§ 380.34a Substitution of direct air carrier's security or depository agreement.

(a) A direct air carrier may substitute its own security agreement and/or depository arrangements, as specified in this section, for those required of the charter operator under §380.34, but only for charter trips in which all the air transportation is provided by one direct air carrier. Charter operators are relieved from §380.34 to the extent that the direct carrier substitutes its own arrangements.

(b) The direct air carrier may substitute its security agreement for all of the arrangements required of the charter operator under §380.34(b). Alternatively, it may substitute its depository agreement for the depository agreement required of the charter operator under §380.34(b)(2). If the direct carrier substitutes its depository agreement, it may also obtain and substitute a security agreement for the one otherwise required of the charter operator under §380.34(b)(1). If the direct carrier substitutes its depository agreement only, the charter operator must supply the security agreement required under §380.34(b)(1).

(c) If the direct carrier substitutes a security agreement for all the charter operator’s requirements under §380.34, the charter operator shall include in the charter prospectus, in place of the information in §380.28(a)(2) regarding the charter operator’s security agreement:

(1) A statement by the direct air carrier on OST Form 4535 that it will take responsibility for all charter participant payments (including those for...
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ground accommodations and services) and for the fulfillment of all the charter operator's contractual and regulatory obligations to the charter participants.

(2) A statement from the direct air carrier and its securer (under §212.12 of this chapter), OST Form 4533, that they have entered into a security agreement assuring the direct air carrier's responsibilities to charter participants under this section in an unlimited amount (except that the liability of the securer with respect to any charter participant may be limited to the charter price paid by or on behalf of such participant), and that the securer has received a copy of the proposed flight schedule identified by the schedule number assigned by the charter operator under this part.

(d) A substitute depository agreement under this section shall be signed by the direct air carrier, the charter operator, and the depository bank, and shall provide, in addition to existing requirements under §212.8 of this chapter, that:

(1) Payments by or on behalf of charter participants shall be allocated to the flight accounts matching the participant's itinerary in the following way: Each account shall have allocated to it the charter cost of the participant's air transportation on that flight. The portion of each payment not intended for air transportation services shall be allocated to the account for the return flight in the participant's itinerary. If there is only one flight in the itinerary, the entire payment shall be allocated to that account.

(2) The bank shall pay funds from a flight account directly to the hotels, sightseeing enterprises, or other persons or companies furnishing ground accommodations and services, if any, in connection with the charter flight, upon presentation to the bank of vendor's bills and upon certification by the person who contracted for the ground accommodations or services of the amounts payable and the persons or companies to whom payment is to be made, except that no disbursement shall be made that would reduce the balance in the account below the charter cost of the flight.

(3) On sales made to participants by a person other than a retail travel agent, the participant shall pay by check, money order, or credit card draft payable to the bank. On sales made to participants by a retail travel agent, payments shall be made in the same manner unless the agent deducts its commission and remits the balance to the bank by check, money order, or electronic transfer. The agent may deduct its commission only if it agrees in writing with its principal (the charter operator or direct air carrier, as applicable) that, if the charter is canceled, the agent shall remit to the bank the full amount of the commission previously deducted or received within 10 days after receipt of notification of the cancellation. The depository bank shall pay refunds directly to participants according to the terms of the operator-participant contract and the terms of this part.

(e) If the direct carrier substitutes a security agreement in addition to substituting a depository agreement, the charter prospectus information must include all the information required by paragraphs (c) and (d) of this section, except for the amount of the security agreement. That agreement shall be in an amount of at least $10,000 times the number of flights, except that the amount need not be more than $200,000.

(f) A copy of the depository agreement under paragraph (d) of this section shall be filed with the Department, and it shall not be effective until approved by the Department.

(g) A copy of the security agreement under paragraph (c) or paragraph (e) of this section shall be filed with the Department. It shall insure the financial responsibility of the direct air carrier for supplying the transportation and all other accommodations, services, and facilities in accordance with the contracts between the charter operator and the charter participants. Such security agreement shall meet all the other requirements of §380.34 (c) and (d).

§380.35 Disbursements from depository account.

No charter operator or direct air carrier shall cause its agents or the depository bank to make disbursements or