindness and trust by inflicting incalculable damage on the company which had placed him in a senior position of trust and responsibility, and he betrayed the trust of his fellow officers at BMAC, and of BMAC’s undersigned outside
counsel, and of all of his fellow employees, many of whom lost their jobs as a result of his shocking criminal actions.

2. **Initial Large-Aircraft Application.** BMAC does not disagree with, and deeply regrets, the Department’s finding that inaccurate and falsified financial information and evidence was submitted to the Department in BMAC’s name in support of BMAC’s application for authority to operate three Boeing 727 aircraft, and was relied on by the Department in granting BMAC’s application to operate up to three Boeing 727 aircraft (Order 2008-2-3, pp. 15-16).

BMAC does not disagree with the Department’s finding and conclusion that the Department’s unknowing reliance on falsified financial information as the basis for the Department’s grant of authority to authorize BMAC to operate three Boeing 727 aircraft completely nullifies and vitiates the probative value of the falsified evidence on which the Department’s decision was based (Order 2008-2-3, pp. 15-16), and, thus, warrants the withdrawal of the Department’s grant of that large-aircraft authority to BMAC by Order 2003-2-24 and Order 2004-8-21.

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1 BMAC notes that it subsequently filed, on and after December 30, 2005, extensive and wholly accurate financial information in support of its large-aircraft application. In its Show Cause Order, however, the Department found that BMAC’s new and verified financial fitness evidence still failed to meet the requirements of the Department’s financial fitness test (Order 2008-2-3, p. 16). BMAC disagrees with that finding, but, for the reasons noted hereinafter, BMAC is no longer inclined to continue to defend the adequacy of its working capital resources.
3. Post-June 1, 2005 Financial Evidence Submissions. BMAC asserts, and the Department does not dispute, that all of the financial fitness evidence submitted by BMAC to the Department after June 1, 2005, in support of the continuation and expansion of its existing large-aircraft authority, was demonstrably true, correct, and verified by independent audits and third-party sources. Notwithstanding the undisputed accuracy of that financial information, which BMAC firmly believed was at least adequate to support a finding that BMAC was fit to operate up to five Boeing 727 aircraft in charter operations, BMAC recognizes that the Department has tentatively determined that the financial evidence relating to BMAC was insufficient (in the view of the Department) to fully satisfy the requirements of the Department’s financial fitness test (Order 2008-2-3, pp. 15, 18-19).

BMAC notes, as discussed below, that it does not presently plan or expect to operate any large aircraft after April 6, 2008. Because of that plan, the matter of BMAC’s financial fitness to operate any Boeing 727 aircraft is about to become moot. For that reason, BMAC has no reason to challenge the Department’s tentative finding that BMAC does not currently possess sufficient financial resources to support the operation of its proposed large-aircraft operations under the Department’s long-established financial fitness test — although BMAC disagrees with that tentative finding. In the unlikely event that BMAC’s owners decide to continue in the airline business, and if they seek to operate
large jet aircraft in the future, BMAC will file a new application for authority to operate
large aircraft, with all necessary fitness evidence, at that time.

4. **Other Tentative Fitness Findings.** Finally, BMAC is not in a position to
agree or disagree with the Department’s description of concerns recently expressed to the
Department by the Federal Aviation Administration (the “FAA”) regarding BMAC’s
reduced operational staffing levels, since BMAC has not heard anything from the FAA
regarding those concerns. Not surprisingly, BMAC has lost some flight operations
employees in the recent past due to the publicity given to this proceeding and
understandable doubts about BMAC’s scope of future operations.

The Department’s reference to enforcement action taken against BMAC in March
2006 by the Department’s Enforcement Office, based on passenger complaints alleging
that BMAC failed to pay passenger ticket refund requests in a timely manner (Order
2008-2-3, p. 18) is undisputed. BMAC’s very much regrets its admitted failure to pay
passenger refund requests on a timely basis over two years ago, and BMAC notes that it
has settled that matter with the Department’s Enforcement Office on the basis of
BMAC’s payment in full of all delayed passenger refund payments, the entry of a Consent
cease and desist order, and BMAC’s payment of a substantial compromise civil penalty.

BMAC submits that neither of those circumstances, standing alone, would have
any material bearing on BMAC’s fitness for certification, and certainly neither
circumstance would warrant the extremely severe sanction of certificate revocation as proposed in Order 2008-2-3.

D. Comments Regarding Recent Developments Pertinent to This Case

1. BMAC’s Planned Near-Term Suspension of Certain Flight Operations.

As the Department is aware, BMAC had announced its intention to voluntarily suspend all flight operations on Friday, February 29, 2008, as stated in BMAC’s February 8, 2008 Motion For Postponement Of Procedural Dates in this proceeding (Motion, pp. 6-7). That proposed voluntary suspension was predicated on favorable action by the Department on BMAC’s requested postponement of procedural dates. The Department denied that modest request one day prior to the due date for Answers, by Order 2008-2-24, served February 19, 2008. Notwithstanding that rebuff to BMAC’s good-faith efforts to bring this case to a prompt conclusion by going out of business, BMAC still intends to voluntarily suspend most of its large-aircraft flight operations, effective on February 29th, except for a limited number of charter flights to which BMAC is contractually committed through April 6, 2008.

BMAC respectfully submits that its planned voluntary reduction, and near-term suspension, of all large-aircraft operations eliminates any immediate urgency for the finalization of the tentative findings and conclusions in Order 2008-2-3, which tentative findings and conclusions are predominantly directed to the Department’s concerns about BMAC’s asserted lack of financial fitness to conduct large-aircraft operations. Those
concerns will be rendered moot by BMAC’s voluntary suspension of all large-aircraft operations on or about April 6, 2008, which is the last date on which BMAC is contractually committed to be able to operate charter flights upon request pursuant to its two remaining charter service contracts.

BMAC is unwilling to voluntarily suspend its small-aircraft operations at this time for two reasons: First, as argued herein, BMAC believes there is no basis in the record of this proceeding for finding that BMAC is financially or otherwise unfit to continue to engage in its long-established wholly safe, reliable and fully-compliant small-aircraft operations. Second, BMAC is obliged to maintain its small-aircraft operations and DOT and FAA small-aircraft authority in effect in order to have any hope of selling its corporate ownership to a fully-qualified prospective purchaser, as discussed in the following section.

Moreover, as the Department is, of course, aware, if BMAC were to voluntarily suspend all of its flight operations even briefly, it would then require specific approval by the Department prior to resuming any flight operations pursuant to Section 204.7(b) of the Department’s Economic Regulations, even if, as BMAC urges, its economic authority to operate small aircraft is not revoked in this proceeding.

2. **Planned Sale of BMAC Including Its Small Aircraft Authority.**

As BMAC has recently advised the Department’s Fitness Division, pursuant to Section 204.5 of the Economic Regulations, BMAC has reached a tentative Letter of
Interest agreement with an existing small-aircraft air carrier, Maine Aviation Aircraft Charter, LLC ("Maine Aviation"), which currently holds both FAA Part 135 and DOT Part 298 exemption authority, including commuter air carrier authority, to conduct its current small-aircraft operations. See, Order 2007-7-24, served July 31, 2006 in Docket OST-2007-25711; and Order 2007-8-12, served August 15, 2007.

Subject to completion of a due diligence investigation, and satisfactory completion of agreements on price and terms necessary to reaching a definitive Stock Purchase Agreement, Maine Aviation is interested in acquiring 100 percent of the ownership of BMAC for the purpose of acquiring BMAC’s established small-aircraft operations, BMAC’s leased fleet of Jetstream 3100 turboprop aircraft, engines and parts, and other operational assets, owned by BMAC or its parent company. Although Maine Aviation currently holds FAA and DOT authority to operate small aircraft, Maine Aviation is also interested in acquiring, subject to regulatory approvals by the DOT and FAA, BMAC’s FAA Part 121 Air Carrier Certificate and Part 121 Operations Specifications related to BMAC’s existing small-aircraft operations with Jetstream-3100 turboprop aircraft, and BMAC’s DOT Section 41102 Certificate of Public Convenience and Necessity, also subject to a small-aircraft limitation.

The Letter of Interest ("LOI") reflecting that tentative agreement between BMAC and Maine Aviation was filed by BMAC with the Department’s Fitness Division on February 20, 2008, pursuant to a Section 204.5(a) Notice of a Proposed Change in
Ownership through the planned sale of 100 percent of BMAC’s voting stock. The LOI contemplates that, if the parties reach a definitive Stock Purchase Agreement, that Agreement and any other relevant agreements will be filed with the Fitness Division, and Maine Aviation will file the detailed fitness and citizenship information and documents required by Section 204.5 and Section 204.3 for review and approval by the Department. In addition, the LOI provides that, if the preconditions to a definitive agreement are met, including reaching an agreement on price, appropriate representations, warranties and indemnifications, the parties hope to close on the Stock Purchase Agreement on or about April 22, 2008. BMAC’s Section 204.5 Notice expressly states that neither BMAC nor Maine Aviation plans to seek any additional economic authority in connection with DOT review and approval of the proposed stock purchase transaction.

Finally, as noted above, the tentative LOI between BMAC and Maine Aviation contemplates that Maine Aviation desires to acquire BMAC with its existing FAA Part 121 certificate and DOT small-aircraft certificate authority intact and effective. In that connection, as discussed above and as the LOI notes, Maine Aviation already holds DOT economic authority to perform operations as a commuter air carrier, and would not need BMAC’s DOT certificate authority, except for a requirement in BMAC’s FAA Part 121 Operations Specifications which expressly provides that BMAC’s FAA Part 121 Air Carrier Certificate authority is subject to an express proviso that “at all times, the certificate holder has appropriate written economic authority issued by the Department of
In light of the foregoing FAA condition, BMAC requests that its DOT economic authority authorizing small-aircraft operations be permitted to remain in effect pending FAA approval of the transfer of BMAC’s Part 121 authority to Maine Aviation in order to enable Maine Aviation to acquire (subject to prior FAA approval) BMAC’s existing FAA Part 121 operating authority, which BMAC expects will also be limited to the operation of small aircraft at the time of the transfer and FAA approval.

As argued by BMAC in Section II., infra, BMAC respectfully submits that the Department’s tentative findings and conclusions relating to BMAC’s fitness for certification, except for the Department’s tentative findings regarding BMAC’s failure to satisfy the Department’s financial fitness test minimum capitalization requirements for large-aircraft operations, to which BMAC does not object in these Objections (see, Section I.B.1. and 2., supra), are otherwise lacking a necessary evidentiary foundation with regard to the fitness, competence and compliance disposition of BMAC’s owners and its current senior officers and two of its former senior officers. No allegation of unfitness was raised in the Show Cause Order regarding BMAC’s subordinate executive management and operations management group.

If, after its careful review of these Objections, and the entire record of this case (particularly BMAC’s post-June 1, 2005 record), the Department concludes that its
primary fitness concerns have all related to BMAC’s troubled large-aircraft operations, and not to its small-aircraft operations – which were not discussed or criticized in Order 2008-2-3 at all – BMAC urges the Department to limit any revocation of BMAC’s certificate authority to its large-aircraft authority, and to continue BMAC’s small-aircraft certificate authority in effect on the basis of a finding that the evidence in the record of this case does not warrant the revocation of BMAC’s small-aircraft authority.

BMAC’s owners still intend and desire to depart from the airline business in an orderly way, through a sale of BMAC to new owners. The continuation of BMAC’s small-aircraft authority will foster that objective, without any risk of harm to the traveling and shipping public.

II. PARTIAL OBJECTIONS OF BMAC TO SHOW CAUSE ORDER

A. Introduction and Summary

It is clear that the gravamen of the Department’s tentative finding that BMAC is unfit for certification, and of the Department’s tentative conclusion that BMAC’s certificate authority should be revoked, is based on one tentative finding of very serious violations of the law committed solely by the disgraced and long-ago discharged former General Counsel of BMAC, and a second tentative finding, regarding the fitness of BMAC’s owners and senior officers, which BMAC submits is incorrect and unjustified, and is not supported by any probative evidence of record in this proceeding.
The Department’s second finding, relating to the issue of managerial attentiveness, competence, and compliance disposition, is the primary focus of these Partial Objections.

First, the Department’s first basis for finding BMAC (collectively) to be unfit for certification relies upon the extremely serious and undisputed evidence of the deliberate falsification of numerous financial documents and third-party financial statements by BMAC’s former Senior Vice President and General Counsel (Nadolny), and the submission of that falsified evidence to the Department on numerous occasions over a two and one-half year period at Nadolny’s direction, and verified in every instance by Nadolny’s sworn-to Title 18 Certification, certifying that the falsified evidence, all of which was created and prepared by Nadolny, was true, correct and complete to the best of Nadolny’s knowledge and belief. The falsified financial evidence was directed to the issue of BMAC’s financial fitness to operate up to seven Boeing 727 large jet aircraft, and that issue was the primary fitness issue affecting BMAC’s large-aircraft application.

BMAC fully agrees with the Department’s finding that the deliberate submission of falsified evidence to the Department on behalf of an applicant in a certification

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2 Specifically, Nadolny’s Title 18 Certification swore under oath that he “in [his] individual capacity, and as the authorized representative of the applicant, [has] not in any manner knowingly and willfully falsified, concealed or covered up any material fact, or made any false, fictitious, or fraudulent statement, or knowingly used any documents which contain such statements, in connection with the preparation, filing or prosecution of the application.”
proceeding is an extremely serious violation, which goes to the heart of the integrity of
the Department’s decisional process (Order 2008-2-3, p. 15). BMAC also fully agrees
that the Department’s finding that the evidence of Nadolny’s direct involvement in the
preparation and submission of falsified evidence on behalf of BMAC in this proceeding is

However, the second, and legally essential, basis for the Department’s tentative
conclusion that BMAC’s certificate authority should be revoked is based on the
Department’s incorrect and unjustified tentative finding that BMAC’s owners and current
senior management are unfit, and are indirectly responsible for Nadolny’s crimes, based
on their failure to have discovered and prevented Nadolny’s fraudulent actions, and on the
Department’s further erroneous finding that BMAC’s owners and senior officers “either
knew or should have known” of Nadolny’s criminal actions (Order 2008-2-3, pp. 16-17).
Even less justifiable, the Department’s unfounded expressions of a “belief” that BMAC’s
owners and senior officers may have had actual knowledge of Nadolny’s crimes (Order
2008-2-3, p. 16, last line (“even if true”) and id., p. 17, 4th line (“we find it hard to
believe”), 14th line (“it strains credulity”), and lines 35-38 (“[that BMAC’s key
management personnel] perhaps even noticed the significant discrepancies in financial
data submitted to the Department, but . . . they did not speak up.”)).

Those types of unfounded and speculative expressions of belief are commonplace
and generally harmless in casual and informal conversations. In the case of official
written and published pronouncements by the courts and executive departments of the U.S. Government, which wield great power, such unfounded expressions of "belief", without any probative evidence, are reckless and irresponsible, and, in this specific case, are inaccurate, unfounded, unjustified and highly damaging expressions of "belief" as a basis for making such serious findings as that a carrier's management may be dishonest, or at least negligent and irresponsible, to a degree which warrants the revocation of an air carrier's certificate authority – the corporate equivalent of a death sentence. In the following section, BMAC will demonstrate that the Department's casual "belief" about the lack of integrity of BMAC's management is also completely unjustified.

B. The Record In This Proceeding Conclusively Demonstrates That Nadony Acted Wholly Alone, Without The Knowledge Or Complicity Of Any Other Person Employed By Or Involved With BMAC.

At the time of Nadolny's fraudulent, and concealed, falsification of BMAC's internal Balance Sheets, Income Statements and other financial reports, and Nadolny's fraudulent forgery and alteration of third-party bank statements purportedly reflecting BMAC's bank account balances, and his submission of those falsified documents to the Department as evidence of BMAC's financial fitness in furtherance of BMAC's applications for expanded large-aircraft authority, BMAC's senior executive management group consisted of three senior officers: Mr. David Fink, BMAC's President, John Nadolny, BMAC's Senior Vice President and General Counsel, and BMAC's Treasurer, 
Mr. Joseph Carey. In addition, as the Department has noted, since BMAC is a small and closely-held company, with over 99.4 percent of its stock owned by two individuals, Mr. Timothy Mellon and Mr. David Fink, BMAC’s two principal owners also closely monitored BMAC’s operations and financial affairs.

As BMAC reported to the Department on December 30, 2005, in a detailed response to the Department’s questions and requests for information in the aftermath of the discovery and reporting (by BMAC itself) of Nadolny’s fraudulent and extensive falsification of financial documents submitted to the Department, Nadolny, as a trusted long-time officer holding a position of great responsibility over BMAC’s legal affairs, including DOT and FAA regulatory proceedings, enjoyed essentially unsupervised authority over the matters entrusted to his responsibility, and he enjoyed unfettered access to BMAC’s financial records, bank statements and financial information (BMAC Response, filed on December 30, 2005 in this docket, at p. 10).

The criminal actions and fraudulent submissions of falsified evidence to the Department in this proceeding have been the subject of intensive and thorough investigations of the one of BMAC’s owners who has been most actively involved in the day-to-day management of the company (Mr. Fink), its three prior senior officers (Messrs. Fink and Carey, and, particularly, Nadolny), other officers and employees, and BMAC’s

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3 BMAC did not have a Chief Financial Officer until after June 1, 2005, when Mr. Eric Lawler, who held positions as a financial officer with BMAC’s affiliated railroad and parent companies, was transferred to BMAC as its Senior V.P. and Chief Financial Officer.
outside counsel, by the Department’s Inspector General (the “DOT/IG”), the Justice
Department’s Assistant U.S. District Attorney in New Hampshire (the “DOJ/ADA”). In
addition, vigorous internal investigations have also been conducted by BMAC’s current
General Counsel, Mr. Culliford and by its current Chief Financial Officer, Mr. Lawler.

BMAC is not privy to the findings and report of the investigation by the DOT/IG,
whose report BMAC has never seen. BMAC has only very limited information about the
investigation by the DOJ/ADA, other than a one-page letter to BMAC’s General Counsel,
Mr. Culliford, from the ADA (Mr. Kinsella) confirming that the ADA’s investigation did
not turn up any credible evidence that Nadolny acted otherwise than completely alone.
BMAC believes that it has a substantial basis for believing that none of the government
investigations turned up any evidence that Nadolny had any low-level or high-level
accomplices or co-conspirators, based on the known fact that no other individuals, other
than Nadolny, have been the subject of prosecution, or of formal or informal complaints,
by the Department or by either of those investigative agencies.

During the course of its own investigation, BMAC never found any documents or
received any statements indicating that any other person was aware of, or involved in,
Nadolny’s criminal acts. On that basis, BMAC assumes and believes that neither the
Department, nor the DOT/IG, nor the DOJ/ADA is aware of any evidence or even any
basis for suspicion, that any other person employed by or involved with BMAC had any
knowledge of, or complicity in, Nadolny’s fraudulent acts. That fact alone underscores
the unfairness and irresponsibility of the Department’s anonymous and unjustified suggestions in Order 2008-2-3 expressing “doubts”, “suspensions of disbelief” or “strained credulity” about the asserted denials of knowledge or complicity by BMAC’s owner and all of its senior officers.

C. **BMAC’S Owners And Senior Officers Were Justified In Their Trust In Nadolny, And They Were Neither Negligent Nor Incompetent In The Discharge Of Their Supervisory Responsibilities.**

The foregoing refutation of the Department’s unfounded implied distrust of the basic honesty of BMAC’s owners and senior officers leaves the necessity for responding to the Department’s further suggestion that, even if BMAC’s owners and officers were not aware of or complicit in Nadolny’s unlawful actions, they were, at least, negligent or incompetent in failing to follow developments in BMAC’s regulatory and other legal proceedings sufficiently closely to have discovered and prevented Nadolny’s fraudulent actions at an earlier point, warranting a conclusion that those failings also reflect negatively on the compliance disposition of BMAC’s owners and other senior officers (Order 2008-2-3, pp. 16-17).

In response to the Department’s tentative findings regarding the alleged lack of competence and compliance disposition on the part of BMAC’s senior management based on their alleged failure to follow the pleadings and orders in BMAC’s critically-important DOT large-aircraft application and fitness proceeding sufficiently closely to have noticed the significant disparity between the picture of BMAC’s financial condition presented in
BMAC’s filings with the Department and the far worse condition of BMAC’s current actual financial circumstances, BMAC offers the following facts, of which the Department is apparently not aware.

First, Nadolny was extremely well-known to Messrs. Mellon and Fink, who had hired him as an attorney for the Guilford Transportation Industries (“GTI”) railroads 17 years earlier on January 18, 1988. Over the next 10 years, Nadolny was steadily promoted and given positions of increasing responsibility, rising to the position of V.P. Law and General Counsel with GTI in August 1998. Following the acquisition of Pan American World Airways by Messrs. Mellon and Fink out of Pan Am’s bankruptcy proceeding in June 1998, Nadolny was given the additional title and responsibility of Senior V.P. and General Counsel of Pan Am, in addition to his similar positions with GTI and its railroad subsidiaries. During his 17-year employment with GTI and its subsidiaries, Nadolny worked closely with Messrs. Mellon and Fink, and he had long since become a loyal and trusted employee who had never given his employers any reason to doubt his honesty, loyalty and good judgment.

For reasons that only Nadolny himself could have known, Nadolny first began to betray his employers’ trust and to violate his professional responsibilities as an attorney and as a corporate officer by preparing and submitting falsified financial information to the Department in September 2002, in the context of BMAC’s initial application for authority to operate one Boeing 727 aircraft in addition to its existing small-aircraft fleet.
That initial corrupt fraudulent act then cascaded into multiple similar and more egregious fraudulent acts, including his forgery of a signature on the Great American surety bond, the discovery of which by Great American prior to June 2005 virtually immediately resulted in the investigations by BMAC which resulted in the shocking discovery of other fraudulent acts by Nadolny extending back over two and one-half years, and leading ultimately to this certificate-revocation proceeding.

The revelation of Nadolny’s crimes came as a complete shock and surprise to BMAC’s two principal owners, and to BMAC’s two newly-appointed Senior V.P.’s, Messrs. Culliford and Lawler, and to BMAC’s undersigned counsel. The falsified financial documents were discovered by BMAC over a period of more than a week, as the internal investigation worked backward in time to what finally appeared to be the first of Nadolny’s falsified submissions to the Department. Each new discovery was more shocking than the earlier ones, and it took a long while for BMAC’s senior officers and counsel to gradually accept the reality that someone they had worked closely with and thought they knew well had consciously and deliberately lied to everyone he worked closely with on a daily basis for nearly three years.

The key to the Department’s understanding of the complete lack of culpability or negligence on the part of BMAC’s senior management in this very unique case, is to recognize the reality that, after 17 years of close experience with and observation of a trusted employee and fellow officer, it was wholly understandable and justifiable that
BMAC’s senior officers and counsel trusted Nadolny without a shadow of doubt. That wholly reasonable trust led Nadolny’s superiors and fellow officers to trust him and assume that he was performing his duties in an honest and professional manner, as he had always done over the span of a 17-year career – his fellow officers and close co-workers would not have had any reason to suspect otherwise.

Contrary to the Department’s unfounded assumptions stated in Order 2008-2-3, BMAC’s two most senior owners and officers were not disinterested or uninvolved in BMAC’s DOT large-aircraft proceeding – they were riveted by it, and closely followed every development in it on a regular basis and sometimes on a daily basis. The only difficulty was that, just as they trusted Nadolny, prior to June 1, 2005, to do his job properly, for the same reasons, they also relied on Nadolny to give them accurate information in his often daily briefings about the status and progress of the DOT large-aircraft application case, and about the issues and problems that arose. Of course, the one thing that they did not know was that Nadolny was engaged in very serious unlawful activity, and that, therefore, he was never going to tell Messrs. Mellon and Fink, or anyone else, that he had been filing falsified and forged financial information and documents, which he himself created, with the Department for nearly three years.

In Order 2008-2-3, the Department cites several cases bearing on the subject of the responsibility of a carrier’s management to oversee the carrier’s employees and to pay sufficiently close attention to the carrier’s business and regulatory activities to become
aware of deficiencies before they became serious problems. Two of the cases cited by the Department, particularly the notorious ATX, Inc. Fitness Investigation, don’t bear even a remote factual similarity to the facts in this case. However, the Department cites and quotes from the ATX case, and the Yute Air Alaska case, to underscore a basic doctrine of managerial responsibility which BMAC believes fits this case perfectly.

As quoted by the Department, that doctrine holds that “a carrier’s key personnel are responsible for conducting its operations in a way so as to ensure that reasonably expected compliance problems do not occur” (ATX, Inc., Docket 48780, Opinion and Order on Review, issued April 5, 1994, at 7; emphasis added).

In this case, not even BMAC’s harshest and most antagonistic critic could contend with a straight face that the forgery and filing of falsified financial information under oath in a crucially-important DOT fitness proceeding by a 17-year career Senior V.P. and General Counsel was a “reasonably expected compliance problem”.

On the contrary, BMAC submits that its owners’ and senior officers’ trust and confidence in Nadolny was reasonable, understandable and justified. His betrayal of that trust, at the cost of losing his executive position, salary, license to practice law, and the loss of his future employability, was utterly and completely unexpected and unpredictable. BMAC’s owners and senior officers do not deserve to be castigated, and
BMAC’s small-aircraft certificate authority does not warrant revocation, on the basis of BMAC’s management’s acknowledged failure to foresee and prevent such an extraordinary and unimaginable moral collapse on the part of a long-trusted and formerly stable employee.

III. CONCLUSION.

The best evidence of the competence, responsibility, honesty and consistent record of compliance with the law on the part of BMAC’s owners and President is to be found in the real-world record of safe, reliable and lawfully-compliant airline operations by Pan American between June 1998 and its suspension of operations in October 2004, as a result of Pan Am’s substantial operating losses and its intractable labor relations problems, and the similarly safe, reliable and substantially compliant record of airline operations by BMAC between its initial commencement of operations in June, 1999 through to the present time.

For far longer than their 10 economically-difficult years in the airline business, Messrs. Mellon and Fink have also been partners in safe, successful, reliable, and lawfully-compliant – and frequently-honored -- railroad operations in the Northeastern United States for over 25 years, initially organized as Boston & Maine Railroad, and

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4 As BMAC has acknowledged previously, the grant of its large-aircraft certificate authority, which was awarded on the basis of the Department’s unknowing reliance, and BMAC’s unknowing reliance, on falsified financial evidence created and filed by Nadolny, nullifies the effectiveness of that grant of large-aircraft authority.
other affiliated subsidiaries of their parent company, Guilford Transportation Industries, now re-named as Pan American Railways, Inc. Boston & Maine Railroad and Guilford Rail Systems have been awarded the prestigious E. H. Harriman award for outstanding safety achievements in railroad operations on 19 occasions (including five Gold Medal awards) over the past 30 years.

Apart from the evidence provided by BMAC’s operating history, the most recent evidence of the seriousness which Messrs. Mellon and Fink, and their subordinate officers (with one tragic glaring exception), bring to their attitude and diligence devoted to compliance with the requirements of the law is to be found in BMAC’s diligent search through its corporate financial and regulatory filing records to discover, and report fully to the Department, every inaccuracy or inconsistency which could be found in every legal or regulatory filing in which Nadolny was involved going back six years to BMAC’s initial DOT application in July 2000. In addition to its diligent and forthright provision of detailed reports to the Department, BMAC exerted every effort to cooperate fully and immediately with the post-June 1, 2005 investigations by the DOT/IG and by the DOJ/ADA, granting all investigators unrestricted access to BMAC’s files and making its employees and counsel available to be interviewed under oath in connection with the government’s investigations.

Finally, on December 30, 2005, in response to extensive questions and requests for information and explanations from the Department’s OST, BMAC filed a 150-page
compilation of responses to the Department’s questions, audited financial reports, other extensive corporate and compliance information involving other government agencies and courts, and a comprehensive description of the significant and effective corrective measures which BMAC had implemented, and planned to implement, in the aftermath of the shocking discovery of Nadolny’s carefully-concealed unlawful actions, for the purpose of avoiding any repetition of such serious misconduct in the future.

BMAC’s owners and senior officers are justly proud of BMAC’s safety and compliance disposition record, and of their constant efforts to instill that attitude in all of BMAC’s officers and employees, together with other corrective measures instituted since June 2005, including a required double-check review of all financial information submitted to any federal, state and local government agency in the future.

Finally, for the valid reasons noted above, it is important to BMAC to retain its small-aircraft certificate authority, both on the basis of the fitness evidence adduced in this proceeding, and for the lawful business purposes discussed above.
WHEREFORE, BMAC respectfully moves the Department to modify the tentative findings and conclusions stated in Order 2008-2-3, as urged by BMAC in the foregoing Objections and Comments in response to the Department’s Show Cause Order.

Respectfully submitted,

[Signature]
Nathaniel P. Breed, Jr.
ZUCKERT SCOUTT & RASENBERGER, L.L.P.
Attorneys for
BOSTON-MAINE AIRWAYS CORP.

CERTIFICATE OF SERVICE

I hereby certify that I have this 3rd day of March 2008 served a copy of the foregoing Objections and Comments of Boston-Maine Airways by messenger, e-mail transmission or United States mail, properly addressed and with postage prepaid, upon each of the persons listed in the Service List attached hereto.

[Signature]
Nathaniel P. Breed, Jr.

Washington, D.C
March 3, 2008
Service List (DOT Dockets OST-00-7668, OST-03-14985 and OST-04-19919)

Mr. Frederick Walker, Manager  
ASO-200  
FEDERAL AVIATION ADMINISTRATION  
Southern Region HQ  
1701 Columbia Avenue  
College Park, GA 30337  

Mr. William Royal  
POI for Boston-Maine Airways Corp.  
FAA Tampa CMO-29  
5601 Mariner Street  
Tampa, FL 33609  

Mr. Leonard Beers  
FAA CMO-29  
5950 Hazeltine National Drive - Suite 500  
Orlando, FL 32822-5023  

Peter Lynch, Esq.  
Asst. Chief Counsel for Enforcement AGC-300  
FEDERAL AVIATION ADMINISTRATION  
800 Independence Ave., S.W.  
Washington, DC 20591  

Nathaniel P. Breed, Jr., Esq  
ZUCKERT SCOTT & RASENBERGER, LLP  
888 17th Street, N.W. – Suite 700  
Washington, DC 20006-3309  

Jerry D. Anker, Esq.  
Russell Bailey, Esq.  
AIR LINE PILOTS ASSOCIATION  
1625 Massachusetts Ave., N.W.  
Washington, DC 20036  

Eddie Thomas, Esq.  
FAA Regional Counsel ASO-7  
FEDERAL AVIATION ADMINISTRATION  
Southern Region HQ  
1701 Columbia Avenue  
College Park, GA 30337  

Mr. Vic Roxas  
PMI for Boston-Maine Airways Corp.  
FAA Tampa FSDO-35  
5601 Mariner Street  
Tampa, FL 33609  

Captain Dirck Hecking  
6213 Coffman Road  
Indianapolis, IN 46268  

Mr. Edwin Nowell  
PAI for Boston-Maine Airways Corp.  
FAA Orlando CMO-29  
5950 Hazeltine Drive – Suite 500  
Orlando, FL 32822-5023  

Robert B. Culliford, Esq.  
BOSTON-MAINE AIRWAYS CORP.  
Pease International Tradeport  
14 Aviation Avenue  
Portsmouth, NH 03801